Are You a Fleeing Felon? A Call for the Social Security Administration to Adhere to Its Fugitive Felon Provision’s Plain Meaning to Prevent Unfair and Unsuspecting Benefit Suspensions of Non-Fleeing SSI Recipients

I. INTRODUCTION

In June 2001, the Federal Bureau of Investigation ("FBI") apprehended a fugitive with an extensive rap sheet made up of thirteen arrests and five prior convictions, including one for homicide. In addition to being a fugitive of justice, this individual was disabled and, consequently, receiving monthly Supplemental Security Income ("SSI") benefit payments to assist him with his daily living expenses while he avoided the law. In the end, however, his SSI benefit was also his burden. Indeed, this fugitive’s arrest was accomplished through the joint efforts of the FBI and the Social Security Administration’s ("SSA") Office of the Inspector General ("OIG") under the authority of the so-called fugitive felon provision.

This arrest, and the many similar to it, accomplish the fugitive felon provision’s objective of ensuring that “tax payers [do] not subsidize a fugitive’s freedom” through the public dole. Of course, it is not likely that anyone would lament a program that takes “murderers, kidnappers and armed robbers off the street” and refuses to provide public funds to them as “fuel to escape law enforcement.”

To be sure, the SSA’s fugitive felon provision has had great success in working jointly with the FBI and local law enforcement agencies in apprehending fugitive felons, and in preventing these individuals from employing disability benefits to sustain their flight from prosecution. However, in its interpretation and application of the provision, the SSA has ignored the requirement that the individual be “fleeing to avoid prosecution” before SSI benefit suspension is warranted. Unfortunately, the SSA’s interpretation has extended the provision’s reach to the point that it unfairly burdens and

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2. Id.

3. Id.


devastates a significant number of needy, disabled individuals who are in no way fugitives.

To avoid this unfair result, this Note advocates that the SSA adjust its interpretation of its fugitive felon provision in accord with the plain meaning of the provision’s language and criminal law’s understanding of what constitutes “fleeing to avoid prosecution.” In addition, this Note aims to bring light to a little-known provision that is beginning to have a profound effect on many disabled Americans. To this end, Part II discusses the provision’s background, including its enactment by Congress in 1996, and the SSA’s subsequent adoption of the provision as part of its administrative bylaws. Part III exhaustively describes the SSA’s process of identifying, locating, and suspending fugitive felon’s SSI benefits, and also discusses the SSA’s interpretation of the provision’s language. Part IV advocates that the SSA adjust its interpretative practice under the provision in a way that squares with the plain meaning of “fleeing to avoid prosecution” as understood in the cannon of criminal law.

II. BACKGROUND OF THE FUGITIVE FELON PROVISION

During Bill Clinton’s presidential campaign in 1992, he vowed to “end welfare as we know it.”6 Indeed, he satisfied this vow, albeit in the twenty-fourth hour of his first term, on August 22, 1996, when he signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”).7 Many agreed that the PRWORA fulfilled President Clinton’s promise of drastic welfare reform and upheaval. For instance, Newsweek described the PRWORA as “[t]he most far-reaching change . . . in welfare, where the 60-year-old New Deal system established by Franklin Roosevelt to protect poor mothers and their children was simply abolished.”8 Similarly, the New York Times wrote: “Clinton today ended six decades of guaranteed help to the nation’s poorest children by signing into law a vast welfare overhaul.”9 Finally, The Washington Post stated that “President Clinton signed historic welfare legislation yesterday that rewrites six decades of social policy, ending the federal guarantee of cash assistance to the poor.”10

In accord with the tone of these media observations, many Democrats lamented the signing of the PRWORA, calling its enactment a “moment of

9Clines, supra note 6.
“shame” and describing it as welfare denial not welfare reform. On the other hand, Republican and Democratic supporters, along with the President, praised the bill as one that would “transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence.” In his speech on August 1, 1996, the day that Congress voted on the PRWORA and he announced his intention to sign the legislation, President Clinton reasoned that the PRWORA was necessary because “the current welfare system undermines the base values of work, responsibility and family, trapping generation after generation in dependency and hurting the very people it was designed to help.”

