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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION

20 ROSA MARTINEZ, JIMMY HOWARD,
ROBERTA DOBBS, BRENT
21 RODERICK, SHARON ROZIER, and
JOSEPH SUTRYNOWICZ, on behalf of
22 themselves and all others similarly situated,

23 Plaintiffs,

24 vs.

25 MICHAEL J. ASTRUE, Commissioner of
Social Security, in his official capacity,

26 Defendant.
27
28

CASE NO. 08-CV-4735 CW

**NOTICE OF MOTION AND MOTION
FOR CLASS CERTIFICATION**

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SUTRYNOWICZ, and all others similarly situated
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NOTICE OF MOTION

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 19, 2009, at 2:00 p.m., before the Honorable Claudia Wilken, at the United States Courthouse at 1301 Clay Street, Oakland, CA 94612, Plaintiffs will and hereby do move the Court for an order certifying a class in this matter as follows:

All individuals threatened with or who have suffered the suspension or denial of benefits under the Old Age, Survivors, and Disability Insurance ("OASDI"), Supplemental Security Income ("SSI"), or Special Veterans Benefits ("SVB") programs, or who have not been permitted to serve as a representative payee for those programs, on the basis that they were allegedly "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony, and who have a pending appeal or who were still within the time to appeal as of October 15, 2008.

Plaintiffs further will and hereby do move for an order appointing Plaintiffs Rosa Martinez, Brent Roderick, Sharon Rozier, and Joseph Sutrynowicz as representatives of the class defined above, appointing Plaintiffs' counsel as counsel for the class, and requiring the government to identify all members of the class.

This Motion is made pursuant to the Federal Rule of Civil Procedure 23(a) and 23(b)(2). The Motion is based upon this Notice of Motion, the attached Memorandum of Points and Authorities, and the declaration of Jeremy S. Kroger filed herewith.

DATED: January 12, 2009

Respectfully submitted,

By:


DAVID H. FRY

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The law denies Old Age, Survivors, and Disability Insurance (“OASDI”), Supplemental Security Income (“SSI”) and Special Veterans Benefits (“SVB”) (collectively, the “Benefit Programs”) to persons who are “fleeing to avoid prosecution, or custody or confinement after conviction” for a felony. 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A). Individuals falling within these flight-with-intent provisions are also prevented from serving as representative payees for recipients of the Benefit Programs. *Id.*

In implementing these statutory provisions, the Social Security Administration (“SSA”) has issued regulations stating that a person who is receiving benefits is subject to suspension of those benefits from the first day of the month in which a warrant or similar order is issued by a court “on the basis of an appropriate finding that the individual . . . [i]s fleeing, or has fled, to avoid” prosecution or confinement. 20 C.F.R. §§ 416.1339(b)(i)(A)-(B), 408.810(b). Federal courts have construed these provisions to require a specific intent to avoid prosecution on the part of the beneficiary. *Fowlkes v. Adamec*, 432 F.3d 90, 96-97 (2d Cir. 2005); *Garnes v. Barnhart*, 352 F. Supp. 2d 1059, 1066 (N.D. Cal. 2004).

Despite the clear language of the statute and its own regulations, as well courts’ uniform interpretation thereof, the SSA has adopted a policy of suspending benefit payments to every beneficiary who it concludes has a warrant outstanding against him or her — without regard to whether the court issuing the warrant made any finding that the person was fleeing prosecution and, indeed, without regard to whether, in fact, the person ever intended to flee prosecution. The agency’s internal guidelines describing the criteria, which at one point tracked the statutory criteria, were actually amended to omit the word “fleeing” altogether. Declaration of Jeremy S. Kroger (“Kroger Decl.”) Ex. A (SSA’s Program Operations Manual System (“POMS”) Section SI 00530.001, *available at* <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>). Instead, the guidelines state that a person is ineligible if he or she “[h]as an unsatisfied warrant for his/her arrest for a crime, or attempt to commit a crime, that is a felony.” *Id.* Further, in a separate section addressing the time period for which a person will be found ineligible, the guidelines

1 affirmatively contradict the controlling federal regulations, stating that “[t]he warrant does not
 2 have to state that the individual is ‘fleeing’ for the suspension to apply.” Kroger Decl. Ex. B
 3 (POMS Section SI 00530.010).

