



## SOCIAL SECURITY

October 15, 2009

The Honorable Sam Johnson  
Ranking Member, Subcommittee on  
Social Security  
Committee on Ways and Means  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Johnson:

On August 18, 2009, your staff asked us to provide information on how the *Martinez* class action settlement agreement would affect the Social Security Administration's (SSA) fugitive felon policy.

Thank you for the opportunity to provide the Committee with the requested information. To ensure SSA is aware of the information provided to your office, we are forwarding it a copy of this report. I have also sent a similar response to Chairman Tanner, Ranking Member John Linder of the Subcommittee on Income Security and Family Support, and Member Wally Herger of the Committee on Ways and Means.

If you have any questions, please call me, or have your staff contact Misha Kelly, Congressional and Intragovernmental Liaison, at (202) 358-6319.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr." with a stylized flourish at the end.

Patrick P. O'Carroll, Jr.  
Inspector General

Enclosure

cc:  
Michael J. Astrue  
John Tanner  
John Linder  
Wally Herger

***CONGRESSIONAL RESPONSE  
REPORT***

***The Social Security Administration's  
Fugitive Felon Program and the Martinez  
Settlement Agreement***

**A-01-09-29177**



October 2009

## **Mission**

**By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.**

## **Authority**

**The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:**

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

**To ensure objectivity, the IG Act empowers the IG with:**

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

## **Vision**

**We strive for continual improvement in SSA's programs, operations and management by proactively seeking new ways to prevent and deter fraud, waste and abuse. We commit to integrity and excellence by supporting an environment that provides a valuable public service while encouraging employee development and retention and fostering diversity and innovation.**

## OBJECTIVE

Our objective was to address a request from Congress to provide information on how the *Martinez* class action settlement agreement would affect the Agency's fugitive felon policy.

## BACKGROUND

On August 18, 2009, we were asked by the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, for information on the tentative settlement agreement reached by the Social Security Administration (SSA) in the *Martinez* class action lawsuit. In this case, *Martinez* challenged SSA's policy and procedures in applying non-payment actions to fugitive felons.

The *Social Security Act* prohibits the payment of Title II and XVI benefits to a beneficiary who is "fleeing" to avoid prosecution, custody, or confinement for a felony—and to a beneficiary who is violating a condition of probation or parole—unless the Agency determines that good cause exists for paying such benefits.<sup>1</sup>

*Martinez* challenged SSA's fugitive felon policy of basing payment suspensions solely on the existence of an outstanding felony arrest warrant rather than developing information to ensure that the individual was "fleeing." As a result of the *Martinez* case,<sup>2</sup> a settlement was reached in which SSA policy will suspend Title II and deny Title XVI benefits only if the individual's outstanding felony warrant was issued for one of three National Crime Information Center Uniform Offense Class Codes:

- Escape (Offense Code 4901);
- Flight to avoid prosecution, confinement, etc. (Offense Code 4902); and
- Flight-Escape (Offense Code 4999).

Additionally, under the *Martinez* settlement agreement, SSA will not select as a representative payee individuals who have an outstanding felony warrant issued for one of the three offenses cited above. However, SSA reserves the right to use all warrant information in determining an individual's suitability to serve as a representative payee.

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<sup>1</sup> The *Social Security Act* §§ 202(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), 42 U.S.C. §§ 402(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), as amended by § 203(a) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(a), March 2, 2004, and the *Social Security Act* §1611(e)(4), 42 U.S.C. § 1382(e)(4), as amended by § 203(b) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(b), March 2, 2004.

<sup>2</sup> The Federal District Court in Oakland, California ordered final approval of the settlement on September 24, 2009. The settlement is expected to become effective on November 29, 2009.

The *Martinez* settlement agreement does not affect SSA's policies or procedures for processing Title II or XVI payments to beneficiaries with outstanding warrants for parole or probation violations (for example, Offense Codes 5011 and 5012).<sup>3</sup>

The Subcommittee on Social Security requested responses to four specific questions on this matter.

