

LEXSEE 2008 U.S. DIST. LEXIS 74399

ELAINE CLARK, RAYMOND GIANGRASSO, TONY GONZALES, JOHNNY L. HEATHERMAN and MONELL WHITE, individually on behalf of themselves and on behalf of all those similarly situated, Plaintiffs, -against- MICHAEL J. ASTRUE, Commissioner of the Social Security Administration, in his official capacity, Defendant.

06 Civ. 15521 (SHS)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK**

2008 U.S. Dist. LEXIS 74399

**September 22, 2008, Decided
September 22, 2008, Filed**

SUBSEQUENT HISTORY: Vacated by, Remanded by *Clark v. Astrue, 2010 U.S. App. LEXIS 5698 (2d Cir. N.Y., Mar. 19, 2010)*

PRIOR HISTORY: *Clark v. Astrue, 2007 U.S. Dist. LEXIS 18434 (S.D.N.Y., 2007)*

COUNSEL: [*1] For Elaine Clark, individually, Elaine Clark, on behalf of themselves, and on behalf of all similarly situated, Raymond Giangrasso, individually, Raymond Giangrasso, on behalf of themselves, and on behalf of all those similarly situated, Tony Gonzales, individually, Tony Gonzales, on behalf of themselves, and on behalf of all those similarly situated, Johnny L. Heatherman, individually, Johnny L. Heatherman, on behalf of themselves, and on behalf of all those similarly situated, Monell White, individually, Monell White, on behalf of themselves, and on behalf of all those similarly situated, Plaintiffs: Bettina Barasch Plevan, Steven E. Obus, LEAD ATTORNEYS, Proskauer Rose LLP (New York), New York, NY.

For Commissioner Michael J. Astrue of the Social Security Administration, in his official capacity, Defendant: Sean Chance Cenawood, LEAD ATTORNEY, U.S. Attorney's Office, SDNY (86 Chambers St.), New York, NY.

JUDGES: Sidney H. Stein, United States District Judge.

OPINION BY: Sidney H. Stein

OPINION

OPINION & ORDER

SIDNEY H. STEIN, U.S. District Judge

Plaintiffs Elaine Clark, Raymond Giangrasso, Tony Gonzales, Johnny L. Featherman, and Monell White bring this putative class action against the Commissioner of the Social [*2] Security Administration (the "SSA") to challenge the SSA's interpretation of two statutes providing for suspension of Old-Age, Survivor, and Disability Insurance ("OASDI") and Supplemental Security Income ("SSA") benefits to individuals who violate a condition of their probation or parole. Plaintiffs contend that the SSA's practice of suspending OASDI and SSI benefits based solely on the existence of an outstanding arrest warrant for a probation or parole violation is contrary to the statutes at issue, 42 U.S.C. §§ 402(x)(1)(A)(v) and 1382(e)(4)(A)(ii), and an implementing regulation, 20 C.F.R. § 416.1339(b). In plaintiffs' view, suspension of violated the terms of his or her probation or parole. Following the commencement of this benefits is au-

thorized only when a court has made a formal finding that a beneficiary has in fact litigated, this Court denied plaintiffs' motion for a preliminary injunction seeking to halt the SSA's practice of relying on warrants to suspend OASDI and SSI benefits. See *Clark v. Astrue*, No. 06 Civ. 15521 (SHS), 2007 U.S. Dist. LEXIS 18434, 2007 WL 737489 (S.D.N.Y. Mar. 8, 2007). Following the conclusion of discovery proceedings, both parties have moved for summary judgment in their [*3] respective favors pursuant to *Fed. R. Civ. P. 56*. For substantially the reasons set forth in the preliminary injunction opinion, the Court now holds that the SSA's practice is consistent with the statutes and regulation and is entitled to deference. Accordingly, defendant's motion for summary judgment is granted and plaintiffs' motion for summary judgment is denied.

I. BACKGROUND

Except as otherwise noted, the following facts are not in dispute.

A. The SSA's Procedures for Suspending Benefits

Pursuant to various agreements, the SSA receives information regarding outstanding warrants from the National Crime Information Center ("NCIC") of the Federal Bureau of Investigation, the United States Marshals Service, and state and local law enforcement agencies. (Defendant's Statement of Material Undisputed Facts Pursuant to *Local Civil Rule 56.1* ("Def.'s 56.1") P 14; Plaintiffs' Response to Defendant's Statement of Material Undisputed Facts Pursuant to *Local Civil Rule 56.1* ("Pls.' Resp. 56.1") P 14; Declaration of Michael J. McGill dated Jan. 31, 2007 ("McGill Decl.") P 4.) For this information to be processed, it must include, at minimum, the name and date of birth of the individual for whom [*4] the warrant was issued, the date of the warrant, and the "ORI number" identifying the agency that issued the warrant. (Deposition of Michael J. McGill dated May 4, 2007 ("McGill Dep.") at 86:11-17, Ex. 5 to Declaration of Brian S. Rauch dated Nov. 16, 2007 ("Rauch Decl.")) Certain warrants are then referred for further processing. These warrants are the warrants that contain the NCIC Uniform Offense Code indicating a probation or parole violation; an "offense type" code that indicates either a violation of probation or a violation of parole; or a statement that the subject is a "probation violator" or a "parole violator." (McGill Dep. at 100:6-21, 101: 5-12.) The SSA generally does not receive copies of the warrants themselves. (Plaintiffs' Statement of Material Undisputed Facts Pursuant to *Local Civil Rule 56.1* ("Pls.' 56.1") P 18(c); Defendant's Response to Plaintiffs' Statement of Material Undisputed Facts Pursuant to *Local Civil Rule 56.1* ("Def.'s Resp. 56.1") P 18(c).)