Critics of the drastic reform measure focused their energy on the PRWORA’s abolishment of the Aid to Families With Dependent Children program. In striking this program, the PRWORA replaced $12.8 million in monthly cash benefits, including payments from this fund for eight million children, with a system of block grants and permission of greater authority to states to develop welfare programs to solve the issue of dependency. To this end, the PRWORA placed a two-year limit on welfare payments for any one stretch of time, and a five-year lifetime limit for those “who drift on and off welfare rolls.” In addition, many were outspoken against the Act on the ground that it excluded legal immigrants from receiving most federal benefits. Not surprisingly, media accounts from 1996 universally fail to mention the fact that the PRWORA also included an uncontroversial measure that would prevent fugitives and parole violators from receiving public welfare.

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11 Clines, supra note 6. Interestingly, there were many dynamics underlying the PRWORA’s signing, including political motivations. Having vetoed two earlier welfare reform proposals, and with the presidential election only two months away, many, including Clinton campaign advisor Dick Morris, believed that a third veto would “put Clinton on the opposite side of what polls say is overwhelming public sentiment for revamping welfare, would open the door for [Bob] Dole, and would contradict Clinton’s methodical efforts over the past year to show the electorate that he is a centrist who shares middle-class values about work and responsibility.” John F. Harris & John E. Yang, Clinton to Sign Bill Overhauling Welfare, WASH. POST, Aug. 1, 1996, at A1.

12 Harris & Yang, supra note 11.


14 Clines, supra note 6.

15 Id.

16 See George J. Church et al., Ripping up Welfare, TIME, Aug. 12, 1996, at 21; Clines, supra note 6.

17 Church, supra note 16.
A. The PRWORA’s Fugitive Felon Provision

Tucked away among and overshadowed by the many and more notable provisions of the PRWORA are the so-called fugitive felon provisions. These provisions were included as part of the historic welfare overhaul “[i]n response to concerns that individuals wanted in connection with a felony or violating terms of their parole or probation could receive benefits from programs for the needy.” Accordingly, the fugitive felon provisions were implemented with an eye toward preventing wanted individuals and parole violators from profiting from public welfare.

Specifically, the fugitive felon provisions prohibit any individual who is deemed a “fugitive felon” from receiving SSI, Temporary Assistance for Needy Families (“TANF”), food stamps, and housing assistance. Moreover, the fugitive felon provisions require that these programs’ administering agencies provide law enforcement officers with information identifying program recipients with outstanding warrants to assist in the apprehension of these individuals.

While the fugitive felon provisions apply to SSI, TANF, and housing assistance, the language and practical application of the provisions vary from program to program. Directly pertinent to this Note, section 202(a) of the PRWORA, amending Title XVI of the Social Security Act, provides the fugitive felon provision applicable to SSI. The provision states in relevant part:

22Id.
24Id. §§ 202(b), 837, 903(b), 110 Stat. at 2185–86, 2330–31, 2348 (codified as amended at 7 U.S.C. §§ 2015, 2017; 42 U.S.C. § 1437(z)) (relating to temporary assistance for needy families, food stamps, and housing assistance, respectively). As it pertains to SSI, this aspect of the fugitive felon provision requires the SSA, upon receipt of a written request, to furnish law enforcement officials with the current address, Social Security number, and photograph of an SSI recipient who is a fugitive felon or a parole or probation violator. See id. § 202(b), 110 Stat. at 2185–86; SOC. SEC. ADMIN., OFFICE OF INSPECTOR GEN., FACT SHEET: FUGITIVE FELON PROGRAM, at http://www.ssa.gov/oig/executive_operations/factsheet3.htm (last updated July 2004) [hereinafter FACT SHEET: FUGITIVE FELON PROGRAM].
(5) No person shall be considered an eligible individual or eligible spouse for purposes of this title with respect to any month if during such month the person is—

(A) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, 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, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(B) violating a condition of probation or parole imposed under Federal or State law.\(^{26}\)

B. The SSA’s Adoption of the Fugitive Felon Provision

In 2000, the SSA adopted section 202 of the PROWRA and, accordingly, changed its administrative rules to reflect and incorporate the operation of the provision.\(^{27}\) The SSA began active enforcement of the fugitive felon provision on July 31, 2000, following its adoption and incorporation into SSA’s administrative bylaws.\(^{28}\) As applied to the administration and management of SSI, the fugitive felon provision has a direct affect upon (1) the determination of eligibility,\(^{29}\) and (2) the suspension of current SSI benefits for otherwise qualified individuals.\(^{30}\)

In addition to SSI’s traditional requirements,\(^{31}\) an SSI applicant must not be deemed a fugitive under the language of the fugitive felon provision.\(^{32}\) As it pertains to eligibility, the language of the SSA’s adoption of the fugitive felon provision mirrors the language of PROWRA section 202(a),\(^{33}\) but with an additional restriction: an SSI applicant cannot be “[f]leeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which [the applicant] flee[s].”\(^{34}\)

\(^{26}\)Id.