- (1) What results has the fugitive felon program (which includes probation and parole violators) achieved under current law (pre-Martinez) since its inception (for example: savings, arrests, number of individuals removed from the rolls, etc.)? What have been the program's most important successes and challenges?
- (2) If agreed to, how will the Martinez settlement provisions impact the success and challenges of the current program and what new challenges will they create? How many SSI and DI recipients will be affected by the decision (for example, how many will get checks, how much will that cost, how many arrests will not take place, etc.)?
- (3) Are there any other legislative changes/additions you would recommend to this language to ensure the future success of the fugitive felon program?
- (4) For the information requested above, to the degree possible, please provide a breakout of underlying offenses.

See Appendix B for our scope and methodology and Appendix C for additional background information on SSA's fugitive felon program.

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<sup>3</sup> As of September 2009, SSA's reliance on probation and parole violator arrest warrant information is before the U.S. Court of Appeals for the Second Circuit (*Clark v. Astrue*, No. 08-5801).

# Results of Review

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We estimate that about 60.7 percent of individuals with outstanding warrants will be paid Title II and XVI benefits as a result of the *Martinez* settlement agreement. The remaining 39.3 percent will continue to have their benefits stopped. The 39.3 percent consists of

- about 0.7 percent of fugitive felons who have outstanding warrants with one of the three Offense Codes cited in the *Martinez* settlement agreement; and
- about 38.6 percent who are probation or parole violators—since the *Martinez* agreement has no impact on this group.

The settlement agreement, however, does not restrict SSA or the Office of the Inspector General's (OIG) data sharing activities with law enforcement. Therefore, the OIG will continue to obtain data from law enforcement agencies on fugitive felons wanted for all offense codes and match that data with SSA's records. Additionally, the OIG will share information in SSA's records regarding the fugitive's location (that is, address information) with law enforcement so that they can potentially arrest the fugitive.

Responses to the specific questions from the Subcommittee on Social Security are below.

## QUESTION 1

*What results has the fugitive felon program (which includes probation and parole violators) achieved under current law (pre-Martinez) since its inception (for example: savings, arrests, number of individuals removed from the rolls, etc.)? What have been the program's most important successes and challenges?*

SSA identified fugitive felons and probation or parole violators through data matches between the Agency's beneficiary rolls and Federal and State warrant databases. Since the program's inception in August 1996 through July 2009, it has contributed to a total of 86,309 arrests. Of the 86,309 arrests

- 822 (1 percent) individuals were arrested for the offenses cited in the *Martinez* agreement—escape, flight to avoid prosecution or confinement, or flight-escape;
- 38,114 (44 percent) individuals were arrested for violating a condition of probation or parole; and
- 47,373 (55 percent) individuals were arrested for all other offenses.

Table 1 summarizes our two reviews related to fugitive felons and probation or parole violators receiving Title II or XVI benefits—pre-*Martinez*.

<b>Table 1: Fugitive Felons and Probation or Parole Violators Receiving Title II or XVI Benefits</b>			
<b>Title/Date of OIG Review</b>	<b>Funds Not Paid or Overpayments Recovered</b>	<b>Overpayments to be Recovered and Potential Funds Not Paid</b>	<b>Payments Not Recovered<sup>4</sup></b>
<i>Assessment of the Supplemental Security Income Fugitive Felon Project (A-01-03-23070), September 2003<sup>5</sup></i>	\$83,403,489	\$206,927,672	\$158,067,262
<i>Title II Benefits to Fugitive Felons and Probation or Parole Violators (A-01-07-17039), July 2008</i>	\$404,252,378	\$249,676,172	\$60,290,969
<b>Total</b>	<b>\$487,655,867</b>	<b>\$456,603,844</b>	<b>\$218,358,231</b>

In our September 2003 report, we estimated that SSA

- did not pay, or recovered, about \$83.4 million in Title XVI program funds between August 1996 and February 2003 by stopping or recovering Title XVI payments to 32,979 fugitive felons and probation or parole violators;<sup>6</sup>
- had the potential to recover an additional \$206.9 million in payments to fugitives for months up to and including February 2003; and

<sup>4</sup> This included overpayments for which SSA granted repayment waivers or deemed uncollectible; and payments issued to recipients for months during which they were fugitives but SSA did not pursue recovery because the Agency applied its administrative finality rules. It also included benefit payments identified based on our audit—which SSA did not detect but would not attempt to recover because of its administrative finality rules. Additionally, it included benefits paid to beneficiaries with outstanding felony warrants that would not be recovered because of the *Fowlkes* Ruling.