4 This action challenges the SSA’s illegal practice of treating every warrant as establishing
 5 that a person is “fleeing” prosecution or confinement and this motion seeks to certify a class of
 6 persons who, as a result of that unlawful practice, either (1) have had, or will have, their benefits
 7 suspended or denied, or (2) have been, or will be, decertified or denied certification as a
 8 representative payee. Significantly, Plaintiffs are not asking the Court to determine whether class
 9 members fall within the relevant flight-with-intent provisions, lawfully applied; rather, Plaintiffs
 10 request only that the Court require the Commissioner to cease applying its unlawful policy, vacate
 11 decisions based on that policy, and readjudicate those decisions applying the legal standard
 12 imposed by the statute and regulations. As a result, individual issues concerning absent class
 13 members play no role in this litigation. Indeed, this facial challenge to a governmental policy is
 14 the prototypical case for applying Rule 23(b)(2), as the SSA “has acted . . . on grounds that apply
 15 generally to the class, so that final injunctive relief or corresponding declaratory relief is
 16 appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

17 **II. BACKGROUND OF PLAINTIFFS’ CLAIMS**

18 **A. The Personal Responsibility and Work Opportunity Reconciliation Act.**

19 Effective August 22, 1996, the Personal Responsibility and Work Opportunity
 20 Reconciliation Act (“PRWORA”), Pub. L. No. 104-193, 110 Stat. 2105, amended the Social
 21 Security Act by adding a provision authorizing the SSA to suspend or deny SSI benefits to
 22 individuals fleeing to avoid prosecution or custody or confinement for a felony.

23 Section 202 of the PRWORA provides, in relevant part:

24 (4)(A) No person shall be considered an eligible individual or
 25 eligible spouse for purposes of this subchapter with respect to any
 month during such month the person is—

26 (i) fleeing to avoid prosecution, or custody or confinement after
 27 conviction, under the law of the place from which the person flees,
 28 for a crime, or an attempt to commit a crime, which is a felony
 under the laws of the place from which the person flees

1 *Id.* § 202(A) (codified as amended at 42 U.S.C. § 1382(e)).

2 In 1999, Congress authorized the Special Veterans Benefits (“SVB”) Program to
3 provide an SSI-like benefit for certain World War II veterans residing outside the United States.
4 Congress also extended the provisions of 42 U.S.C. § 1382(e)(4)(A)(i) to the SVB program,
5 except that the SVB provision applies only to felony charges within the United States while the
6 SSI provision applies to felony charges anywhere in the world. 42 U.S.C. § 1004(a)(2).

7 Effective in 2005, the Social Security Protection Act of 2004 (“SSPA”), Pub. L. No. 108-
8 203, 118 Stat. 493, extended to the SSA’s largest program, OASDI, the same provision
9 prohibiting payment of benefits to individuals who are “fleeing to avoid prosecution, or custody
10 or confinement after conviction” for a felony and prohibiting such individuals from serving as
11 representative payees in each of its programs.¹ *Id.* § 203 (codified as amended at 42 U.S.C. §
12 402(x)(1)(A)(iv)).

13 The implementing regulation for 42 U.S.C. § 1382(e)(4) provides, in relevant part:

14 (1) Suspension of benefit payments because an individual is a
15 fugitive . . . is effective with the first day of whichever of the
following months is earlier—

16 (i) The month in which a warrant or order for the
17 individual's arrest or apprehension, an order requiring the
18 individual's appearance before a court or other appropriate
19 tribunal (e.g., a parole board), or similar order is issued by a
court or other duly authorized tribunal *on the basis of an
appropriate finding that the individual—*

20 (A) Is fleeing, or has fled, to avoid prosecution as
described in paragraph (a)(1) of this section;

21 (B) Is fleeing, or has fled, to avoid custody or
22 confinement after conviction as described in
paragraph (a)(2) of this section;

23 20 C.F.R. § 416.1339(b) (emphasis added).