The SSA uses automated processes to verify the identity of the individual named in a warrant and then checks whether the individual is receiving OASDI or SSE benefits.¹ (Def.'s 56.1 P 17; Pls.' Resp. 56.1 P 17.) [*5] If these processes yield a match between a warrant and a recipient, the warrant information is transmitted electronically to the SSA's Office of the Inspector General ("OEG"), a semi-independent section of the SSA. (McGill Decl. PP 2, 6.) OEG performs a duplicate-elimination process and assigns nonduplicate warrants to its Fugitive Enforcement Division ("FED"). (Id.) Depending on the source of the warrant information, either FED or the FBI's Information Technology Center ("ITC") then undertakes to verify that the warrant is still open. (Def.'s 56.1 P 18; Pls.' Resp. 56.1 P 18; McGill Decl. PP 8-11, 15.)

¹ As discussed below, plaintiffs strongly dispute the accuracy of SSA's procedures for verifying the identity of the persons named in the warrants it receives. It is undisputed, however, that SSA employs mechanisms intended to verify that the person named in the warrant is the same person identified as the recipient of Social Security benefits.

To do so, FED or ITC sends the referring law enforcement agency two forms--a Law Enforcement Referral Form, or OI-5B, and a Law Enforcement Certification Form, or OI-5C--that seek information regarding the current status of the warrant. (Def.'s [*6] 56.1 P 18; Pls.' Resp. 56.1 P 18; Pls.' 56.1 P 18(g); Def.'s Resp. 56.1 P 18(f) & (g); McGill Decl. PP 11, 15; Forms OI-5B and OI-5C, Ex. C to McGill Decl.) Each week, OIG transmits to SSA a list of the Social Security benefit recipients for whom it has received OI-5B and OI-5C forms from the referring agency or otherwise ascertained the status of the warrant. (McGill Decl. P 18; Decl. of Gareth Dence dated Feb. 1, 2007 ("Dence Decl.") P 11.) The SSA then begins the process of suspending benefits to recipients who have open warrants for violation of probation or parole. (Dence Decl. P 12.)

B. The Named Plaintiffs

1. Elaine Clark

Elaine Clark began receiving OASDI benefits in either 1996 or 1999 after being diagnosed with end-stage renal disease. (Pls.' 56.30 Kan. 25, 1 P 25; Def.'s Resp. 56.30 Kan. 25, 1 P 25; Declaration of Dennis Mass dated Feb. 1, 2007 ("Mass Decl.") P 10.) She has since received a kidney transplant and is being treated for diabetes mellitus, joint disorders of the lower extremities, hypertension, hyperlipidemia, depression, esophagitis reflux, osteoporosis, and anemia. (Pls.' 56.1 P 26; Def.'s 56.1 P 26.) She takes numerous medications and requires a wheelchair, and resides at a managed [*7] long term care facility in Amherst, New York. (Pls.' 56.1 PP 26; Def.'s 56.1 P 26.) Most of the cost of her medical care is paid by Medicaid, and Clark used her monthly OASDI check to pay her rent. (Pls.' 56.1 P 26; Def.'s 56.1 P 26.)

On December 3, 1999, while Clark was living in California, she was sentenced to three years' probation following conviction for felony grand theft/embezzlement by an employee. (Def.'s 56.30 Kan. 25, 1 P 25; Pls.' Resp. 56.30 Kan. 25, 1 P 25.) On November 27, 2002, the Superior Court of the State of California, Santa Clara County, issued a warrant for Clark's arrest for "fail[ing] to comply with terms of probation." (Bench Warrant dated Nov. 27, 2002, at US 001771, Ex M. to Declaration of Bertha Richardson dated Jan. 31, 2007 ("Richardson Decl."); Def.'s 56.1 P 28; Pls.' Resp. 56.1 1128.) The SSA received information regarding this warrant, including an offense code indicating violation of probation. (Def.'s 56.1 P 29; Pls.' Resp. 56.1 P 29.) This warrant remained outstanding and, in December 2005, Clark received a letter from the SSA informing her that her benefits would be suspended. (Pls.' 56.30 Kan. 30, 1 P 27; Def.'s Resp. 56.30 Kan. 30, 1 P 27.) In January 2006, the SSA notified Clark that her [*8] benefits were suspended immediately and that because they should have been suspended as of January 2005, she had been overpaid \$ 9,235. (Pls.' 56.1 P 28; Def.'s Resp. 56.1 P 28.) Clark filed a timely request for reconsideration, and on December 23, 2006, received a letter affirming the initial determination and denying her request for reconsideration. (Pls.' 56.1 P 29; Def.'s Resp. 56.1 P 29.)