\(^{28}\)See id. at 40,493–95.


\(^{30}\)Id. § 416.1339(a).

\(^{31}\)In general, SSI recipients must (1) be either age sixty-five or older, blind, or disabled; (2) be residents of the United States and either citizens, nationals, lawful aliens admitted for permanent residence, or children of military personnel living overseas who satisfy certain qualifying requirements; and (3) have income and assets that do not exceed the SSA’s established threshold. Id. § 416.202(a)–(d).

\(^{32}\)Id. § 416.202(f).

\(^{33}\)See id. § 416.202(f)(2)–(3).

\(^{34}\)Id. § 416.202 (f)(1).
Furthermore, and of greater significance, the SSA also injected the fugitive felon provision into Subpart M—“Suspensions and Terminations”—of its administrative rules. Under the heading “Suspension due to flight to avoid criminal prosecution or custody or confinement after conviction, or due to violation of probation or parole,” the SSA adopted administrative rules that suspend current benefits of otherwise qualified SSI recipients. The final version of the fugitive felon provision as it applies to suspension of benefits provides in relevant part:

   a) **Basis for suspension.** An individual is ineligible for SSI benefits for any month during which he or she is—

      (1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

      (2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

      (3) Violating a condition of probation or parole imposed under Federal or State law.

   b) **Suspension effective date.** (1) Suspension of benefit payments because an individual is a fugitive as described in paragraph (a)(1) or (a)(2) of this section or a probation or parole violator as described in paragraph (a)(3) of this section is effective with the first day of whichever of the following months is earlier—

      (i) 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 tribunal on the basis of an appropriate finding that the individual—

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

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

         (C) Is violating, or has violated, a condition of his or her probation or parole as described in paragraph (a)(3) of this section; or

      (ii) The first month during which the individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her probation or parole, if

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35 See id. § 416.1339.
36 See id.
indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.\textsuperscript{37}

III. APPLICATION OF THE SSA’S FUGITIVE FELON PROVISION WITHIN THE SSI PROGRAM

After the SSA responded to the PRWORA’s mandate, the SSA was left with the task of developing a process to identify, locate, and suspend a “fugitive’s” SSI benefits. The following subsections describe (A) the comprehensive process developed by the SSA, and (B) how the SSA interprets and applies the provision’s language to those on SSI’s roles.

A. The Process of Fugitive Identification, Location, and Benefit Suspension

After embracing the fugitive felon provision, the SSA was charged with developing a way to identify fugitives and subsequently prevent payments to these ineligible recipients.\textsuperscript{38} Complicating this task was the fact the fugitive felon provisions were passed as unfunded mandates.\textsuperscript{39} Nevertheless, the SSA employed ingenuity and developed a very comprehensive system. In order to meet the challenge, the SSA, the OIG, and the SSA’s prospective external partners built an infrastructure and information technology system by reallocating and retooling existing resources.\textsuperscript{40}

Initially, the SSA established a partnership with the OIG’s sixty-three field divisions.\textsuperscript{41} Within this partnership, the SSA worked closely with the OIG, and the OIG worked equally close with its “established law enforcement counterparts to publicize” the fugitive felon initiative, “to conduct manual searches facilitating the apprehension of fugitives,” and to “promote and support joint fugitive felon operations.”\textsuperscript{42}

Today, in its maturity, the SSA’s program calls upon the services of many divisions and departments within the SSA’s organization, including the Division of Operations Analysis and Customer Support, regional and field offices, the Office of Investigations, the Office of Program Benefits, and the Office of Telecommunications and Systems Operations.\textsuperscript{43} Moreover, the SSA

