

08-5801-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

*Elaine Clark, Raymond Giangrasso, Tony Gonzales,
Johnny L. Heatherman, Monell White, individually
on behalf of themselves, and on behalf of all
similarly situated,*

Plaintiff-Appellant,

v.

*Commissioner Michael J. Astrue, of the Social
Security Administration, in his official capacity,*

Defendant-Appellees.

Appeal from the United States District Court for the Southern District of New
York

**BRIEF OF *AMICUS CURIAE* EMPIRE JUSTICE, et. al.,
IN SUPPORT OF PLAINTIFF-APPELLANT'S REQUEST FOR
REVERSAL OF THE DISTRICT COURT DECISION**

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INTRODUCTION

Amici are non-profit advocacy organizations that deal with Social Security and Supplemental Security Income (SSI) problems on a daily basis on behalf of elderly and disabled individuals.¹ In that role, they regularly confront the devastation wrought on individuals and families by the practice of the Social Security Administration to cut off benefits for those who have outstanding warrants for alleged violations of probation or parole.

STATEMENT OF INTEREST

The Empire Justice Center is a statewide not for profit law firm. Its mission is to protect and strengthen the legal rights of people in New York who are poor, disabled or disenfranchised through: systems change advocacy, training and support to other advocates and organizations, and high quality direct civil representation. As part of that mission, advocates at the Empire Justice Center represent disability claimants before the Social

¹ *Amici* Empire Justice Center; the Disability Law Center; Asian Law Alliance; Community Legal Services of Philadelphia; Connecticut Legal Services, Inc.; Greater Hartford Legal Aid, Inc.; New Haven Legal Assistance Association; Disability Rights California; Florida Legal Services; Greater Boston Legal Services; Health & Disability Advocates; Jacksonville Area Legal Aid; Positive Resource Center; and South Royalton Legal Clinic at Vermont Law School file this *amicus curiae* brief in support of the appellant pursuant to Fed. R. App. P. 29(a), and with the consent of the plaintiffs-appellants. As indicated in the accompanying Motion for Leave to File, counsel for the appellee/respondent does not object to this filing.

Security Administration (SSA), including those whose Old Age, Survivors and Disability Insurance (“OASDI”) and/or Supplemental Security Income (“SSI”) benefits have been suspended because of outstanding probation or parole violation warrants. The Empire Justice Center also works with advocates through New York State who provide similar services, and who represent claimants whose benefits have been suspended by the SSA based on outstanding probation or parole violation warrants.

The Disability Law Center (DLC) is a statewide private non-profit organization in Massachusetts that is federally mandated to protect and advocate for the rights of individuals with disabilities. Since 1978, DLC has provided a full range of legal assistance to people with disabilities in Massachusetts, including legal representation, regulatory and legislative advocacy, and education and training on the legal rights of people with disabilities. A key mission of DLC is helping to ensure that individuals with disabilities have access to the items and services needed to live and work in the community. Since 1983, DLC has, through the Disability Benefits Project, provided backup and support on Social Security and SSI benefit matters to a statewide network of advocates for low income people with disabilities. This work has included case consultation, research, training and policy work. In this context, DLC has provided backup and support to the

legal advocates who provide individual representation on probation and parole warrant suspensions.

Asian Law Alliance (ALA) is a non-profit legal services office located in San Jose, California. ALA was founded in 1977 with the mission of providing equal access to the legal system to low income residents of Santa Clara County. ALA provides representation for people with disabilities regarding their eligibility for Social Security, SSI and other needs-based benefits, including low-income clients with disabilities on warrant suspension cases.

Community Legal Services (CLS) of Philadelphia has provided legal assistance for over 40 years to low-income Philadelphians who cannot afford legal counsel. CLS was created by the Philadelphia Bar Association in 1966. In the past year alone, CLS has helped over 17,000 Philadelphians, obtaining government benefits for those whose claims have been wrongfully denied, by fighting consumer fraud and predatory lending, preventing homelessness, ensuring fair treatment in the workplace, and protecting women, children and the elderly. As part of its mission, CLS advocates represent individuals whose OASDI or SSI benefits have been suspended because of outstanding parole or probation violations. CLS staff also consults with other advocates around Pennsylvania and in other states regarding benefit suspensions

resulting from warrant problems. CLS staff has represented clients with alleged parole violation warrants from states as far away as Texas, California, Washington and Florida.