24 **B. The Social Security Administration’s Unlawful Application of the Flight-
25 With-Intent Statutes and The Implementing Regulations.**

26 Despite the plain language of the statutes and the implementing regulations, and despite

27 ¹ The OASDI and representative-payee provisions, like the SSI provision, apply to prosecutions
28 anywhere in the world.

1 repeated and consistent federal rulings to the contrary, the SSA has maintained its interpretation
2 that a person is “fleeing to avoid prosecution, custody, or confinement” whenever a person has an
3 outstanding warrant for his or her arrest, even if there is no finding that the person’s “flight” was
4 undertaken with the specific intent to avoid prosecution and, indeed, even if that person is
5 unaware of the outstanding arrest warrant or the underlying charges.

6 This interpretation has been challenged by individual Benefit Program recipients in at least
7 nine cases brought in federal courts. In each of these cases — save one — the district courts
8 ruled that the SSA’s interpretation of the flight-with-intent statutes was unlawful and either
9 restored benefits to the beneficiaries or otherwise instructed the SSA to comply with the courts’
10 rulings. But by choosing in each case not to appeal the district court’s decision, the SSA has
11 avoided adverse precedent.

12 The one case in which the SSA prevailed on this issue was a case filed *pro se* in New
13 York. *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). In that case, the district court ruled
14 against the plaintiff and the plaintiff appealed, creating the first — and, to date, the only —
15 opportunity for an appellate court to address the issue. The United States Court of Appeals for
16 the Second Circuit found that “the plain language of the statute and its implementing regulation”
17 preclude the SSA from determining that a person is “fleeing to avoid prosecution” based solely on
18 the fact that there is an outstanding warrant for a person’s arrest. *Id.* at 96-97. Rather, the Court
19 held that “benefits may be suspended only as of the date of a warrant or order issued by a court or
20 other authorized tribunal *on the basis of a finding that an individual has fled or was fleeing from*
21 *justice.*” *Id.* at 97 (emphasis added).

22 **C. The SSA’s Illegal Policy Results in the Deprivation of Benefits to Legally-**
23 **Qualified Beneficiaries Who Are In Desperate Need.**

24 By ignoring the language of the statute and regulations, the SSA has denied benefits to
25 many people who plainly are not fleeing prosecution or confinement and who are in dire need of
26 benefits. In *Blakely v. Commissioner of Social Security*, 330 F. Supp. 2d 910, 911 (W.D. Mich.
27 2004), for instance, it was undisputed that the plaintiff moved from Montana to Michigan without
28 knowing that a warrant had issued in Montana. He learned of the Montana warrant (and Montana

1 learned of his whereabouts) after a traffic violation in Michigan. *Id.* Montana declined to
2 extradite him. *Id.* The plaintiff was an SSI recipient, *id.* at 910-11, which means he was disabled,
3 blind or over 65 and had little or no income or resources. 20 C.F.R. § 416.1100. For the same
4 reasons, the plaintiff lacked the resources to travel to Montana. *Blakely*, 330 F. Supp. 2d at 911.
5 He did, however, volunteer to go if the state would pay the cost of transporting him. *Id.* Montana
6 declined that offer as well. *Id.* On these facts, the court quite reasonably found that the SSA had
7 no evidence to support its finding that the plaintiff was fleeing prosecution. *Id.* at 914.

8 In *Hull v. Barnhart*, 336 F. Supp. 2d 1113, 1115 (D. Or. 2004), the plaintiff moved from
9 Nevada to Oregon several months before criminal charges were filed against her. She was
10 unaware of the charges until the SSA sought to suspend her SSI benefits. *Id.* at 1115. While the
11 charges were pending, she had obtained an Oregon drivers license and lived at the same address
12 for four years, then lived at another address for three more years. *Id.* She had not changed her
13 name or done anything else to avoid law enforcement. *Id.* She was eventually arrested at her
14 home and she waived extradition, but Nevada did not bother to take her into custody and the
15 Oregon authorities subsequently released her. *Id.* The court found that the SSA had improperly
16 suspended her benefits because there was no evidence that the court issuing the warrant had made
17 a finding that the plaintiff was fleeing prosecution and, in any event, the evidence was insufficient
18 to support the SSA's finding that the plaintiff was, in fact, fleeing. *Id.* at 1117.