Without her OASDI benefits, Clark has been unable to pay her rent and has been threatened with eviction from her long term care facility. (Pls.' 56.30 Kan. 102, 1 P 30; Def.'s Resp. 56.30 Kan. 102, 1 P 30.) The facility has given her a referral to a homeless shelter, but she fears that someone with her medical conditions would not be able to survive there. (Pls.' 56.30 Kan. 102, 1 P 30; Def.'s Resp. 56.30 Kan. 102, 1 P 30.) She states that she has contemplated suicide. (Pls.' 56.30 Kan. 102, 1 P 30; Def.'s Resp. 56.30 Kan. 102, 1 P 30.)

2. Raymond Giangrasso

Raymond Giangrasso began receiving SSI benefits in 1987 after recovering from a three month long coma caused by painkillers and sleep medications. (Pls.' 56.1 P 31; Def.'s Resp. 56.1 P 31.) He has lasting physical and psychological deficits and has been unable to work since. (Pls.' 56.1 P 31; Def.'s Resp. 56.1 P 31.) [*9] In May 8, 1995, he was convicted in Florida's Circuit Court for Pasco County of driving under the influence of alcohol or a controlled substance and driving with a suspended or revoked license. (Def.'s 56.1 P 38; Pls.' Resp. 56.1 P 38.) As part of his sentence, Giangrasso was placed on probation for two years. (Def.'s 56.1 P 39; Pls.' Resp. 56.1 P 39.) On July 11, 1995, a Florida court issued a warrant for his arrest for violating the conditions of his probation. (Def.'s 56.30 Kan. 57, 1 P 41; Pls.' Resp. 56.30 Kan. 57, 1 P 41; Arrest Warrant dated July 11, 1995 at US 001806, Ex. 0 to Richardson Decl.)

The SSA subsequently received information concerning the warrant, including the offense code indicating that it had been issued for violation of conditions of probation. (Def.'s 56.1 P 42; Pls.' Resp. 56.1 P 42.) In December 2003, the SSA informed Giangrasso that his benefits would be suspended retroactive to October 1, 2001, on the basis of the warrant, which remained outstanding. (Pls.' 56.30 Kan. 82, 1 P 32; Def.'s Resp. 56.30 Kan. 82, 1 P 32.) Giangrasso filed a motion for reconsideration, which was denied in July 2005. (Pls.' 56.1 P 33; Def.'s Resp. 56.1 P 33.) In May 2004, Giangrasso moved unsuccessfully to have the Florida court [*10] set aside the arrest warrant. (Def.'s 56.1 PP 44-45; Pls.' Resp. 56.1 PP 44-45.) In the fall of 2005, Giangrasso filed a new application for SSI benefits, which was approved in October of that year. (Pls.' 56.1 P 34; Def.'s Resp. 56.1 P 34.) In March 2007, an SSA administrative law judge ordered that Giangrasso's SSI benefits be reinstated as of January 2004 and concluded that he had not been overpaid benefits during the period between October 2001 and December 2003 because SSA had suspended his benefits erroneously. (Pls.' 56.1 P 35; Def.'s Resp. 56.1 P 35; Decision of Administrative Law Judge Lucian A. Vecchio dated March 30, 2007, attachment to Letter from Brian S. Rauch dated Aug. 19, 2008 ("Rauch Letter").)

As a result of the suspension of his benefits, Giangrasso was unable to pay his rent and was forced to leave his residence and live in homeless shelters and on the street. (Pls.' 56.30 Kan. 118, 1 P 36; Def.'s Resp. 56.30 Kan. 118, 1 P 36.) His mental impairments have worsened, as a result of which he has been hospitalized several times. (Pls.' 56.30 Kan. 118, 1 P 36; Def.'s Resp. 56.30 Kan. 118, 1 P 36.) He also states that he has contemplated suicide. (Pls.' 56.30 Kan. 118, 1 P 36; Def.'s Resp. 56.30 Kan. 118, 1 P 36.)