Connecticut Legal Services, Inc. has six full service offices and five satellite locations in Connecticut. Greater Hartford Legal Aid, Inc. serves the majority of Hartford County in addition to the city of Hartford. New Haven Legal Assistance serves the greater New Haven area. All are non-profit organizations that provide legal services in civil matters to needy individuals in the state of Connecticut. Their services include representation of people with disabilities regarding their eligibility for OASDI and/or SSI and other needs-based benefits, including claimants whose benefits have been or are threatened with suspension due to allegations of outstanding probation or parole violation warrants.

Disability Rights California is California's Protection and Advocacy agency serving annually about twenty-five thousand Californians with disabilities, including legal representation, abuse investigations, and public education through training and publications. Disability Rights California provides advocacy and legal representation for people with problems with Social Security benefits, including those whose benefits are suspended because of outstanding probation or parole warrants.

Florida Legal Services (FLS), a non-profit corporation, was formed in 1972 by the Florida Bar to act as a statewide focal point to expand the availability of legal assistance to the poor in Florida. FLS is a statewide, public interest law firm supporting the legal needs of poor people through legislative and administrative advocacy, impact litigation, policy analysis, training, publications, and technical support. From its four locations in Tallahassee, Miami, Jacksonville, and Lake Worth, and its online presence, FLS attorneys assist advocates working in over thirty legal service programs throughout the state who, in turn, directly assist indigent clients with a myriad of legal issues, including suspension of OASDI and SSI benefits by the SSA because of its policy of suspending benefits whenever there is an outstanding warrant for an alleged violation of probation or parole.

Greater Boston Legal Services (GBLS) is a non-profit corporation that provides civil legal services to eligible low income clients in thirty-three cities and towns in eastern Massachusetts. The help it offers ranges from legal advice to full case representation, depending on client need. The staff is divided into areas of legal expertise to best address the problems faced by people living in poverty. GBLS also undertakes representation and legal advocacy to address the root causes of poverty. As part of its mission, it represents individuals with disabilities or seniors who are seeking to receive

or preserve benefits under Titles II (“OASDI”) or XVI (“SSI”) of the Social Security Act. GBLS advocates have represented individuals whose SSI or OASDI benefits are threatened due to allegations of parole or probation violations.

Health & Disability Advocates (HDA) is a non-profit agency in Chicago whose mission is to ensure that safety net programs, including Social Security, SSI, Medicare, and Medicaid, meet the needs of the elderly and persons with disabilities. As part of this mission, HDA’s attorneys provide legal representation and assistance to persons trying to maintain eligibility for Social Security and SSI benefits. HDA attorneys have represented claimants whose benefits have been suspended because of outstanding probation or parole violation warrants. HDA attorneys also work with other advocates in Illinois to provide technical assistance concerning legal representation when Social Security and SSI benefits are suspended due to pending parole or probation violations.

Jacksonville Area Legal Aid (and branch office St. Johns County Legal Aid) is a 501(c)(3) non-profit law firm serving the civil legal needs of low-income, elderly, and disabled and mentally ill clients in seventeen counties of north Florida. As part of that mission, it serves SSI and Social Security Disability clients, including those whose benefits have stopped or

been denied due to allegations of probation and parole violations. These cases are given priority because of the severe consequences that even temporary discontinuation of these disability benefits has to the health, safety, and welfare of disabled and elderly and mentally ill clients.

Positive Resource Center (PRC) is a San Francisco non-profit community based agency founded in 1987. The Benefits Counseling Program of PRC provides free direct legal representation to low-income people living with HIV/AIDS or mental health issues to obtain and maintain life-saving public and private disability income and health insurance benefits (OASDI/SSI and corresponding Medi-Cal/Medicare). The Benefits Counseling Program represents at least 1500 clients residing in San Francisco every year, including Social Security claimants at all levels of appeal as well as beneficiaries whose OASDI/SSI benefits have been suspended based on warrant of probation or parole violations.