19 Here in the Northern District, Chief Judge Walker reversed the SSA's suspension of
20 benefits to an SSI beneficiary suffering from the combined effects of a developmental disability
21 and mental illness. *Garnes v. Barnhart*, 352 F. Supp. 2d 1059, 1066 (2004). The plaintiff was
22 arrested in Virginia for failure to return a rental car on time. *Id.* at 1060. She was released on her
23 own recognizance and agreed to appear in court a few days later. *Id.* Due to a fire and resulting
24 asbestos contamination, the court was closed on the date the plaintiff was supposed to appear. *Id.*
25 A few weeks later, the plaintiff's mother — with whom plaintiff lived — relocated from Virginia
26 to California. *Id.* Unable to live on her own, plaintiff moved with her mother to California. *Id.* at
27 1060-61. A warrant was issued when she failed to appear in Virginia. *Id.* at 1061. She was later
28 arrested in California based on the outstanding warrant, but Virginia chose not to extradite her.

1 *Id.* Based in part of the SSA's own finding that the plaintiff was mentally disabled, Chief Judge
 2 Walker found that the determination that plaintiff was "fleeing" prosecution was not supported by
 3 substantial evidence and, moreover, that the agency could not suspend benefits without a finding
 4 by a court or other duly authorized tribunal that the plaintiff was fleeing and that no such finding
 5 had been made. *Id.* at 1066-67.

6 **III. ARGUMENT**

7 Plaintiffs move for certification of a class of persons affected by the Commissioner's
 8 policies and practices, defined as follows:

9 All individuals threatened with or who have suffered the suspension or denial of
 10 benefits under the OASDI, SSI, or SVB programs, or who have not been
 11 permitted to serve as a representative payee for those programs, on the basis that
 12 they were allegedly "fleeing to avoid prosecution, or custody or confinement
 after conviction" for a felony, and who have a pending appeal or who were still
 within the time to appeal as of October 15, 2008.²

13 As defined, this proposed class meets the requirements for class certification under
 14 Federal Rule of Civil Procedure 23(a), which mandates that (1) the number of persons is so
 15 numerous that joinder of all members as parties is impracticable; (2) there are common questions
 16 of law or fact; (3) the claims of the proposed named plaintiffs are typical of those of the class; and
 17 (4) the named plaintiffs and their counsel will fairly and adequately protect the interests of the
 18 class. Fed. R. Civ. P. 23(a); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). The
 19 proposed class also meets the additional requirements for class certification set forth in Federal
 20 Rule of Civil Procedure 23(b)(2), which requires that "the party opposing the class has acted or
 21 refused to act on grounds that apply generally to the class, so that final injunctive relief or
 22 corresponding declaratory relief is appropriate respecting the class as a whole." *See Amchem*
 23 *Prods.*, 521 U.S. at 614 (in addition to meeting four requirements of Rule 23(a), case must be
 24 maintainable under Rule 23(b)(1), (2) or (3)). As set forth in the Complaint, the government has
 25 implemented an unlawful practice of suspending or denying SSI, SVB, and OASDI benefits
 26 based on the existence of a warrant, without a determination that the recipient of the benefits is

27 ² In seeking certification of the class so defined, Plaintiffs do not intend to waive, and in fact
 28 expressly reserve, their rights to later seek certification of the broader class set forth in the First
 Amended Complaint.

1 fleeing prosecution or confinement for a felony.