3. Tony Gonzales

In March 2005, [*11] after having qualified for OASDI early retirement benefits, Tony Gonzales began receiving Social Security retirement payments. (Declaration of Tony Gonzales dated Jan. 2, 2007 P 4.) On August 29, 2005, the SSA sent Gonzales a letter stating that it intended to suspend his benefits because he either had an outstanding arrest warrant for a felony or had violated a condition of probation or parole, although it did not indicate which. (Pls.' 56.30 Kan. 1, 1 P 19; Def.'s Resp. 56.30 Kan. 1, 1 P 19.) The letter referred to a warrant issued in December 1987 with an NCIC offense code of 2499. (Letter from SSA to Tony A. Gonzales dated Aug. 29, 2005, Ex. 11 to Rauch Decl.) In July 2006, the SSA informed Gonzales that he had been overpaid \$ 5,463. (Pls.' 56.1 P 24; Def.'s Resp. 56.1 P 24.) In August 2006, the SSA resumed payment of Gonzales's retirement benefits, but withheld a portion each month for the overpayment. (Pls.' 56.1 P 24; Def.'s Resp. 56.1 P 24.)

The parties disagree regarding the basis for the SSA's suspension of benefits. Plaintiffs contend that the suspension was triggered by a warrant erroneously issued in 1965 for violating the terms of Gonzales's probation for a 1962 conviction in California. (Pls.' [*12] 56.1 P 20.) In 2006, Gonzales successfully petitioned a California court to recall and terminate a warrant for violation of probation for this conviction. (Id. P 22.) The SSA, however, asserts that it suspended Gonzales's benefits based on the warrant referenced in its August 2005 letter, which was an outstanding arrest warrant for a 1987 felony; NCIC code 2499, referenced in the letter, indicates car theft. (Def.'s Resp. 56.1 P 20.) This warrant was dismissed in June 2006. (Id. P 22; Form OI-5C for Tony A. Gonzales, Ex. Y to Decl. of Douglas H. Roloff, III dated Feb. 5, 2008.) On July 16, 2008, an administrative law judge ruled that Gonzales's benefits had been suspended erroneously because the 1987 felony warrant on which the SSA had relied was either nonexistent or was a misdated record of the 1965 warrant, which the administrative law judge found would not have justified suspension of benefits. (Decision of Administrative Law Judge Riley J. Atkins dated July 16, 2008 at 3, attachment to Rauch Letter.)

4. Johnny L. Heatherman

In February 1987, Johnny L. Heatherman pleaded guilty to two felonies--aggravated assault and vandalism--in the Court of Common Pleas for Cuyahoga County, Ohio, [*13] and in March 1987 was sentenced to two years' probation. (Def.'s 56.1 in PP 31, 32; Pls.' Resp. 56.1 PP 31, 32; Case Summary and Docket Information at US 001781-82, 001783-84, Ex. N to Richardson Decl.) In September 1987, the same court issued a *capias* and arrest warrant for Heatherman at the request of the county probation department on the ground that he had violated the terms of his probation. (Def.'s 56.1 PP 34, 35; Pls.' Resp. 56.1 PP 34, 35; Docket Information at US 001783, Ex. N to Richardson Decl.)

Heatherman began receiving OASDI benefits in 2001, retroactive to 1999, because of his bipolar disorder and Reflex Sympathetic Dystrophy, both of which require several medications to control. (Pls.' 56.1 PP 37, 38; Def.'s Resp. 56.1 PP 37, 38.)

SSA received information concerning the outstanding warrant, including the offense code indicating a violation of probation, and, in February 2006, suspended Heatherman's benefits. (Pls.' 56.1 PP 36, 39; Def.'s Resp. 56.1 PP 36, 39.) Heatherman filed a request for reconsideration in March 2006, and the parties disagree as to whether the SSA had adjudicated this request at the time of the filing of the present motions for summary judgment. (Pls.' [*14] 56.1 P 40; Def.'s Resp. 56.1 P 40.)

Since his benefits were suspended, Heatherman has been unable to contribute financially to the support of his wife and three children. (Pls.' 56.30 Kan. 57, 1 P 41; Def.'s Resp. 56.30 Kan. 57, 1 P 41.) He and his wife have filed for bankruptcy, which he states they would not have done had he continued to receive his benefits. (Pls.' 56.30 Kan. 57, 1 P 41; Def.'s Resp. 56.30 Kan. 57, 1 P 41.)

5. Monell White

In November 1979, Monell White pleaded guilty in the Court of Common Pleas for Cuyahoga County, Ohio to breaking and entering a commercial building with the intent to commit theft, and received a sentence of two years' probation. (Def.'s 56.1 PP 49, 50; Pls.' Resp. 56.1 in PP 49, 50; Docket Information at US 001827, Ex. P to Richardson Decl.) In August 1980, the Probation Department requested issuance of an arrest warrant based on White's failure to abide by the terms of his probation, and in September 1980, the Cuyahoga County Court issued a *capias* and warrant. (Def.'s 56.1 in PP 53, 54; Pls.' Resp. 56.1 PP 53, 54.)