The South Royalton Legal Clinic is a civil poverty law clinic housed at Vermont Law School. Under the supervision of four staff attorneys, who are also on the Vermont Law School faculty, second and third year law students represent low-income persons in many different kinds of cases, including Social Security and SSI disability cases. The Clinic has been in

operation for thirty years and has represented hundreds of individuals in Social Security cases.

All *amici* frequently confront situations where their clients or clients of advocates with whom they work have had their benefits suspended or been charged with enormous overpayments by the Commissioner of Social Security pursuant to 42 U.S.C. §§402(x)(1)(A)(v) and 1382(e)(4)(A)(ii) and 20 C.F.R. §416.1339(b), under the guise of outstanding warrants alleging that they may have violated a condition of their probation or parole.

These cases present various fact patterns, but share one common fact: the claimants or beneficiaries described have all been subjected to SSA's practice of suspending benefits merely on the basis of an outstanding warrant for probation or parole violations but without any determination by anyone that they are, in fact, violating a condition of probation or parole, much less an "appropriate finding" of an actual violation by a "court or other appropriate tribunal."

All *amici* have witnessed the havoc that this practice can wreak in the lives of many of their clients. Most OASDI and SSI beneficiaries face enormous difficulties when they are notified that their benefits will be suspended because of outstanding warrants based on probation or parole terms of which they were unaware or had long forgotten. Many suffer from

cognitive impairments, mental illness, or combinations of physical and mental impairments. The result of such suspensions is that the clients are left without income or resources to meet their basic needs, much less deal with the outstanding warrants.

These clients, who are often undereducated or mentally impaired, are provided, at best, scant information by SSA about the outstanding warrants. They turn to the *amici* in desperation, unable to understand the limited information provided by SSA and unable to negotiate their way through the criminal justice system to cure their outstanding warrants. The *amici*, in turn, have been frustrated by the lengthy, cumbersome and sometimes futile processes that their clients must go through - including the imposition of fines they cannot afford to pay - to seek the reinstatement of benefits for which they are otherwise eligible based on previously proven disabilities or old age.

Tracking down these parole and probation warrants diverts the *amici*'s limited resources from meeting other pressing legal needs of their clients. The claimants, usually because of their disabilities or age, are often poor historians and unable to assist in the time consuming and confusing task of sorting out what happened and what needs to happen. In some instances, *amici* eventually discover there were no parole or probation violations.

While this may provide the ultimate resolution for the claimants, it does nothing to help them meet their basic needs for food and shelter in the interim. Many of those who have mental illness and other physical disabilities also lose their health insurance, and in turn, access to treatment.² In some instances, for example, they are left without the psychotropic medications that allow them to function in society, or the anti-retroviral medications that they need to control their HIV disease. For many, this may be nothing short of a death-sentence.

The *amici* thus have a substantial interest in the outcome of the case at bar. They submit this brief to bring to this Court's attention examples of the negative consequences of the Commissioner's practice of suspending

² Most Social Security beneficiaries receive health insurance through Medicare. Medicare Part B provides insurance for doctors' visits and outpatient hospital care, but there is a premium payment required for these benefits. For 2009, the monthly premium is \$96.40. *See Medicare & You 2009*, p. 21, <http://www.medicare.gov>. These premiums are usually deducted from Social Security benefits. If, however, Social Security benefits are terminated, then the individual must pay out-of-pocket for the premiums. Those beneficiaries who rely upon Social Security income to meet expenses are unlikely to be able to afford the Medicare premiums once their Social Security benefits have been terminated. Thus, a likely consequence of losing benefits due to the statutory restriction is that these individuals will also lose Medicare Part B coverage. Similarly, many SSI recipients who lose their eligibility for cash benefits also lose their associated Medicaid coverage.

benefits based solely on allegations that an individual may have violated a condition of probation or parole

ARGUMENT

As set forth in the brief for the Plaintiffs-Appellants, 42 U.S.C. §§402(x)(1)(A)(v) and 1382(e)(4)(A)(ii) preclude the payment of OASDI and SSI benefits to otherwise eligible individuals only in certain limited situations, including where there has been a determination that an individual “is violating a condition of probation or parole.”

SSA has interpreted the statute to apply to any applicant or recipient with an outstanding warrant issued for the purpose of bringing the individual before a tribunal for a determination of whether or not he or she may in fact be in violation of the terms of probation or parole. This enables SSA to cast a very wide net, no matter how insignificant or old the warrant and regardless of the current circumstances of the beneficiary, if an outstanding warrant exists.