2 **A. Federal Rule of Civil Procedure 23(a)**

3 **1. Numerosity and Impracticability of Joinder**

4 **a. The Proposed Class Satisfies the Numerosity Requirement**

5 Although there is no numerical cut-off for certification under Rule 23, *Gen. Tel. Co. of the*
 6 *Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980), courts have presumed that the numerosity
 7 requirement is met when there are more than 40 putative class members. *Celano v. Marriott Int'l,*
 8 *Inc.*, 242 F.R.D. 544, 549 (N.D. Cal. 2007) (noting that courts generally will find numerosity
 9 requirement satisfied if class comprises 40 or more members); 2 William W Schwarzer et al.,
 10 *California Practice Guide: Federal Civil Procedure Before Trial* § 10:261, at 10-44 (rev. ed.
 11 2006) (citing *Ansari v. New York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998); *Consol. Rail*
 12 *Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)). The Court may determine based
 13 on general knowledge and common sense, in addition to the number of known putative class
 14 members, that the numerosity requirement is met. *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604,
 15 608 (N.D. Cal. 2004) (citing 1 Newberg on Class Actions § 3:6 (4th ed. 2002); *Haley v.*
 16 *Medtronic, Inc.*, 169 F.R.D. 643, 648 (C.D. Cal. 1996)).

17 Here, the SSA's own Inspector General recently issued a report touting the number of
 18 beneficiaries who have been denied benefits under the agency's illegal policy and the hundreds of
 19 millions of dollars in benefits that those beneficiaries have not received. Kroger Decl. Ex. D
 20 (SSA Audit Report No. A-01-07-17039, Title II Benefits to Fugitive Felons and Probation or
 21 Parole Violators (Office of the Inspector General, July 7, 2008) at 5, *available at*
 22 <http://www.ssa.gov/oig/ADOBEPDF/A-01-07-17039.pdf>). Among other things, the Inspector
 23 General's report estimates that, in 2008, the SSA's policy will result in approximately 11,000
 24 otherwise eligible individuals being denied benefits in the OASDI program alone. *Id.*, Appendix
 25 B at B-3 (Table 7).

26 In short, the numerosity requirement is satisfied and there is no argument that Defendants
 27 can reasonably make to the contrary.

b. Joinder is Impracticable

Given the large number of potential class members, joinder would be impracticable. *See Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (numerosity inquiry asks whether joinder is impracticable, not whether it is impossible). Judge Henderson, in language that applies squarely to this case, explained why joinder is impractical in the case of a national class of benefits recipients, such as this one: “The class includes members who are geographically dispersed; class members are, by definition, on low incomes and therefore have limited financial resources that would make it difficult or impossible for them to bring individual lawsuits; and the class is fluid in nature and involves future members who are presently unidentifiable because new individuals regularly [become subject to the challenged policy].”³ *Situ v. Leavitt*, 240 F.R.D. 551, 560 (N.D. Cal. 2007).

Joinder of all putative class members is impracticable for the additional reason that most of their identities are unknown to Plaintiffs. Under such circumstances, where defendant is in the best position to identify class members, the burden falls on Defendant to demonstrate that joinder of all class members would be practicable. *See Barahona-Gomez v. Reno*, 167 F.3d 1228, 1236–37 (9th Cir. 1999) (although ordinarily plaintiffs are responsible for providing notice to class members, government could be required to do so where it may perform that task with less difficulty or expense).

³ It is well-settled that a class may include individuals who will satisfy the class definition in the future. *See, e.g., Santillan v. Ashcroft*, 2004 WL 2297990, at *7 (N.D. Cal. Oct. 12, 2004) (“[T]he inclusion of unnamed class members who will be affected in the future by a challenged policy or practice is a common characteristic of class actions seeking to curtail ongoing harms.”); *I.N.S. v. Nat’l Ctr. for Immigrant Rights*, 502 U.S. 183, 186 (1991) (addressing the merits of a class action representing “all those persons who have been or may in the future be denied the right to work pursuant to 8 CFR § 103.6”); *Haitian Refugee Ctr., Inc. v. Nelson*, 694 F. Supp. 864, 876–78 (S.D. Fla. 1988) (granting class certification of a class of all persons who had or would apply for adjustment of immigration status under a particular program), *aff’d* by 872 F.2d 1555 (11th Cir. 1989); *Does 1-5 v. Chandler*, 83 F.3d 1150 (9th Cir. 1996) (addressing the merits of a class consisting of “[a]ll persons who are, have been, or will be identified as ‘disabled’ under Chapter 346 ...”); *LaDuke v. Nelson*, 762 F.2d 1318, 1321, 1332 (9th Cir. 1985) (affirming certification of a class consisting of “[a]ll persons who have resided or will reside in particularly described farm housing ...”); *Etuk v. Blackman*, 748 F. Supp. 990, 994 (E.D.N.Y. 1990) (certifying a class of persons “whose permanent resident cards either have been or will be confiscated by the INS”) *aff’d* in relevant part, *Etuk v. Slattery*, 936 F.2d 1433 (2d Cir. 1991).