White applied for OASDI benefits in 1991 because of his bipolar and schizoaffective disorders, and began receiving benefits in 1993. (Pls.' 56.1 P 42; Def.'s Resp. 56.1 P 42; Mass [*15] Decl. P 36.) The SSA received information concerning White's arrest warrant, including an offense code indicating a probation violation. (Def.'s 56.1 P 55; Pls.' Resp. 56.1 P 55.) In July 2006, the SSA notified White that his benefits would be suspended based on the outstanding warrant, and in October 2006, the SSA suspended his benefits. (Pls.' 56.1 P 43; Def.'s Resp. 56.1 P 43.) After unsuc-

cessful efforts in Florida, where he lives, to address the outstanding warrant, White filed a Motion to Terminate Probation in the Cuyahoga County, Ohio court that had issued the warrant. (Pls.' 56.1 PP 44-48; Def.'s Resp. 56.1 PP 44-48.) In November 2006, that court granted White's motion and recalled the warrant. (Pls.' 56.1 P 48; Def.'s Resp. 56.1 P 48.) The SSA then resumed OASDI payments. (Def.'s 56.30 Kan. 45, 1 P 58; Pls.' Resp. 56.30 Kan. 45, 1 P 58.)

II. DISCUSSION

This Court has subject matter jurisdiction pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3). These provisions generally require exhaustion of administrative remedies. See *Pavano v. Shalala*, 95 F.3d 147, 150 (2d Cir. 1996). As determined in the Court's prior opinion, however, this action satisfies the conditions for waiver of the exhaustion requirement. [*16] See *Clark*, 2007 U.S. Dist. LEXIS 18434, 2007 WL 737489, at *3-4.

A. Summary Judgment Standard

Summary judgment is appropriate if the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)*; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In determining whether a genuine issue of material fact exists, the Court "is to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004). The party opposing summary judgment, however, "may not rely on mere conclusory allegations nor speculation, but instead must offer some hard evidence" in support of its factual assertions, *D'Amico v. City of New York*, 132 F.3d 145, 149 (2d Cir. 1998), such that "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party," *Golden Pac. Bancorp v. FDIC*, 375 F.3d 196, 200 (2d Cir. 2004) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

B. The Statutory and Regulatory Framework

Pursuant [*17] to Title II of the Social Security Act (the "Act"), 42 U.S.C. §§ 401 *et seq.*, the SSA provides OASDI benefits that are funded by worker and employer contributions. See *id.* § 423(c). Pursuant to Title XVI of the Act, the SSA provides need-based SSI to individuals whose income and resources fall below a minimum level. See *id.* §§ 1382, 1382a, 1382b. In 1996, Congress enacted the SSI suspension provision, which provides, in pertinent part:

No person shall be considered an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if during such month the person is . . . (ii) violating a condition of probation or parole imposed under Federal or State law.

42 U.S.C. § 1382(e)(4)(A). In 2004, Congress extended the prohibition of benefits to recipients of OASDI by adding the OASDI suspension provision:

Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under *section 423* of this title to any individual for any month ending with or during or beginning with or during a period of more than 30 days throughout all of which such individual . . . (v) is violating a condition of probation or parole imposed [*18] under Federal or State law.

Id. § 402(x)(1)(A).

As part of the 2004 legislation, Congress also authorized the SSA to restore benefits to otherwise ineligible SSI or OASDI recipients for "good cause":

[T]he Commissioner shall, for good cause shown, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that . . . (I) a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action).

Id. § 1382(e)(4)(B); see id. § 402(x)(1)(B)(iii) (same).

In 2000, the SSA promulgated a regulation to implement the SSI suspension provision. This regulation (the "SSI Regulation") provides, in pertinent part, for suspension of SSI benefits on the first day of the month

in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order is issued by a court or other duly authorized [*19] tribunal on the basis of an appropriate finding that the individual . . . (C) Is violating, or has violated, a condition of his or her probation or parole . . .

20 C.F.R. § 416.1339(b)(1)(i). The SSA has not promulgated a corresponding regulation to implement the OASDI suspension provision. (Pls.' 56.1 P 3; Def's Resp. 56.1 P 3.)

The SSA has issued written interpretations of the two statutory suspension provisions and the SSI Regulation in its Program Operations Manual System (the "Manual"), an internal policy guide. (Pls.' 56.1 P 6; Def.'s Resp. 56.1 P 6.) The Manual provides that with respect to SSI benefits,

[p]arole and probation violators are not eligible to receive an SSI benefit beginning with the earlier of: [t]he month in which a warrant, a court order or decision, or an order or decision by an appropriate agency in the United States (e.g. parole board) is issued which finds that the individual . . . is violating a condition of his or her probation or parole; or [t]he first month during which the individual . . . violated a condition of probation or parole, if indicated in such warrant, court order, or decision.

Manual § SI 00530.010(A), available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500530010>. [*20] (See US 000005, Ex. E to Dence Decl.) With respect to OASDI benefits, the Manual provides:

Unless good cause is found . . . payment is prohibited for any month in which a beneficiary . . . has an unsatisfied warrant for more than 30 continuous days for: . . . [v]iolation of a condition of Federal or State probation/parole.