<sup>5</sup> The \$83.4 million is significantly lower than the other two categories because although the fugitive provisions took effect in August 1996, it took SSA several years to set up data matching with law enforcement agencies, and SSA limited its overpayment assessments for fugitives to the 24 months before the date it discovered the warrant under its rules of administrative finality (unless fraud or similar fault was involved).

<sup>6</sup> Effective August 1996, an individual was ineligible for Title XVI payments for any month during which he/she is (1) fleeing to avoid prosecution for a crime which is a felony (or in New Jersey, a high misdemeanor) under the laws of the place from which the person flees; (2) fleeing to avoid custody or confinement after conviction for a crime which is a felony (or in New Jersey, a high misdemeanor) under the laws of the place from which the person flees; or (3) violating a condition of probation or parole imposed under Federal or State law. Pub. L. No. 104-193, § 202(a), 110 STAT. 2185-2186, *Social Security Act* § 1611(e)(4), 42 U.S.C. § 1382(e)(4).

- did not recover \$158.1 million in Title XVI payments issued to fugitive felons, despite their outstanding warrants.<sup>7</sup>

In our July 2008 report, we estimated SSA

- did not pay, or recovered, about \$404.3 million in Title II program funds from January 2005 through March 2008;<sup>8</sup>
- had the potential not to pay, or recover, an additional \$249.6 million by withholding future payments and recovering overpayments made through March 2008; and
- did not recover approximately \$60.3 million in Title II benefits issued to fugitive felons, despite their outstanding warrants.<sup>9</sup>

Table 2 summarizes our two reviews related to fugitive felons and probation or parole violators serving as representative payees for Title II or XVI beneficiaries—pre-*Martinez*.

<b>Table 2: Fugitive Felons and Probation or Parole Violators Serving as Representative Payees</b>		
<b>Title/Date of OIG Review</b>	<b>Funds Managed by Payees</b>	<b>Funds Expected to be Managed Annually</b>
<i>Fugitive Felons Serving as Representative Payees (A-01-08-18021), March 2009</i>	\$75,841,193	\$19,358,640
<i>Probation or Parole Violators Serving as Representative Payees (A-01-09-29112), August 2009</i>	\$26,876,147	\$4,076,164
<b>Total</b>	<b>\$102,717,340</b>	<b>\$23,434,804</b>

<sup>7</sup> SSA did not recover these funds because it granted repayment waivers, deemed the payments uncollectible, or applied its rules of administrative finality.

<sup>8</sup> Beginning January 1, 2005, the *Social Security Act* prohibits the payment of Title II benefits to a beneficiary who is fleeing (for a period of more than 30 days) to avoid prosecution, custody, or confinement for a felony—and to a beneficiary who is violating a condition of probation or parole—unless the Agency determines that good cause exists for paying such benefits. The *Social Security Act* §§ 202(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), 42 U.S.C. §§ 402(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), as amended by § 203(a) of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203 § 203(a), March 2, 2004. In our July 2008 report, we found that 6 of the 275 sample cases involved the good cause provision; and this projects to about 1,937 from a population of 219,635 cases (or less than 1 percent) involving the good cause provision.

<sup>9</sup> This includes funds paid to beneficiaries as a result of Social Security Acquiescence Ruling 06-1(2), *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005): Determining Whether an Individual Is a Fugitive Felon Under the Social Security Act (Act)—Titles II and XVI of the Act, Federal Register, Vol. 71, No. 66, at page 17551 (April 6, 2006).

In our March 2009 report, we estimated SSA

- paid approximately \$75.8 million between April 2005 and September 2008 to about 6,527 fugitive felons who served as representative payees for about 8,384 beneficiaries and<sup>10</sup>
- would pay about \$19.4 million over the next 12 months if the warrants remained unsatisfied and the fugitive felons continued serving as representative payees.

In our August 2009 report, we estimated SSA

- paid approximately \$26.9 million between April 2005 and January 2009 to about 1,800 probation or parole violators serving as representative payees for about 2,439 beneficiaries. Of this amount, probation or parole violators serving as payees received approximately \$8 million in Title II benefits and \$18.9 million in Title XVI payments; and<sup>11</sup>
- would pay about \$4.1 million over the next 12 months if the warrants remained unsatisfied and the probation or parole violators continued serving as representative payees.