\textsuperscript{37}\textit{Id.} § 416.1339(a)-(b).
\textsuperscript{38}\textit{FACT SHEET: FUGITIVE FELON PROGRAM, supra note 24.}
\textsuperscript{39}\textit{Id.}
\textsuperscript{40}\textit{Id.}
\textsuperscript{41}\textit{SOCIAL SECURITY ADMINISTRATION, supra note 1, at 6. In general, the OIG is responsible for program integrity, and is the “primary interface between SSA and law enforcement entities,” which includes investigating and arresting individuals for program fraud. Id.}
\textsuperscript{42}\textit{FACT SHEET: FUGITIVE FELON PROGRAM, supra note 24.}
\textsuperscript{43}\textit{SOCIAL SECURITY ADMINISTRATION, supra note 1, at 7 fig. 1. While the TANF and Food Stamp programs have also developed matching procedures in order to apply the PRWORA’s fugitive felon provision to their respective programs, the SSA’s matching program, as exhaustively detailed in this subsection, is the “most comprehensive computerized matching...}
employs the assistance of many external organizations. In particular, the SSA presently operates its fugitive felon program with the use of automated data machines. These machines assist SSA in gathering warrant information, which is used to identify both ineligible fugitive felon SSI applicants and ineligible current recipients. The SSA receives the initial warrant information for its matching operations from several different state and federal sources, including (1) the FBI’s National Crime Information Center (NCIC); (2) state and local law enforcement agencies; and (3) the U.S. Marshals Service (USMS).44

As the United States General Accounting Office makes clear in its September 2002 report,45 the process of moving from raw data collection to denying SSI applications and suspending SSI benefits is a complicated and very involved process. It begins outside the SSA in FBI, USMS, and state and local law enforcement offices.46 Each of these agencies commences the process by downloading warrant information from their individual databases.47

Next, each entity places its specific warrant information onto cartridges, paper, disks, or CD-ROMs.48 The information is then sent to the SSA’s Office of Central Operations, and warrant information recorded on tapes, cartridges, and other electronic media is sent to the SSA’s Office of Telecommunications and Systems Operations.49 Once this information is received in-house with the SSA, the staff of the Office of Central Operation or the Office of Telecommunications and Systems Operations uploads or otherwise records warrant information into the SSA’s mainframe computer housed at the SSA’s National Computer Center (“NCC”).50 After being uploaded to the mainframe, the process of matching individuals on the SSA’s welfare roles with warrants begins.51

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44FACT SHEET: FUGITIVE FELON PROGRAM, supra note 24; SOCIAL SECURITY ADMINISTRATION, supra note 1, at 8.
45FACT SHEET: FUGITIVE FELON PROGRAM, supra note 24; SOCIAL SECURITY ADMINISTRATION, supra note 1, at 8.
46SOCIAL SECURITY ADMINISTRATION, supra note 1, at 8. The SSA receives the warrant information under memorandums of understanding with the FBI and USMS. Id. In addition, the SSA also has matching agreements with numerous state and local law enforcement agencies, which establish conditions for the SSA’s use of the warrant information. Id.; FACT SHEET: FUGITIVE FELON PROGRAM, supra note 24.
47SOCIAL SECURITY ADMINISTRATION, supra note 1. This report is the most extensive, comprehensive, and clear explanation of the process.
48Id. at 38.
49Id.
50Id.
51Id.
52Id.
53Id.
54Id.
At this point, as the GAO explains:

the NCC staff makes backup copies of the warrant information and processes the data in overnight batches, using SSA’s Enumeration Verification System (EVS) to verify fugitives’ names, Social Security numbers, sex, and birth dates. The NCC staff then notifies SSA’s OIG that the data files are in production. The OIG is responsible for ensuring that the data files include only individuals charged with felony and parole or probation violations; it deletes any files naming individuals charged with misdemeanors.\(^{54}\)

After the OIG has reviewed the information, the NCC staff processes the data files and matches the warrant files against SSI roles to identify “fugitives” that have been receiving SSI payments.\(^{55}\) Records that create a match, so-called “matched records,” are then transferred back to the OIG for additional processing.\(^{56}\)

Matches are subsequently classified according to their “quality.”\(^{57}\) When the files are placed back in the control of the OIG, they are entered into its “allegation and case investigative system” and affixed with a case number that reflects the quality of the match.\(^{58}\) For instance, case numbers assigned to files of “exact matches” indicate a match where there is only one person on SSI roles that match the particular name, Social Security number, date of birth, and sex.\(^{59}\) Matches not classified as “exact matches” are deemed “good matches,” which indicates that the match has “two of the data elements, such as name and date of birth, but not a Social Security [n]umber.”\(^{60}\)