Manual § GN 02613.010(A)(1), available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0202613010>. (See US 000088, Ex. F to Dence Decl.)

C. The SSA's Interpretation of the Statutes and Regulation Is Entitled to Deference

Plaintiffs contend that the statutes, by their terms, permit suspension of Social Security benefits only upon a formal judicial determination that the recipient "is violating a condition of probation or parole." 42 U.S.C. § 402(x)(1)(A)(v); see id. § 1382(e)(4)(A). In their view, suspension of benefits on the basis of a warrant is contrary to the statute because a warrant reflects only a finding of probable cause to believe that a violation has occurred. They characterize the SSA's practice as suspending benefits on a probation or parole officer's "mere allegation" that a benefits recipient has violated a condition of her probation or parole.

As set forth [*21] in the Court's prior opinion in this litigation, however, regardless of the wisdom of the SSA's practice as a matter of policy, it is consistent with the statutes. Plaintiffs' interpretation, in contrast, takes the statutory phrase "is violating" out of its context. See *Clark*, 2007 U.S. Dist. LEXIS 18434 2007 WL 737489, at *5 ("[S]tatutory interpretation must be 'guided not by a single sentence or member of a sentence, but looking to the provisions of the whole law, and to its object and policy.'" (quoting *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 94-95, 114 S. Ct. 517, 126 L. Ed. 2d 524 (1993))). The suspension provisions themselves are silent as to how the SSA is to determine whether a Social Security recipient "is violating" probation or parole. However, the "good cause" provisions of each statute--which authorize the SSA to restore benefits for good cause--suggest that a warrant is sufficient evidence of a violation to support a suspension of benefits. These provisions permit the SSA to restore suspended benefits to a recipient where "a court of competent jurisdiction has found the person not guilty of the criminal offense, dismissed the charges relating to the criminal offense, [*22] vacated the warrant for arrest of the person for the criminal offense, or issued any similar exonerating order (or taken similar exonerating action)." 42 U.S.C. § 402(x)(1)(B)(iii)(I) (emphasis added); see id. § 1382(e)(4)(B)(i) (same). Because Congress authorized the SSA to restore

benefits when an arrest warrant has been vacated, it follows that Congress also contemplated that a warrant constitutes a sufficient basis on which to suspend benefits in the first instance. ²

2 The fact that the SSI good faith provision was added in 2004, eight years after the SSI suspension provision was enacted, does not undermine this conclusion. When Congress legislates, it is presumed to be aware of administrative agencies' prior statutory interpretations. See *Lorillard v. Pons*, 434 U.S. 575, 580, 98 S. Ct. 866, 55 L. Ed. 2d 40 (1978). According to the SSA, the practice at issue long predates Congress's enactment of the good cause provisions. (Memorandum of Law in Further Support of Defendant's Motion for Summary Judgment 9.) If Congress had deemed the practice inconsistent with the statute, it had the ability to amend the statute to prohibit it. Instead, Congress added a statutory provision that is entirely [*23] consistent with the SSA's practice.

Plaintiffs object that whereas these provisions refer to warrants "for arrest of a person for the criminal offense," a probation or parole violation may not constitute a new criminal offense. Granting that this is so, there is still no indication in the statute that Congress intended to draw a distinction between warrants for criminal offenses and warrants for probation and parole violations. Rather, the good cause provisions explicitly state that they apply to "the person referred to in subparagraph (A)," which includes persons who are violating a condition of their probation or parole. 42 U.S.C. § 402(x)(1)(B)(iii); id. § 1382(e)(4)(B). Under plaintiffs' reading, the good cause provisions would either be entirely inapplicable to persons who violated their probation or parole because the provisions refer exclusively to "criminal offenses" throughout, or else would apply only in the rare instances in which such persons were able to have their underlying convictions vacated. ³

3 Moreover, to the extent that the reference to "criminal offenses" [*24] renders the statute unclear or ambiguous, the SSA's interpretation, as discussed below, is entitled to deference.

The SSA's interpretation is also consistent with the SSI Regulation, the validity of which is not challenged by plaintiffs. As noted, this regulation permits suspension of SSI benefits upon issuance of a "warrant or order . . . requiring the individual's appearance before a court or other appropriate tribunal (e.g., a parole board), or similar order . . . issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual . . . [i]s violating, or has violated, a condition of his or her probation or parole." 20 C.F.R. § 416.1339(b)(1)(i). Although this language clearly authorizes the SSA to suspend benefits on the basis of a warrant for violation of a condition of probation or parole, plaintiffs contend that the words "appropriate finding" require that the warrant have been issued on the basis of a formal judicial determination rather than "mere probable cause." However, plaintiffs fail to cite any statutory or regulatory language giving meaning to the words "appropriate finding," instead appealing to a general intuition that a finding [*25] of "mere probable cause" is not an appropriate basis on which to suspend benefits. Moreover, given plaintiffs' assertion that warrants are rarely, if ever, issued on the basis of formal judicial findings, interpreting the words "appropriate finding" to require a formal judicial finding would render the regulatory provision essentially meaningless. If the SSA, in promulgating the SSI Regulation, had intended to permit suspension of benefits on the basis of a warrant only in very rare instances, it would undoubtedly have said so more explicitly.