2. Commonality

Plaintiffs seek certification of a class of persons whose benefits have been or will be suspended or denied as a result of a warrant issued without any finding by a court or other duly authorized tribunal that the person is fleeing prosecution or confinement. In order to succeed in this motion, Plaintiffs must show that there is a common issue of law or fact. Fed. R. Civ. P. 23(a)(2); *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir. 2007); *Amchem Prods.*, 521 U.S. at 613.

Courts have recognized that the commonality requirement does not impose a heavy burden. *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003) (“Rule 23(a)(2) has been construed permissively”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (same); *Dukes*, 474 F.3d at 1225 (“all questions of fact and law need not be common to satisfy the rule”). Even a single common legal or factual issue that is central to the case can justify class certification. *Celano*, 242 F.R.D. at 551; *Hanlon*, 150 F.3d at 1019 (commonality requirement is met either by common legal issue with divergent factual predicates or by common core of facts with disparate legal remedies); *Krzesniak v. Cendant Corp.*, No. C 05-05156-MEJ, 2007 WL 1795703, at *7 (N.D. Cal. June 20, 2007) (“The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.”).

Plaintiffs easily meet this requirement, as this action is premised on the SSA’s application of the same unlawful policy to each member of the class. Common questions include:

- Are the SSA’s internal policies contrary to the express command of the governing statute and implementing regulations?;
- May the SSA determine that an individual is “fleeing to avoid prosecution, or custody or confinement after conviction” for a felony under 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), and 1382(e)(4)(A) absent a finding that the individual had the intent to flee for the specific purpose of either avoiding prosecution or avoiding custody or confinement and that the individual had the capacity to form such an intent?; and

- 1 ▪ May the SSA treat a warrant as conclusively determining that the subject thereof is
- 2 “fleeing” prosecution or confinement when the warrant does not expressly indicate
- 3 that the subject has any intent to avoid prosecution or confinement?

4 Although members of the class may differ in whether they are ultimately entitled to

5 benefits, those issues are not presented by this case as Plaintiffs do not ask the Court to adjudicate

6 the entitlement any member of the class. Rather, Plaintiffs challenge the SSA’s policy of

7 suspending or denying benefits on the basis of a warrant without any finding that the beneficiary

8 is fleeing prosecution or confinement and Plaintiffs seek declaratory and injunctive relief ordering

9 the government to readjudicate all suspensions, denials, and representative-payee decertifications

10 made pursuant to 42 U.S.C. §§ 402(x)(1)(A)(iv), 1004(a)(2), 1382(e)(4)(A), and 20 C.F.R. §

11 416.1339(b), but applying the legally required standards. Thus, no divergent issues of law or fact

12 within the proposed class could defeat class certification. *See Walters v. Reno*, 145 F.3d 1032,

13 1046 (9th Cir. 1998) (differences among class members regarding merits of individual cases were

14 “simply insufficient to defeat the propriety of class certification”); *Celano*, 242 F.R.D. at 551; *see*

15 *also Forbush v. J.C. Penney Co., Inc.*, 994 F.2d 1101, 1106 (5th Cir. 1993) (need for subsequent

16 individual proceedings “does not supply a basis for concluding that [named plaintiff] has not met

17 the commonality requirement”); *Doe v. Los Angeles Unified Sch. Dist.*, 48 F. Supp. 2d 1233,

18 1241 (C.D. Cal. 1999) (“[C]ommonality exists if plaintiffs share a common harm or violation of

19 their rights, even if individualized facts supporting the alleged harm or violation diverge.”). As

20 set forth above, there are several issues common to all members of the class in this case. Thus,

21 the proposed class meets the commonality requirement.

