



SOCIAL SECURITY

Office of the Inspector General

May 28, 2010

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 January 12, 2010, you requested information regarding prison inmates affected by both the Martinez settlement agreement and the *No Social Security Benefits for Prisoners Act of 2009*.

Thank you for the opportunity to provide the Committee with the requested information. To ensure the Agency is aware of the information provided to your office, we are forwarding a copy of this report to the Agency. I have also sent a similar response to Chairman Pomeroy, 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 additional questions, please call me, or have your staff contact Misha Kelly, Congressional and Intra-Governmental Liaison, at (202) 358-6319.

Sincerely,

A handwritten signature in black ink that reads "Patrick P. O'Carroll, Jr."

Patrick P. O'Carroll, Jr.
Inspector General

Enclosure

cc:

Michael J. Astrue
Earl Pomeroy
John Linder
Wally Herger



SOCIAL SECURITY
Office of the Inspector General

May 28, 2010

The Honorable Earl Pomeroy
Chairman, Subcommittee on
Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Chairman Pomeroy:

On January 12, 2010, you requested information regarding prison inmates affected by both the Martinez settlement agreement and the *No Social Security Benefits for Prisoners Act of 2009*.

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Michael J. Astrue
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John Linder
Wally Herger



SOCIAL SECURITY
Office of the Inspector General

May 28, 2010

The Honorable John Linder
Ranking Member, Subcommittee on
Income Security and Family Support
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Linder:

On January 12, 2010, you requested information regarding prison inmates affected by both the Martinez settlement agreement and the *No Social Security Benefits for Prisoners Act of 2009*.

Thank you for the opportunity to provide the Committee with the requested information. To ensure the Agency is aware of the information provided to your office, we are forwarding a copy of this report to the Agency. I have also sent a similar response to Chairman Earl Pomeroy and Ranking Member Sam Johnson of the Subcommittee on Social Security, and Member Wally Herger of the Committee on Ways and Means.

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

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Inspector General

Enclosure

cc:
Michael J. Astrue
Earl Pomeroy
Sam Johnson
Wally Herger



SOCIAL SECURITY
Office of the Inspector General

May 28, 2010

The Honorable Wally Herger
Member, Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Herger:

On January 12, 2010, you requested information regarding prison inmates affected by both the Martinez settlement agreement and the *No Social Security Benefits for Prisoners Act of 2009*.

Thank you for the opportunity to provide the Committee with the requested information. To ensure the Agency is aware of the information provided to your office, we are forwarding a copy of this report to the Agency. I have also sent a similar response to Chairman Earl Pomeroy and Ranking Member Sam Johnson of the Subcommittee on Social Security, and Ranking Member John Linder of the Subcommittee on Income Security and Family Support.

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Inspector General

Enclosure

cc:
Michael J. Astrue
Earl Pomeroy
Sam Johnson
John Linder

CONGRESSIONAL RESPONSE REPORT

Martinez Settlement Benefits Withheld Under the No Social Security Benefits for Prisoners Act of 2009

A-01-10-20112



May 2010

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.

Background

OBJECTIVE

Our objective was to provide information on individuals not paid the Martinez settlement payments under the *No Social Security Benefits for Prisoners Act of 2009*.

BACKGROUND

The *Social Security Act* prohibits the payment of Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments to individuals who are “fleeing” to avoid prosecution, custody, or confinement for a felony—and to individuals who are violating a condition of probation or parole—unless the Agency determines that good cause exists for paying such benefits.¹

The Martinez class action suit challenged the Social Security Administration’s (SSA) fugitive felon policy of denying or suspending benefits to individuals who had outstanding felony warrants without developing information to ensure that they had been “fleeing” law enforcement. The parties reached a settlement under which SSA continued its policy only if an 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).

Under the settlement agreement, SSA must abide by these rules prospectively. In addition, SSA must apply the same rules and pay retroactive benefits to certain classes of beneficiaries whose benefits were suspended or denied in the past. The Agency planned to make Martinez payments in four phases. For Phase 1, SSA began sending notices and issuing payments in December 2009.

SSA estimated in its Fiscal Year 2009 financial statements that the Martinez settlement would cost the Agency about \$693 million to restore benefits and/or eliminate overpayments to fugitive felons.²

¹ 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.

² SSA, *Fiscal Year 2009 Performance and Accountability Report*, pages 106-107.

Further, the Office of the Inspector General's (OIG) analysis of fugitive data showed that only about 0.7 percent of fugitive felons have outstanding warrants with one of the three Offense Codes cited in the Martinez settlement. Therefore, SSA will no longer save millions of dollars in OASDI and SSI funds since most fugitive felons are now eligible to receive benefits.³

The settlement agreement, however, does not restrict SSA or the OIG's 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.