Even if there were any doubt whether the statutes and SSI Regulation authorize the SSA's practice of suspending benefits based solely on the existence of an outstanding arrest warrant for a probation or parole violation, the SSA's interpretation of the statutes and its regulation would be entitled to deference. The SSA's interpretation of its own regulation is entitled to "substantial deference," meaning that its interpretation is controlling unless "plainly erroneous or inconsistent with the regulation." *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512, 114 S. Ct. 2381, 129 L. Ed. 2d 405 (1994) (internal quotation marks omitted). Thus, a [*26] court should defer to an agency's interpretation of its own regulation unless "an alternative reading is compelled by the regulation's plain language or by other indications of the Secretary's intent at the time of the regulation's promulgation." *Id.* Moreover, although the SSA has not promulgated a parallel regulation to implement the more recently enacted OASDI suspension provision, it has adopted an interpretation in its internal operating Manual that calls for suspension of OASDI benefits on the basis of an outstanding warrant for violation of a condition of probation or parole. Manual § GN 02613.010(A)(1). Because the Manual's guidelines "represent the Commissioner's interpretation of the statutory mandate, they deserve substantial deference, and will not be disturbed as long as they are reasonable and consistent with the statute." *Bubnis v. Apfel*, 150 F.3d 177, 181 (2d Cir. 1998).

For the reasons previously set forth, the SSA's practice of suspending benefits on the basis of an arrest warrant is consistent with the plain language of the statutes and the SSI Regulation and is not unreasonable. ⁴ It is also consistent with "indications of the Secretary's intent at the time of the [*27] regulation's promulgation." *Thomas Jefferson Univ.*,

512 U.S. at 512. In its published notice of the final version of the SSI Regulation, the Commissioner addressed the objection, echoing plaintiffs' position here, that "unless an individual has been adjudicated by a State or by the Federal government to be in violation of probation or parole, SSA has no basis for discontinuing or denying benefits." 65 Fed. Reg. 40,492, 40,494 (June 30, 2000) (to be codified at 20 C.F.R pt. 416). The Commissioner responded to the objection as follows:

SSI payments will be stopped when a court or other authorized tribunal finds that the individual is violating, or has violated, a condition of his or her probation or parole and the court has either: issued an order for the individual's arrest or apprehension, or issued an order requiring the individual's appearance before a court or other tribunal. Of course, individuals may dispute a finding that they are in violation of their probation or parole with the reporting agency.

Id. Although this response repeats the word "finding," the meaning of which is at the heart of this dispute, it is clear from this passage that the Commissioner contemplated the suspension [*28] of benefits on the basis of the type of "finding" that a court makes prior to issuing an arrest warrant--i.e., a finding of probable cause that the benefit recipient is violating a condition of probation or parole.

4 The SSA's practice is also consistent with the Manual provision regarding suspension of SSI benefits, which substantially tracks the language of the SSI Regulation. See Manual § SI 00530.010(A).

Finally, the SSA's interpretation finds support in the decision of the U.S. Court of Appeals for the Second Circuit in *Fowlkes v. Adamec*, 432 F.3d 90 (2d Cir. 2005). There, the Second Circuit considered the provision immediately preceding the SSI suspension provision, 42 U.S.C. § 1382(e)(4)(A)(i), which calls for suspension of SSI benefits to any recipient who "is . . . fleeing to avoid prosecution, or custody" for a felony offense. *Fowlkes*, 432 F.3d at 96. This provision is implemented by the same regulation as the SSI suspension provision, which authorizes suspension of benefits beginning in the month in which a "warrant . . . or similar order issued by a court or other authorized tribunal on the basis of an appropriate finding that the individual . . . [i]s fleeing, or has fled, [*29] to avoid prosecution." 20 C.F.R. § 416.1339(b)(1)(i). The SSA interpreted this statutory and regulatory language to permit suspension of benefits on the basis of an outstanding felony arrest warrant even where there was no indication that the issuing jurisdiction had found the individual to be fleeing to avoid prosecution. Id. The Second Circuit rejected the SSA's interpretation because "for 'flight' to result in a suspension of benefits, it must be undertaken with a specific intent, i.e., to avoid prosecution." Id. at 97. Neither the statute nor regulation "permit[ted] the Commissioner to conclude simply from the fact that there is an outstanding warrant for a person's arrest that he is fleeing to avoid prosecution." Id. at 96 (internal quotation marks omitted).