### **Successes and Challenges**

SSA's fugitive felon program has successfully assisted law enforcement agencies with apprehending fugitive felons. This contributes to the safety of the American public by taking criminals off the streets. Additionally, millions of Social Security Trust Fund dollars and General Fund dollars have not been paid to, or have been recovered from, fugitive felons. Finally, the needs of many of the most vulnerable beneficiaries have been protected because fugitive felons have not been appointed as representative payees.

As for challenges, significant resources were required to set up the data matches with law enforcement agencies to obtain and process warrant information. The process has been in place for several years. It allows the OIG to identify fugitive felons and share address information with law enforcement to assist in the arrest of the fugitive felons and the Agency to suspend or deny Title II or XVI payments. However, the process could be automated more, and renewing the computer matching agreements is a challenge. Also, communication and cooperation with law enforcement officials continue to be challenges. Additionally, SSA has had to devote resources to challenges in court of the Agency's implementation of the fugitive provisions in the *Social Security Act*—such as in the *Fowlkes v. Adamec*, *Martinez v. Astrue*, and *Clark v. Astrue* court

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<sup>10</sup> The *Social Security Protection Act of 2004*, Pub. L. No. 108-203 §§ 103(a), 103(c), and 103(d), disqualifies fugitive felons from serving as representative payees and took effect in April 2005.

<sup>11</sup> The *Social Security Protection Act of 2004* disqualifies probation or parole violators from serving as representative payees for Title XVI recipients; however, there is no similar provision for Title II beneficiaries. Pub. L. No. 108-203 §§ 103(c)(1)(C)(V) and (c)(3)(C). See also *Social Security Act* § 1631(a)(2)(B)(iii)(V), and 1611(e)(4)(A)(ii), 42 U.S.C. § 1383(a)(2)(B)(iii)(V), and 1382(e)(4)(A)(ii).

cases.<sup>12</sup> Although the *Clark v. Astrue* court case was decided in the Government's favor at the District Court level, the plaintiffs have appealed. If the Circuit Court decides in the plaintiffs' favor, SSA's continued ability to prohibit payment on the basis of probation or parole violation might be affected.

## QUESTION 2

*If agreed to, how will the Martinez settlement provisions impact the success and challenges of the current program and what new challenges will they create? How many SSI and DI recipients will be affected by the decision (for example, how many will get checks, how much will that cost, how many arrests will not take place, etc)?*

According to the *Martinez* settlement agreement, SSA will suspend payments to individuals using the current policy and procedures for only three offense codes: Escape (4901); Flight to avoid prosecution, confinement, etc. (4902); and Flight-Escape (4999). Additionally, parole and probation violators (for example, 5011 and 5012) are not affected by the *Martinez* settlement agreement and will continue to be ineligible for benefits.

Based on a file of 271,618 fugitive felons and probation or parole violators as of October 5, 2006, we determined that SSA could continue to withhold or recover payments from only 39.3 percent of these individuals under the *Martinez* settlement agreement.<sup>13</sup> Therefore, the *Martinez* settlement agreement will reduce the number and amount of Title II and XVI suspensions. Table 3 shows the impact the *Martinez* settlement could have on the Title II and XVI programs.

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<sup>12</sup> *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005), and *Martinez v. Astrue*, Case No. 08-CV-4735 CW, (N.D. CA., Oakland Div.); *Clark v. Astrue*, 2008 WL 4387709 (S.D.N.Y., Sept. 22, 2008).

<sup>13</sup> The 39.3 percent represents 38.6 percent of the cases that were probation or parole violators, and 0.7 percent that were fugitive felons with Offense Codes 4901, 4902, or 4999 (see Table 5).