In December 2009, the *No Social Security Benefits for Prisoners Act of 2009* became law.⁴ Under this law, individuals who are not receiving monthly OASDI or SSI benefit payments because they are prisoners, fugitive felons (under the Martinez definition), or probation or parole violators will not be paid retroactive benefits—including those due benefits under the Martinez settlement. Once the individual is no longer a prisoner, fugitive felon, or probation or parole violator, he or she can receive the Martinez settlement payment. (See Appendix B for additional background information on the Martinez settlement and the *No Social Security Benefits for Prisoners Act of 2009*.)

On January 12, 2010, Sam Johnson, Ranking Member, Committee on Ways and Means, Social Security Subcommittee; John Linder, Ranking Member, Committee on Ways and Means, Income Security and Family Support Subcommittee; and Wally Herger, Member, Committee on Ways and Means, requested information regarding beneficiaries affected by both the Martinez settlement and the *No Social Security Benefits for Prisoners Act of 2009*. Specifically, they requested statistical information showing how many prison inmates—whose Martinez settlement-related payments SSA withheld—were in prison because of fugitive felon warrants versus other crimes.

³ We estimated that SSA saved about \$83 million in SSI funds between August 1996 and February 2003 by stopping or recovering SSI payments to 32,979 fugitive felons and probation or parole violators. (SSA OIG, *Assessment of the Supplemental Security Income Fugitive Felon Project* [A-01-03-23070], September 2003). Additionally, we estimated SSA saved about \$404 million in OASDI funds from January 2005 through March 2008. (SSA OIG, *Title II Benefits to Fugitive Felons and Probation or Parole Violators* [A-01-07-17039], July 2008).

⁴ Pub. L. No. 111-115.

METHODOLOGY

In November 2009, SSA developed a population of 157 Phase 1 Martinez cases it could not pay under the *No Social Security Benefits for Prisoners Act of 2009* because the individuals had potential prison addresses. The Agency finalized this population on or about November 12, 2009 and provided us this file on January 26, 2010. We reviewed these 157 cases.⁵ (See Appendix C for our scope and methodology.)

⁵ We did not independently identify this population but relied on the 157 cases SSA provided.

Results of Review

SSA provided us a file of 157 individuals not due retroactive Martinez settlement benefits because they were incarcerated. Our review of these cases found that, as of January 2010, SSA had withheld benefits to 80 individuals. Additionally, the Agency correctly processed Martinez settlement payments totaling \$553,835 for 76 individuals and incorrectly paid 1 individual who was still incarcerated.

SSA DID NOT PROCESS MARTINEZ SETTLEMENT

As of January 2010, SSA had not processed the Martinez settlement payments for 80 individuals.

In 73 of the 80 cases, the individuals were incarcerated:

- 21 were incarcerated because of the fugitive felon warrant. For example, one individual was issued a fugitive felon warrant in June 2005 for a sex offender registration violation. The warrant ended when the individual was apprehended and incarceration began in August 2007. These 21 individuals had warrants for crimes such as assault, kidnapping, larceny, and drug-related offenses. Table 1 summarizes the type of offenses for which these individuals were issued their fugitive felon warrant.

Table 1		
Type of Offense	Number of Individuals	Portion
Non-violent, not drug-related	9	43%
Drug-related	7	33%
Violent	5	24%
Total	21	100%

- 50 were incarcerated because of some other crime. For example, one individual was issued a fugitive felon warrant in February 1999 for aggravated assault on a police officer. According to SSA's prisoner records, this individual was charged with murder; therefore, it appeared the individual was incarcerated for a crime other than the fugitive felon warrant.
- 2 were incarcerated for reasons we could not determine.

In 7 of the 80 cases, the individual was no longer incarcerated:

- 5 were not eligible to receive a Martinez settlement payment. For example, one individual had a potential Martinez settlement period from October 2008 through December 2009; however, this individual had a disability cessation effective in August 2007. Therefore, this individual was not eligible for a Martinez settlement.
- 2 were eligible to receive a Martinez settlement payment; however, SSA withheld the benefit for other reasons. For example, one individual had an outstanding probation violation warrant. Once the probation violation warrant is satisfied, SSA will process the Martinez settlement.

SSA PROCESSED MARTINEZ SETTLEMENT

SSA processed Martinez settlements totaling \$575,161 to 77 of these individuals. Specifically, in

- 76 cases, SSA correctly processed the Martinez settlement payments totaling \$553,835. The Agency (a) paid the individuals who were no longer incarcerated, (b) withheld the settlement payment to collect an outstanding overpayment, or (c) canceled prior fugitive overpayments because they were no longer considered overpayments (subject to recovery action) under the settlement agreement. For example, according to SSA's records, one individual was released from prison in August 2009. In January 2010, SSA processed this individual's Martinez settlement payment, and he received a payment totaling \$9,221.
- 1 case, SSA incorrectly processed the Martinez settlement totaling \$21,326.⁶ According to SSA, this individual was still incarcerated and should not have received a Martinez settlement.

⁶ Of the \$21,326, a payment of \$10,652 was paid to the individual, and \$10,674 was used to recover an overpayment.