Significantly, the Second Circuit gave no indication that it would take issue with the SSA's suspension of benefits on the basis of a warrant that did indicate that the recipient was fleeing to avoid prosecution. As the court explained, "the regulation does not permit the agency [*30] to make a finding of flight; rather, it demands a court or other appropriate tribunal to have issued a warrant or order based on a finding of flight." Id. at 97. The SSA's practice in the present case, in contrast to the practice at issue in *Fowlkes*, is to suspend benefits only where the warrant includes an offense code indicating that it was issued for a probation or parole violation. Thus, unlike in *Fowlkes*, the SSA does not suspend benefits on its own determination that a warrant was issued for a probation or parole violation.

D. The SSA's Procedures Are Consistent With the Statutes and Regulation

Plaintiffs further contend that the process by which the SSA suspends benefits to probation and parole violators is unreliable and does not represent an "appropriate finding" of a violation within the meaning of the SSI Regulation. Specifically, plaintiffs object to the SSA's practice of relying on offense codes to identify warrants issued for probation and parole violations and in most instances only verifying warrant information to the extent of confirming that the warrants remain outstanding. As a result of the SSA's practice, they argue, some Social Security recipients have had their [*31] benefits suspended erroneously. They contend that the SSA should, at minimum, obtain a copy of the warrant or otherwise ascertain the basis on which it was issued before making a decision that can so dramatically affect the lives of benefit recipients.

It is conceivable that some procedure the SSA could adopt for determining when to suspend SSI benefits would be so unreliable as not to constitute "an appropriate finding that the individual . . . [i]s violating, or has violated, a condition

of his or her probation or parole." 20 C.F.R. § 416.1339(b)(1)(i); see *Fowlkes*, 432 F.3d at 98 n.4. Plaintiffs have failed to show, however, that the practice the SSA employs reaches that degree of unreliability. Although plaintiffs point to ways in which the SSA's procedures could be made more accurate and less burdensome for benefit recipients, they do not dispute that in the vast majority of cases in which the SSA suspends benefits on the basis of a warrant, the warrant had in fact been issued for violation of probation or parole. Plaintiffs' position would require a sweeping change in SSA procedure on the basis of a single regulatory phrase that does not clearly require it.

Finally, plaintiffs [*32] object to the SSA's practice of relying on warrants to justify a suspension of benefits because some jurisdictions permit a parole or probation officer to issue a warrant without involving a court. They argue that this practice is inconsistent with the good cause provisions, which permit the SSA to restore suspended benefits where "a court of competent jurisdiction has . . . vacated the warrant for arrest of the person for the criminal offense[] or issued any similar exonerating order." 42 U.S.C. § 1382(e)(4)(B)(i) (emphasis added); see id. § 402(x)(1)(B)(iii)(I) (same). They also contend that it is inconsistent with the SSI Regulation, which permits suspension of benefits only where a warrant has been "issued by a court or other duly authorized tribunal." 20 C.F.R. § 416.1339(b)(1)(i).

The SSA does not dispute that some jurisdictions permit nonjudicial officers to issue arrest warrants for probation or parole violations. It correctly notes, however, that the five plaintiffs in this action had their benefits suspended on the basis of warrants issued by courts. Clark's warrant was issued by the California Superior Court for Santa Clara County. (Bench Warrant dated Nov. 27, 2002, at US [*33] 001771, Ex M. to Richardson Decl.) The warrant for which Giangrasso's benefits were suspended was issued by the Florida Circuit Court for Pasco County. (Arrest Warrant dated July 11, 1995, at US 001806, Ex. O to Richardson Decl.) The warrants for both Heathennan and White were issued by Ohio's Cuyahoga County Court of Common Pleas. (Docket Information at US 001783, Ex. N to Richardson Decl.; Docket Information at US 001827, Ex. P to Richardson Decl.) Although there is some disagreement as to which warrant triggered suspension of Gonzales's benefits, plaintiffs do not contend that a warrant for his arrest was issued by a probation officer rather than a court. Therefore, it is not before this Court to decide whether suspension of SSI or OASDI benefits on the basis of a warrant issued by a nonjudicial officer would be consistent with the statutes or regulation. That argument must await another case.

III. CONCLUSION

Plaintiffs have failed to establish that the SSI and OASDI suspension provisions or the SSI Regulation permit suspension of Social Security benefits only after an individual has been formally adjudicated to have violated a condition of probation or parole. The SSA's practice [*34] of suspending benefits upon a warrant based on probable cause is consistent with the statute and regulation and with Second Circuit precedent and is entitled to deference by this Court. Because the practice is lawful, this Court may not substitute its own policy judgment for the SSA's policy judgment. Accordingly, the SSA's motion for summary judgment is granted and plaintiffs' cross-motion for summary judgment is denied. The Clerk of Court is directed to enter judgment in defendant's favor.

Dated: New York, New York

September 22, 2008

SO ORDERED:

/s/ Sidney H. Stein

Sidney H. Stein, U.S.D.J.