<b>Table 3: Fugitive Felons and Probation or Parole Violators Receiving Title II or Title XVI Benefits</b>			
<b>Title/Date of OIG Review</b>	<b>Funds Not Paid or Overpayments Recovered Before <i>Martinez</i> Settlement Agreement</b>	<b>Funds Not Paid or Overpayments Recovered After <i>Martinez</i> Settlement Agreement</b>	<b>Variance</b>
<i>Assessment of the Supplemental Security Income Fugitive Felon Project (A-01-03-23070), September 2003</i>	\$83,403,489	\$32,777,571	\$50,625,918
<i>Title II Benefits to Fugitive Felons and Probation or Parole Violators (A-01-07-17039), July 2008</i>	\$404,252,378	\$158,871,185	\$245,381,193
<b>Total</b>	<b>\$487,655,867</b>	<b>\$191,648,756</b>	<b>\$296,007,111</b>

To put this into perspective, for our two reviews in which fugitive felons and probation or parole violators were receiving Title II or XVI payments, we estimated SSA did not pay, or recovered, about \$487.7 million. However, if the *Martinez* settlement were in place, the Agency would have not paid, or would have recovered, only about \$191.6 million (\$487.7 million multiplied by 39.3 percent).<sup>14</sup>

According to SSA, early in the negotiation sessions for the *Martinez* case, the Agency developed a rough estimate of the effect a possible settlement would have in terms of benefits to be paid under the Title II and XVI programs. The estimate was based on a very general version of a possible settlement agreement—not a specific set of settlement provisions—and it did not rely on the detailed identification of the affected population and their associated liabilities. However, the plaintiff’s attorney became aware of this “ballpark” estimate, and it has been incorrectly associated (in media reports) with the agreement. In August 2009, SSA’s position was that, even once the settlement is finalized and the specific terms agreed to, the Agency will not be able to provide a reasonable estimate at that time. For example, class members will need to be identified, and legal limits on eligibility—such as Title XVI income and resource limits—will need to be determined. Additionally, the cost of the settlement will include administrative costs associated with the resources the Agency will need to devote to implementing the terms of the settlement, including re-evaluating cases and re-programming its computer systems.

<sup>14</sup> These amounts cover nonconsecutive audit time periods—from August 1996 through February 2003 and from January 2005 through March 2008—and do not include an estimate for the 21-month period between the two audits.

### QUESTION 3

*Are there any other legislative changes/additions you would recommend to this language to ensure the future success of the fugitive felon program?*

Currently, the *Social Security Act* prohibits the payment of Title II and XVI funds to a beneficiary who is fleeing to avoid prosecution, custody, or confinement for a felony—and to a beneficiary who is violating a condition of probation or parole—unless the Agency determines that good cause exists for paying such benefits.<sup>15</sup>

Removing the word “fleeing” from the language of the law and incorporating language prohibiting payment to individuals with an outstanding felony warrant would enable SSA to not pay benefits to these individuals and prohibit them from being representative payees. Another option would be to define what is meant by the word “fleeing” in the context of this legislation. For example, “fleeing” could be defined as the point in time a beneficiary is notified by SSA that he or she has an outstanding felony warrant. In revising this legislation, consideration could also be given to limiting the fugitive felon non-payment provisions to individuals wanted for violent or drug-related crimes instead of any felony offense.<sup>16</sup> Additionally, legislative changes could be considered to require that all law enforcement agencies enter warrant information into a central source, such as the Federal Bureau of Investigation’s National Crime Information Center, eliminating the need for SSA to negotiate computer matching agreements with individual law enforcement agencies.

### QUESTION 4

*For the information requested above, to the degree possible, please provide a breakout of underlying offenses.*

Tables 4 and 5 show the 271,618 fugitive felons and probation or parole violators whose SSNs we verified through SSA’s Enumeration Verification System. This file of SSNs included all fugitive felons and probation or parole violators as of October 5, 2006. Table 4 classifies the offense codes in broad categories while Table 5 provides a more detailed classification of the offense codes.

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<sup>15</sup> The *Social Security Act* §§ 202(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), 42 U.S.C. §§ 402(x)(1)(A)(iv)-(v) and (B)(iii)-(iv), as amended by § 203 of the *Social Security Protection Act of 2004*, Pub. L. No. 108-203, March 2, 2004, and the *Social Security Act* § 1611(e)(4), 42 U.S.C. § 1382(e)(4).

<sup>16</sup> According to SSA, the Department of Justice provides information on crimes through a number of sources, including the Bureau of Justice Statistics. The Bureau of Justice Statistics defines violent offenses as those that are “threatening, attempting, or actually using physical force against a person.” Examples of such crimes are murder, assault, sexual abuse, and kidnapping.