22 3. Typicality

23 The claims of Plaintiffs Rosa Martinez, Brent Roderick, Sharon Rozier, and Joseph

24 Sutrynowicz are typical of the claims of the proposed class, as required for class certification

25 under Rule 23(a)(3). “Under the rule’s permissive standards, representative claims are ‘typical’ if

26 they are reasonably co-extensive with those of absent class members; they need not be

27 substantially identical.” *Hanlon*, 150 F.3d at 1020; *see also Krzesniak*, 2007 WL 1795703, at *8.

28 “While typicality and commonality ‘tend to merge’ . . . typicality focuses on whether the named

1 plaintiffs possess the ‘same interest and suffer the same injury’ as class members.” *Krzesniak*,
 2 2007 WL 1795703 at *8 (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 156, 158 n.13
 3 (1982)).

4 In this case, these Plaintiffs and all the members of the proposed class have had (or face
 5 the threat of having) their benefits denied or suspended based on the same unlawful policy. They
 6 have identical claims for declaratory and injunctive relief and an identical interest in enforcing the
 7 plain language of the statutes and implementing regulations. Any possible differences in the
 8 underlying facts concerning their eligibility for benefits are not relevant because this lawsuit
 9 challenges only the application of the unlawful policy. *See Krzesniak*, 2007 WL 1795703, at *8
 10 (citing *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (typicality inquiry goes
 11 to “the nature of the claim . . . of the class representative, and not to the specific facts from which
 12 it arose”); *Santillan*, 2004 WL 2297990, at *11 (certifying class and rejecting government’s
 13 argument that length of delay differed among individuals because of different investigation
 14 results). Thus Rule 23’s typicality requirement is met.

15 4. Adequacy

16 Plaintiffs meet the final requirement of Rule 23(a), as they will fairly and adequately
 17 protect the interests of the proposed class. Fed. R. Civ. P. 23(a)(4). In order to satisfy the
 18 adequacy requirement, Plaintiffs must show (1) that their interests are common with, and not
 19 antagonistic to, the interests of the class; and (2) that they are able to prosecute the action
 20 vigorously through qualified and competent counsel. *Dukes*, 509 F.3d at 1185; *Linney v. Cellular*
 21 *Alaska P’ship*, 151 F.3d 1234, 1238–39 (9th Cir. 1998); *Lerwill v. Inflight Motion Pictures, Inc.*,
 22 582 F.2d 507, 512 (9th Cir. 1978). As already set forth above, Plaintiffs Rosa Martinez, Brent
 23 Roderick, Sharon Rozier, and Joseph Sutrynowicz share a common interest with the proposed
 24 class members in preventing the SSA from suspending or denying benefits based on a warrant
 25 without any finding that the beneficiary is fleeing prosecution or confinement. And these
 26 Plaintiffs do not have any interests that are antagonistic to the remainder of the proposed plaintiff
 27 class.

28 The proposed class representatives also will be able to prosecute this action vigorously.

1 They are represented by pro bono attorneys with the National Senior Citizens Law Center, the
 2 law firm of Munger, Tolles & Olson LLP, the Urban Justice Center, Disability Rights California,
 3 and the Legal Aid Society of San Mateo. Collectively, these nonprofit organizations and private
 4 law firm and the attorneys representing the Plaintiffs have extensive experience in disability
 5 rights, public-benefits law, senior-citizen law and class-action litigation, and have the necessary
 6 resources and commitment to pursuing the interests of the class vigorously.

7 **B. Federal Rule of Civil Procedure 23(b)(2)**

8 This case meets the requirements for certification of a class under Federal Rule of Civil
 9 Procedure 23(b)(2), as Defendants “ha[ve] acted or refused to act on grounds that apply generally
 10 to the class, so that final injunctive relief or corresponding declaratory relief is appropriate
 11 respecting the class as a whole.” The requirements of Rule 23(b)(2) are satisfied if the class
 12 members complain of a pattern or practice that is generally applicable to the class as a whole.
 13 *Walters*, 145 F.3d at 1047. This requirement is met here, as Plaintiffs challenge Defendants’
 14 policy of denying or suspending benefits, or decertifying representative payees, on the basis of an
 15 outstanding warrant, without regard to whether the person was fleeing prosecution or
 16 confinement. *See* Am. Compl. ¶¶ 17-23, 57-58. Plaintiffs seek declaratory and injunctive relief
 17 from those practices and policies.