I. SSA'S PRACTICE CAUSES HARM BY SUSPENDING BENEFITS IN CASES WHERE THE CRIMINAL PROCESS HAS DETERMINED THERE WAS NO PROBATION OR PAROLE VIOLATION

The experiences of the *amici* demonstrate the harm resulting from SSA's practice of suspending benefits on the basis of a warrant alone without first determining that there was an actual violation. Take, for

example, the case of Binh N., which highlights the enormous bureaucratic hurdles that a claimant can confront when SSA suspends benefits when a condition of probation or parole has not actually been violated.³ Binh immigrated to the U.S. in 1975 after serving in the Vietnamese Navy. He lived in Texas, working on a shrimp boat until 1989 when he was sentenced to prison for unauthorized use of a motor vehicle. He was released on parole in 1991 and returned to working on shrimp boats. When he became unable to work due to physical disability in 1993, he asked his parole officer if he could be placed on annual supervision so that he could move to California to be near his family. When his parole officer gave her approval, Binh moved to California.

In 1996, Binh began receiving SSI disability benefits,⁴ which he continued to receive until October 2006, when he received notice that SSA was suspending his SSI benefits because of an outstanding warrant from the Texas Pardon and Parole Board (TPPB). Prior to that notice, he was

³ The names used in the fact patterns presented herein have been changed to protect the privacy and confidentiality of the individuals.

⁴ Since SSI is a means tested program, beneficiaries by definition have no other income or assets on which to live. SSI recipients are already living below the poverty line by several thousand dollars each year. The federal poverty level has been set at an annual income of approximately \$10,800. *See Update of the HHS Poverty Guidelines*, 74 Fed. Reg. 4199 (1/23/09). The federal benefits rate (FBR) for 2009 is \$674 per month, for an annual income of \$8,088.

unaware of any problems with his parole. He immediately went to the SSA office that had issued the notice but was not provided any information about the warrant. With the assistance of the California Division of Adult Parole Operations, Binh learned that there was an outstanding parole violation warrant in Texas. Binh agreed to return to Texas, where he had a parole revocation hearing on November 27, 2006. The hearing officer determined that Binh had not violated any of the conditions of parole and recommended discharge from parole, and the TPPB adopted the recommendation.

Upon his release, Binh returned to California and requested reinstatement of his SSI benefits. After an initial denial, SSA agreed to reinstate the SSI benefits, but notified Binh that he has an SSI overpayment of \$22,374 due to the benefits he received during the period that the warrant was outstanding. Under the findings of the TPPB, however, there was no parole violation. Binh should thus have been entitled to benefits for the entire period. Obviously, his benefits should never have been suspended in the first place. He has sought the assistance of the Asian Law Alliance for help challenging the overpayment.

Similarly, Marvin L. is a Rhode Island resident who lost his SSI benefits effective August 2005 through June 2006 due to an outstanding probation warrant that should not have been issued. Marvin had been

sentenced to probation in Massachusetts in 2003. Massachusetts court documents show that after applying to his Massachusetts probation officer in May 2004 for permission to return to Rhode Island and providing his complete Rhode Island address, Marvin moved to Rhode Island. He nonetheless did not receive Massachusetts probation documents that were erroneously sent to his former address in August 2005. Nor did his Rhode Island probation officer receive notice from the Massachusetts probation office.⁵

With the help of his probation officer, Marvin was ultimately able to clear the Massachusetts warrant. Fortunately for him, his new residence in Rhode Island was a relatively short distance to Massachusetts, so there were no impossible geographic barriers to the resolution of his situation. His OASDI benefits have since been reinstated, but only with the assistance of advocates from Rhode Island Legal Services. Furthermore, he was forced to survive without income for a number of months, and now faces an overpayment of over \$7,000 based on the warrant erroneously issued for an alleged probation violation that all agree never occurred.