<b>Table 4: Offenses Committed by Fugitive Felons and Probation or Parole Violators</b>		
<b>Category of Crime</b>	<b>Number of Cases</b>	<b>Portion</b>
Probation/Parole Violation	104,720	38.6%
Nonviolent or Not Drug Related	89,955	33.1%
Drug Related	38,148	14.0%
Violent	19,864	7.3%
Unknown	18,931	7.0%
<b>Total</b>	<b>271,618</b>	<b>100.0%</b>

<b>Table 5: Detailed Classification of Offenses Committed by Fugitive Felons and Probation or Parole Violators</b>		
<b>Warrant Offense<sup>17</sup></b>	<b>Number of Cases</b>	<b>Portion of All Cases</b>
<b>Cases SSA Would Withhold or Recover Payment from Under the Martinez Settlement</b>		
Probation/Parole Violation	104,720	38.6%
Flight/Escape ( <i>Martinez Settlement</i> )	1,982	0.7%
<b>Sub-total</b>	<b>106,702</b>	<b>39.3%</b>
<b>Cases SSA Will No Longer Be Able to Withhold or Recover Payment from Under the <i>Martinez Settlement</i></b>		
Dangerous Drugs *	38,148	14.0%
Obstruct (Specify)	25,762	9.5%
Unknown	18,931	7.0%
Assault *	11,941	4.4%
Larceny	11,620	4.3%
Burglary	10,058	3.7%
Forgery/Counterfeiting	7,670	2.8%
Fraud	5,482	2.0%
Traffic Offenses	4,501	1.7%
Sex Offense	4,054	1.5%
Robbery *	3,965	1.5%
Stolen Vehicle	3,615	1.3%
Weapon Offense	3,069	1.1%
Sexual Assault *	2,312	0.9%
Stolen Property	2,191	0.8%
Family Offense	1,854	0.7%
Health/Safety	1,279	0.5%

<sup>17</sup> Violent crimes and drug-related crimes are indicated with an asterisk (\*).

<b>Table 5: Detailed Classification of Offenses Committed by Fugitive Felons and Probation or Parole Violators</b>		
<b>Warrant Offense<sup>17</sup></b>	<b>Number of Cases</b>	<b>Portion of All Cases</b>
Damage Property	1,179	0.4%
Juvenile Offenses <sup>18</sup>	920	0.3%
Crimes Against Person	889	0.3%
Homicide *	849	0.3%
Arson	806	0.3%
All other offenses <sup>19</sup>	3,821	1.4%
<b>Sub-total</b>	<b>164,916</b>	<b>60.7%</b>
<b>TOTAL</b>	<b>271,618</b>	<b>100.0%</b>

<sup>18</sup> Of these 920 juvenile cases, 644 were for violation of parole or probation (Offense Codes 8101 and 8102), and 276 cases were for escape from custody (Offense Code 8100).

<sup>19</sup> See Appendix D for all other offenses committed by fugitive felons.

## Conclusion

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The *Martinez* settlement will reduce Title II and XVI payment suspensions to fugitive felons, resulting in the payment of millions of program dollars that would have otherwise not been paid or would have been recovered.

# Appendices

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APPENDIX A – Acronyms

APPENDIX B – Scope and Methodology

APPENDIX C – Additional Background

APPENDIX D – Other Offenses Committed by Fugitive Felons

## Acronyms

OIG	Office of the Inspector General
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSN	Social Security Number
U.S.C.	United States Code

### Scope and Methodology

To accomplish our objective, we:

- Researched the Social Security Administration’s regulations, policies, and procedures related to fugitive felons and probation or parole violators as they relate to the *Martinez* settlement.
- Reviewed Office of the Inspector General reports related to fugitive felons and probation or parole violators. Specifically, we reviewed the following reports.
  - ✓ *Assessment of the Supplemental Security Income Fugitive Felon Project* (A-01-03-23070), September 2003.
  - ✓ *Title II Benefits to Fugitive Felons and Probation or Parole Violators* (A-01-07-17039), July 2008.
  - ✓ *Fugitive Felons Serving as Representative Payees* (A-01-08-18021), March 2009.
  - ✓ *Probation or Parole Violators Serving as Representative Payees* (A-01-09-29112), August 2009.
  - ✓ *Semiannual Report to Congress, October 1, 2008 – March 31, 2009.*
- Analyzed a data file of 271,618 fugitive felons and probation or parole violators as of October 5, 2006 to identify the number of fugitives per Offense Code.
- Calculated Title II and XVI program funds that would be paid or recovered because of the *Martinez* settlement agreement that otherwise would not have been paid or recovered pre-*Martinez*.