18 Rule 23(b)(2) “has been used extensively to challenge the enforcement and application of
 19 complex statutory schemes, *such as suits involving the award or termination of benefits under the*
 20 *Social Security Act.*” 7AA Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, *Federal*
 21 *Practice and Procedure* § 1775, at 73 (3d ed. 2005) (emphasis added). “Indeed, arguments
 22 concerning whether a class action could be brought seeking relief under the Social Security Act
 23 and challenging procedures established by the Secretary of HEW were quelled by the Supreme
 24 Court in *Califano v. Yamasaki*.” *Id.* at pp. 76-77. In language that applies nearly verbatim here,
 25 the Supreme Court, in certifying a nationwide class in *Yamasaki*, found class relief to be
 26 “peculiarly appropriate” because:

27 The issues involved are common to the class as a whole. They turn
 28 on questions of law applicable in the same manner to each member
 of the class. . . . It is unlikely that the differences in the factual

1 background of each claim will affect the outcome of the legal issue.
2 And the class-action device saves the resources of both the courts
3 and the parties by permitting an issue potentially affecting every
4 social security beneficiary to be litigated in an economical fashion
5 under Rule 23.

6 *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979). For the same reasons certification of a Rule
7 23(b)(2) class is appropriate here.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court should grant the Plaintiffs' motion, certify this matter
10 as a class action as defined above, and appoint Plaintiffs' counsel as class counsel.

11 DATED: January 12, 2009

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROSA MARTINEZ, JIMMY HOWARD,
ROBERTA DOBBS, BRENT
RODERICK, SHARON ROZIER, and
JOSEPH SUTRYNOWICZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

MICHAEL J. ASTRUE, Commissioner of
Social Security, in his official capacity,

Defendant.

CASE NO. 08-CV-4735 CW

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

The Court, having considered the papers and arguments submitted in support of and in opposition to Plaintiffs' Motion for Class Certification, and good cause appearing, hereby orders as follows.

Plaintiffs' Motion for Class Certification is GRANTED. Pursuant to Federal Rule of Civil Procedure 23, the following class is certified:

All individuals threatened with or who have suffered the suspension or denial of benefits under the Old Age, Survivors, and Disability Insurance ("OASDI"), Supplemental Security Income ("SSI"), or Special Veterans Benefits ("SVB") programs, or who have not been permitted to serve as a representative payee for those programs, on the basis that they were allegedly "fleeing to avoid prosecution, or custody or confinement after conviction" for a felony, and who have a pending appeal or who were still within the time to appeal as of October 15, 2008.

It is further ORDERED that:

1. Plaintiffs Rosa Martinez, Brent Roderick, Sharon Rozier, and Joseph Sutrynowicz shall serve as representatives of the class; and
2. Plaintiffs' counsel at the National Senior Citizen Law Center, Munger, Tolles & Olson LLP, the Urban Justice Center, Disability Rights California, and the Legal Aid Society of San Mateo shall represent the class as co-lead counsel.

IT IS SO ORDERED:

DATED: _____

The Honorable Claudia A. Wilken
United States District Court Judge

Submitted by:

DATED: January 12, 2009

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By: David H. Fry / JSK
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Lechwar, Maureen

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Case Name: Martinez et al v. Astrue

Case Number: [4:08-cv-4735](#)

Filer: Rosa Martinez
Jimmy Howard
Roberta Dobbs
Brent A. Roderick
Sharon D. Rozier
Joseph Sutrynowicz

Document Number: [59](#)

Docket Text:

MOTION to Certify Class filed by Jimmy Howard, Roberta Dobbs, Brent A. Roderick, Sharon D. Rozier, Joseph Sutrynowicz, Rosa Martinez. Motion Hearing set for 2/19/2009 02:00 PM in Courtroom 2, 4th Floor, Oakland. (Attachments: # (1) Proposed Order Proposed Order)(Conrad, Mark) (Filed on 1/12/2009)

4:08-cv-4735 Notice has been electronically mailed to:

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81d7decef304f99557aba488383fdb0439964a09a22a7464988e361af53]]

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