Cheryl B. is a California resident in her late forties who receives SSI and OASDI benefits due to her mental illness and orthopedic/physical

⁵ The problems encountered by Marvin in trying to have his probation transferred to his home state are not uncommon. *See discussion infra.*

disabilities.⁶ In May 2008, she received a notice from SSA stating that her disability benefits would be suspended due to an outstanding warrant. Upon receipt of this letter, she visited her local SSA office and learned that her SSI benefits were also being suspended. Prior to being notified by SSA, she had no knowledge of any warrant or any problem with her probation.

Cheryl checked with the court that had issued the bench warrant and learned that it had been issued in April 2008: she had allegedly missed a court date of which she had received no notice. The appearance was one of the terms of the probation to which she was sentenced following her 2007 guilty plea to charges of drug possession. When she learned of the warrant, she immediately contacted her probation officer. The Assistant District Attorney subsequently agreed in May 2008 to withdraw the warrant. With the help of Disability Rights California, her benefits were reinstated with retroactive payments. SSA, however, has charged her with an overpayment for OASDI and SSI payments made in April 2008.

These three scenarios underscore the difficulties faced by OASDI and SSI beneficiaries who are complying with conditions of their probation or

⁶ The typical OASDI recipient receives an annual income of slightly above \$12,500. *See 2009 Social Security Changes*, www.ssa.gov. The average Social Security benefit will just barely keep beneficiaries out of poverty. *See supra* note 4. Concurrent OASDI/SSI beneficiaries generally have income of only \$20 per month more than recipients of SSI alone. 42 U.S.C. §1382a(b)(2)(A); 20 C.F.R. §416.1124(c)(12).

parole to the best of their abilities, but are nevertheless caught in the wide net cast by SSA due to its practice of considering a warrant alone as sufficient basis for suspending essential benefits. These three claimants were at least able to get help from their parole or probation officers and legal assistance organizations to cut through the bureaucracy standing between them and their benefits. Even with that help, they suffered the loss of their income for periods of time, and now face substantial overpayments.

The effort to recoup benefits “overpaid” to those unjustly accused of violating probation or parole underscores the basic inequity of the way SSA is administering this program: how can indigent people with disabilities whose income has been discontinued be expected to repay thousands of dollars to SSA?

II. SSA'S PRACTICE CAUSES HARM BY SUSPENDING BENEFITS BASED ON PROBATION OR PAROLE VIOLATION WARRANTS ISSUED PRIOR TO ANY CONSIDERATION OF CURRENT CIRCUMSTANCES

For an increasing number of beneficiaries, the fines, fees, restitution and costs imposed by the courts stand in the way of clearing the outstanding warrants. For some, the only condition of their probation may be restitution or fines, or more frequently these days, additional court costs and fees.⁷

⁷ Court systems are increasingly using fines and fees to help meet their budget shortfalls. Florida in particular has intensified its collection efforts.

Warrants are often issued simply because of these outstanding fees. An allegation of outstanding fees may well serve as the basis for the issuance for a warrant; it does not necessarily indicate, however, that there has been an actual violation of probation. Further factual investigation might reveal, for example, that the payments had been made and simply not recorded properly, or more typically, that the individual does not have the capacity to pay them. SSA's practice, however, allows for the suspension of benefits upon which the individuals usually rely for their sole means of support without consideration of these factors.

The case of Loretta R., a 48 year-old-woman who currently lives in Waterbury, Connecticut, highlights the difficulties faced by indigent beneficiaries who are unable to clear their outstanding warrants in part because of the exorbitant court fees and costs that are imposed. Loretta learned that her OASDI and SSI benefits would be suspended as of April 3,

See

http://www.nytimes.com/2009/04/07/us/07collection.html?_r=1&scp=1&sq=court%20costs&st=cse. The Brennan Center for Justice has recently released several reports on the downstream consequences of a system in which financial obligations are imposed at sentencing regardless of a defendant's ability to pay in Florida and elsewhere. *See* <http://www.brennancenter.org>.

2009, based on a probation violation warrant allegedly issued on April 15, 1996.

According to the Office of the State's Attorney in Pinellas County, Florida, Loretta owes a "bill" of \$185 to the Salvation Army for its role in "supervising" her misdemeanor probation, in addition to an additional fee of \$50 owed to the State's Attorney's office, \$54 to the St. Petersburg Police Department and \$354 to the Pinellas County. Under the best of circumstances, Loretta would be unable to afford these fees. *See supra* note 6 regarding the limited incomes of SSI/OASDI beneficiaries. Obviously, with no income, it will be impossible for her to pay fees totaling \$643, much less meet her living expenses.⁸ Yet the warrant upon which SSA relied to suspend Loretta's benefits was issued without any consideration of her current circumstances, including her ability to pay the outstanding fines.