Conclusion

As of January 2010, for the 157 individuals SSA identified as having potential prison addresses, the Agency properly withheld Martinez settlement payments in 80 cases pursuant to the *No Social Security Benefits for Prisoners Act of 2009*. Of these 80 individuals, 21 were incarcerated because of a fugitive felon warrant. Additionally, the Agency correctly processed Martinez settlement payments totaling \$553,835 for 76 individuals and incorrectly paid 1 individual who was still incarcerated.

Appendices

APPENDIX A – Acronyms

APPENDIX B – Additional Background

APPENDIX C – Scope and Methodology

Appendix A

Acronyms

OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSI	Supplemental Security Income

Additional Background

The Martinez Settlement Agreement and the No Social Security Benefits for Prisoners Act of 2009

On September 24, 2009, the U.S. District Court of Northern California approved a nationwide class action settlement agreement in the *Martinez v. Astrue* lawsuit involving the Social Security Administration's (SSA) fugitive felon program. The Martinez settlement changed the types of felony arrest warrants SSA uses to prohibit payment of Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments. The settlement does not apply to persons whose benefits the Agency denied or stopped because of an arrest warrant for a parole or probation violation. Specifically, the agreement allows SSA to stop benefit payments to fugitive felons in only three Offense Code categories:¹

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

For Class Members whose benefits were suspended or denied, or had an administrative appeal determination on or after January 1, 2007, or who had administrative appeals challenging the suspension of their benefits pending on August 11, 2008, SSA will reinstate benefits and pay any benefits withheld back to the first month of suspension. The Agency will also repay any sums collected on an overpayment if these Class Members had been overpaid benefits based on the previous policy. For Class Members who receive SSI, the Agency will first redetermine the Class Member's non-medical eligibility criteria under its usual policies.

For Class Members whose benefits were suspended or denied between January 1, 2000 and December 31, 2006, and who did not have administrative appeals pending on August 11, 2008, SSA will stop collecting overpayments and will remove any remaining overpayment balances imposed based on the previous policy. The Agency will advise Class Members who were not receiving benefits as of April 1, 2009 because of the application of the previous fugitive felon policy, to make an appointment to file a new application for benefits. Class Members whose benefits were suspended or denied before January 1, 2000 may reapply under the new policy.

¹ The three Offense Codes specified—4901, 4902, and 4999—are National Crime Information Center Uniform Offense Class Codes.

On December 15, 2009, the *No Social Security Benefits for Prisoners Act of 2009* became law.² Under this law, individuals not receiving monthly OASDI or SSI benefit payments because they are a prisoner, fugitive felon under the Martinez definition, or probation or parole violator, will not be paid retroactive benefits. This includes benefits due under the Martinez settlement. SSA can pay retroactive benefits once the individual is no longer a prisoner, fugitive felon, or probation or parole violator.

The Agency planned to make Martinez-related retroactive payments in four phases.

- Phase 1: Individuals whose OASDI benefits were suspended after 2006. SSA began issuing these retroactive payments in December 2009.
- Phase 2: Individuals whose SSI payments were suspended or denied after 2006. The Agency plans to issue retroactive payments to these individuals between April and September 2010.
- Phase 3: Individuals whose OASDI benefits were suspended or denied between January 1, 2005 and December 31, 2006. The Agency plans to issue retroactive payments to these individuals between May and December 2010. For beneficiaries in this class, SSA will not pay benefits retroactively to the initial period of denial or suspension. Payments will extend only back to the protective filing date of April 1, 2009.
- Phase 4: Individuals whose SSI payments were suspended or denied between January 1, 2000 and December 31, 2006. The Agency plans to issue retroactive payments to these individuals between August and December 2010. For beneficiaries in this class, SSA will not pay benefits retroactively to the initial period of denial or suspension. Payments will extend only back to the protective filing date of April 1, 2009.

The new law did not limit SSA's authority to otherwise withhold, adjust, or recover benefits.³ For individuals receiving SSI, the Agency will first re-examine non-medical eligibility before reinstating payments.

² Pub. L. No. 111-115.

³ Pub. L. No. 111-115 § 2, 42 U.S.C. 404(a)(1)(B)(iii), and 42 U.S.C. 1383(b)(7)(B).

Scope and Methodology

To accomplish our objective, we:

- Researched the Social Security Administration's (SSA) regulations, policies, and procedures related to the Martinez settlement and withholding of retroactive benefit payment under the *No Social Security Benefits to Prisoners Act of 2009*.
- Reviewed the Office of the Inspector General report, *The Social Security Administration's Fugitive Felon Program and the Martinez Settlement Agreement* (A-01-09-29177), October 2009.

On January 26, 2010, SSA provided us a data file of 157 records. (We did not independently identify this population but relied on the 157 cases SSA provided.) We analyzed the available warrant and prison data for these individuals to determine whether they were in prison because of the fugitive felon warrant that led them to be included in the Martinez settlement.

We performed our review between January and March 2010 in Boston, Massachusetts. We tested the data we used and determined them to be sufficiently reliable to meet our objective. 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 Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspections*.

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.