We performed our review in August and September 2009 in Boston, Massachusetts. The data we used had been tested and determined sufficiently reliable in our prior audits (listed above). The entity reviewed was the Office of Income Security Programs under the Deputy Commissioner for Retirement and Disability Policy. We conducted our review in accordance with the President’s Council on Integrity and Efficiency’s *Quality Standards for Inspections*.<sup>1</sup>

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<sup>1</sup> In January 2009, the President’s Council on Integrity and Efficiency was superseded by the Council of the Inspectors General on Integrity and Efficiency, *Inspector General Reform Act of 2008*, Pub. L. No. 110-409 § 7, 5 U.S.C. App. 3 § 11.

## Additional Background

### Fugitive Felons—Pre-Martinez Settlement Agreement

The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* precluded eligibility for Title XVI payments for certain fugitive felons effective August 1996.<sup>1</sup> An individual receiving Title II and XVI concurrently continued to receive the Title II benefits even though the Title XVI payments were suspended.

The *Social Security Protection Act of 2004* extended the fugitive felon non-payment provision to Title II beneficiaries beginning January 1, 2005.<sup>2</sup> This law made persons ineligible to receive Title II benefits during any month in which they were fleeing to avoid prosecution, custody, or confinement for felonies or violating a condition of probation or parole under Federal or State law.

The Social Security Administration (SSA) considers a person to be “fleeing to avoid prosecution, custody, or confinement” when that person has an outstanding warrant for his or her arrest, even if he or she is unaware of the warrant.<sup>3</sup> However, under the authority granted in the law, SSA will continue payments to beneficiaries who have unsatisfied warrants if “good cause” exists to do so.

Before SSA takes action to suspend benefit payments, it sends the beneficiary a notice about the warrant information the Agency has received and the impact it may have on benefit payments. The notice also advises the beneficiary of his or her rights to file an appeal or request a waiver. Finally, the letter informs the beneficiary of the conditions that must be met for the Agency to find that there is “good cause” to continue the benefit payments. Good cause may be either mandatory or discretionary.<sup>4</sup>

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<sup>1</sup> Pub. L. No. 104-193, § 202. See *Social Security Act* § 1611(e), 42 U.S.C. § 1382(e).

<sup>2</sup> Pub. L. No. 108-203, § 203. See *Social Security Act* §§ 202(x) and 1611(e), 42 U.S.C. §§ 402(x) and 1382(e).

<sup>3</sup> Social Security Acquiescence Ruling 06-1(2), *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005): Determining Whether an Individual Is a Fugitive Felon Under the *Social Security Act*—Titles II and XVI of the Act, Federal Register, Vol. 71, No. 66, at page 17551 (April 6, 2006).

<sup>4</sup> The *Social Security Act* §§ 202(x)(1)(B)(iii) and (iv), 42 U.S.C. §§ 402(x)(1)(B)(iii) and (iv).

The U.S. Second Circuit Court of Appeals, in the case of *Fowlkes v. Adamec*, stated the term “fleeing” (in § 1382(e)(4)(A) of the *Social Security Act*) is understood to mean “the conscious evasion of arrest or prosecution,” and that SSA could not conclude from the mere fact that an outstanding felony arrest warrant exists that an individual is “fleeing.”<sup>5</sup> As a result of the *Fowlkes* decision, SSA issued an acquiescence ruling and—beginning in December 2005—the Agency no longer suspended benefits to fugitive felons (not including probation or parole violators) residing in the Second Circuit—Connecticut, New York, and Vermont.

### **Fugitive Felons—*Martinez* Settlement Agreement**

On September 24, 2009, the U.S. District Court of Northern California had given final approval to a settlement agreement in the *Martinez* class action lawsuit involving SSA’s fugitive felon program. It is anticipated the settlement will become legally effective on November 29, 2009. Specifically, the agreement allows SSA to stop benefit payments to fugitive felons in only three Offense Code categories:<sup>6</sup>

- Escape (4901);
- Flight to avoid prosecution, confinement, etc.4902); and
- Flight-Escape (4999).