Similarly, Walter N. is a California resident who had been receiving SSI for Major Depression and severe orthopedic problems. Authorities in Pinellas County, Florida, will not vacate his outstanding probation violation

⁸ According to the *New York Times* article cited *supra* note 7, defendants such as Loretta are offered the opportunity in Florida to start a payment plan for an additional \$25 fee. As Rebekah Diller, deputy director of the justice program at the Brennan Center for Justice at the New York University School of Law, notes in the article, however, in these instances the state is using its limited resources "to get blood from a stone." Loretta, who currently has no income, can no more afford the payment plan fee than she can afford the \$643 that she owes.

warrant unless and until he pays \$100 in court costs and fines. Needless to say, \$100 might as well be one million dollars to someone who is homeless and surviving on one meal a day from the local homeless agency.

Nor can most of the claimants who have been subjected to SSA's practice of suspending OASDI and/or SSI benefits based on the mere existence of outstanding probation or parole violation warrants return to the jurisdictions where the warrants were issued to resolve them. Many have lost their only income and sole means of support, and cannot afford to travel, even if their physical and/or psychiatric disabilities permitted them to so. For instance, Antonio B. is a Rhode Island resident who receives OASDI benefits due to his HIV disease. His benefits were suspended in December 2005 due to an outstanding Florida warrant. He is now without income and homeless. Since he has no income, he cannot afford to travel to Florida to attend a probation hearing and clear the warrant. Additionally, his health has deteriorated and he was recently hospitalized.

Antonio's scenario is typical of cases frequently seen by the *amici*. He was sentenced to probation in Florida and ordered to do community service. He left Florida for Rhode Island after receiving permission from his parole officer. He later learned that Florida issued a probation violation

warrant in November 2004, presumably because of some confusion or miscommunication within or between the two probation offices.

Beneficiaries frequently report to *amici* that they have attempted to transfer their probation supervision to their home states so that they can be closer to family and friends when they became disabled. On the other hand, they may have only been visiting or temporarily staying in the jurisdiction where they were arrested, and need to return home. Their efforts to have their probation supervision properly transferred, however, are often thwarted. In some cases, like Antonio's, the problems are the result of bureaucracies run afoul. The transfer may not have been properly recorded or completed by one or the other of the jurisdictions involved. In other instances, the probation department in the beneficiary's home state may refuse to accept the transfer. Individuals who have returned home in good faith are then caught in the middle of the two bureaucracies. To exacerbate the matter, the individual for a variety of reasons may never have received notice that the transfer was rejected.

These problems are compounded by the fact that a number of beneficiaries seen by the *amici* have cognitive impairments and/or mental illnesses that interfere with their ability to understand the terms of their probation in the first place. Under SSA's practice, however, their benefits

can be suspended before any of these factors have been taken into consideration.

SSA's practice of suspending OASDI and/or SSI benefits based on nothing more than outstanding warrants presents additional problems for claimants. Many are unable to obtain basic information from the court systems of the outstanding warrants, much less resolve them. When beneficiaries are notified that their benefits are about to be suspended, they are typically provided with very generic information. As in the sample notice that is attached hereto as Exhibit A, the beneficiary is simply informed that the jurisdiction has "issued a warrant for your arrest for a felony crime or a violation of Federal or State probation or parole on [a certain date]." Although the notice may identify the jurisdiction and provide a warrant number and contact information, it warns the beneficiary that "Social Security cannot provide further information about the warrant. Please contact the [jurisdiction] directly."

Furthermore, it is virtually impossible for many claimants, a number of whom were on benefits due to serious psychiatric illness or cognitive impairments, to negotiate their way through the court and probation bureaucracies. The process takes significant time, persistence, perseverance, and, ideally, legal assistance, which is generally unavailable to most low-

income beneficiaries. In fact, even with the help of advocates, it is time-consuming and difficult to resolve these issues. Take, for example, Edwin L., a 53-year-old man living with schizophrenia. He was referred to Neighborhood Legal Services (NLS) in Buffalo, New York, following a recent psychiatric hospitalization. He had no income at the time of his discharge. His OASDI disability benefits had been suspended in April 2007 based on an outstanding warrant from Georgia issued in 1993. Because of his mental state, he was unable to pursue the matter and has been without benefits or any income for almost two years. He is living with his sister, and visits a soup kitchen on a daily basis for his food.

According to Edwin, he had been involved in a domestic dispute in DeKalb County, Georgia, and the Georgia authorities asked him to leave the state. He complied, returning to New York, where he has family. He was not aware of any probation or reporting obligations in Georgia. To the contrary, he believed that he was banned from the State of Georgia. He had already been diagnosed with schizophrenia at that time.

Through a series of phone calls to the Sheriff's Department, the District Attorney's (DA) office and the Probation Department in Georgia, advocates at NLS learned that the outstanding Georgia warrant stemmed from an extortion charge. NLS advocates were informed by the Sheriff's

Department that Edwin could satisfy the warrant by returning to Georgia and turning himself in to the authorities. Alternatively, they could contact the DA's office to discuss how the warrant could be satisfied. The advocates have left a number of messages with the DA's office explaining that the client is seriously mentally ill and in dire straits, and that his OASDI benefits cannot be reinstated under the probation warrant is resolved. To date, their calls have not been returned.

Beneficiaries such as Edwin are thus left in the untenable position of trying to overcome the allegations in a warrant about which they know little or nothing. As discussed above, the beneficiary may have fulfilled all the terms and conditions of probation or parole, and the warrant has been issued mistakenly or not been properly withdrawn or revoked. The beneficiary, however, is unable to obtain confirmation of this. Alternatively, the facts upon which the alleged probation or parole violations were based may have occurred in the distant past and are no longer relevant or extant.⁹ As noted

⁹ See S. REP. NO. 108-176, at 54 (2003), <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr176&dbname=cp108&>. When considering extension of the "fugitive felon" provisions to the OASDI program, the Senate Committee observed that "[l]aw-enforcement authorities focus on the most-serious offenders (either pursuing them aggressively or arresting them on new offenses) but rarely clear other warrants from the books. Thus, remaining warrants are disproportionately older--about 15 percent of state warrants, for example, are more than 10 years old--and usually cite

in the Brief of the Plaintiffs-Appellants at 23 n. 4, were the authorities aware of a disabled or elderly beneficiary's current circumstances, they might dismiss the warrant in the interests of justice.

In many of these instances, the jurisdiction that issued the warrant upon which SSA relied is no longer actively pursuing the beneficiary.¹⁰ Even when the authorities are aware of an individual's current whereabouts, they often make no efforts to extradite him or her. Yet none of these factors are taken into consideration prior to SSA suspending benefits. In situations such as Edwin's, beneficiaries are often powerless to raise them after the damage has been done.¹¹ As a result of the Commissioner's practice, they remain, like Edwin, disabled and without any means to support themselves, living on the largess of family, friends or soup kitchens.

nonviolent offenses such as drug possession and probation or parole violation.”

¹⁰ *Id.* at 15. “The Committee has been made aware of numerous cases in which law enforcement agencies have chosen not to pursue individuals identified through the current Title XVI fugitive felon program. Such cases often involve minor offenses that may be decades old and will never be prosecuted. As a result, the only effect of the individual's illegal actions is the denial of SSI benefits.”

¹¹ Public Defender programs from which *amici* have sought assistance in trying to resolve warrants for their clients report that their offices, especially in Florida, are overwhelmed with requests from defendants seeking to clear stale warrants in the hopes of restoring their OASDI or SSI benefits.

CONCLUSION

The examples set forth above underscore the importance of requiring the Commissioner to adhere to the statutory mandate of 42 U.S.C. §§402(x)(1)(A)(v) and 1382(e)(4)(A)(ii), which allow for suspension of benefits only where there has been a determination that an individual “is violating a condition of probation or parole.” *Amici* join with the plaintiffs-appellants in urging this Court to enter an order enjoining the Commissioner’s current practice of suspending benefits based only on the existence of warrant alleging a violation of probation or parole.

Dated: April 16, 2009
Rochester, New York

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