Additionally, under the *Martinez* settlement agreement, SSA will not select as a representative payee individuals having an outstanding felony warrant issued for one of the three offenses cited above. However, SSA reserves the right to use all warrant information in determining an individual’s suitability to serve as a representative payee.

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<sup>5</sup> *Fowlkes v. Adamec*, supra at p. 97.

<sup>6</sup> The three Offense Codes specified—4901, 4902, and 4999—are National Crime Information Center Uniform Offense Class Codes. As a result of the agreement, SSA’s Office of the Inspector General would refer to SSA only those fugitive felons having one of these offense codes.

## Other Offenses Committed by Fugitive Felons

All Other Offenses from Table 5 in Results of Review Section of Report	Number Receiving Benefits
<b>Cases SSA Will No Longer Be Able to Withhold or Recover Payment From Under the <i>Martinez</i> Settlement</b>	
Kidnapping	645
Obstruct Police	574
Public Order Crimes	389
Public Peace	312
Embezzle	275
Commercial Sex	263
Invade Privacy	246
Property Crimes	240
Terrorism	152
Military Desertion	140
Extortion	109
Smuggling	97
Liquor	87
Bribery	63
Gambling	41
Morals/Decency Crimes	37
Civil Rights	31
Obscenity	30
Witness	28
Aiding Prisoner/Fugitive	22
Tax Revenue	16
Conservation	9
Immigration	6
Money Laundering	4
Election Laws	2
Antitrust	2
Espionage	1
<b>Total</b>	<b>3,821</b>

## **DISTRIBUTION SCHEDULE**

Commissioner of Social Security

Office of Management and Budget, Income Maintenance Branch

Chairman and Ranking Member, Committee on Ways and Means

Chief of Staff, Committee on Ways and Means

Chairman and Ranking Minority Member, Subcommittee on Social Security

Majority and Minority Staff Director, Subcommittee on Social Security

Chairman and Ranking Minority Member, Committee on the Budget, House of Representatives

Chairman and Ranking Minority Member, Committee on Oversight and Government Reform

Chairman and Ranking Minority Member, Committee on Appropriations, House of Representatives

Chairman and Ranking Minority, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, House of Representatives

Chairman and Ranking Minority Member, Committee on Appropriations, U.S. Senate

Chairman and Ranking Minority Member, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, U.S. Senate

Chairman and Ranking Minority Member, Committee on Finance

Chairman and Ranking Minority Member, Subcommittee on Social Security Pensions and Family Policy

Chairman and Ranking Minority Member, Senate Special Committee on Aging  
Social Security Advisory Board

## **Overview of the Office of the Inspector General**

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

### **Office of Audit**

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

### **Office of Investigations**

OI conducts investigations related to fraud, waste, abuse, and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, third parties, or SSA employees performing their official duties. This office serves as liaison to the Department of Justice on all matters relating to the investigation of SSA programs and personnel. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

### **Office of the Counsel to the Inspector General**

OCIG provides independent legal advice and counsel to the IG on various matters, including statutes, regulations, legislation, and policy directives. OCIG also advises the IG on investigative procedures and techniques, as well as on legal implications and conclusions to be drawn from audit and investigative material. Also, OCIG administers the Civil Monetary Penalty program.

### **Office of External Relations**

OER manages OIG's external and public affairs programs, and serves as the principal advisor on news releases and in providing information to the various news reporting services. OER develops OIG's media and public information policies, directs OIG's external and public affairs programs, and serves as the primary contact for those seeking information about OIG. OER prepares OIG publications, speeches, and presentations to internal and external organizations, and responds to Congressional correspondence.

### **Office of Technology and Resource Management**

OTRM supports OIG by providing information management and systems security. OTRM also coordinates OIG's budget, procurement, telecommunications, facilities, and human resources. In addition, OTRM is the focal point for OIG's strategic planning function, and the development and monitoring of performance measures. In addition, OTRM receives and assigns for action allegations of criminal and administrative violations of Social Security laws, identifies fugitives receiving benefit payments from SSA, and provides technological assistance to investigations.