After completing the classification process, the OIG sends the “exact match” records to the FBI in Fort Monmouth, New Jersey and to the USMS for additional processing.\(^{61}\) Additionally, the OIG notifies its field offices “that exact and good matches have been entered into its allegation and case investigative system.”\(^{62}\)

At this point, the process moves to carry out the aim of the fugitive felon provision by locating and arresting the identified felons, and cutting off their SSI benefits. As to the task of locating and arresting, the FBI’s Information Technology Center (“ITC”) staff in New Jersey takes the “exact matches” and verifies the address, name, and status of each individual in order to determine

\(^{54}\)Id.
\(^{55}\)Id.
\(^{56}\)Id.
\(^{57}\)Id.
\(^{58}\)Id.
\(^{59}\)Id. at 38 n.19.
\(^{60}\)Id. at 38. As the GAO explains, “[g]ood matches require the OIG field offices to perform additional identification and verification” procedures. Id.
\(^{61}\)Id.
\(^{62}\)Id.
if the warrant is still active.\textsuperscript{63} Next, the ITC forwards the individual’s information, referred to as a “lead,” to the warrant-issuing law enforcement agency to locate and arrest the individual.\textsuperscript{64} As to the suspension of SSI benefits, the SSA adheres to a “sunset phase” in order to avoid frustrating arrest efforts of the warrant-issuing agency.\textsuperscript{65} In adhering to the “sunset phase,” the SSA “generally allows the originating law enforcement [sixty] days to apprehend a fugitive” before suspending SSI benefits.\textsuperscript{66} In this way the “sunset phase” prevents the SSA from “letting fugitives know that their status and whereabouts have been revealed” to law enforcement.\textsuperscript{67}

Once law enforcement has taken action on the warrant, a certification indicating what action has been taken is forwarded to the ITC and then to the OIG’s field offices.\textsuperscript{68} OIG agents have “[thirty] days from the time the forms are returned to them to work the cases . . . or perform additional verifications, enter the information from these forms into the allegation and case investigative system, complete summary and benefits suspension forms, and mail the forms to SSA field offices.”\textsuperscript{69} When field offices receive this information and the warrant is deemed active, the individual’s SSI benefits are automatically suspended and overpayments are calculated.\textsuperscript{70}

Following the suspension of benefits, the fugitive SSI recipient is given what the SSA considers due process: ten days to contact the SSA for a continuance of benefits and sixty days to appeal the suspension.\textsuperscript{71} During the

\textsuperscript{63}Id. at 39.
\textsuperscript{64}Id.
\textsuperscript{65}Id.
\textsuperscript{66}Id.
\textsuperscript{67}Id.
\textsuperscript{68}Id. If, after sixty days, the local law enforcement officials have not returned the certificate to the OIG indicating what action has been taken concerning the warrant, OIG agents follow up on the “lead” with the warrant-issuing agency to determine whether the warrant is still active. Id.
\textsuperscript{69}Id.
\textsuperscript{70}Id. at 40; see also 42 U.S.C. § 1383(b)(1)(A) (2000) (requiring SSA to recover overpayments when they are discovered). Because benefit suspension is keyed to the first day of the first month in which the individual is said to be fleeing, the SSA calculates the amount of SSI benefits paid to the recipient since the first day of the month the warrant was issued, and considers this amount to be overpayment because it was received at a time when the individual was ineligible. The SSA requires this overpayment amount to be repaid. It is estimated that individuals whose benefits were suspended in 2002 for a pre-August 1996 warrant could owe the government as much as $30,000 in back payments. Kathryn J. Lewis, \textit{Income Injustice: The Impact of Welfare Reform’s Fleeing Felon Regulations on SSI Recipients} (Center for Juv. & Crim. Just., S.F., Cal.), June 2002, at 8, http://www.cjcj.org/pdf/welfare_reform.pdf. Overpayments are usually collected through withholding SSI payments from the “fugitive” once the warrant is satisfied and the benefits are resumed, thus extending the amount of time SSI benefits are withheld from the individual. SOC. SEC. ADMIN., PROGRAM OPERATIONS MANUAL SYSTEM § SI 02201.005, at http://policy.ssa.gov/poms.nsf/partlist!OpenView (last updated July 2005) [hereinafter POMS].
\textsuperscript{71}SOCIAL SECURITY ADMINISTRATION, supra note 1, at 40. It has been suggested that, despite the availability of appeal, benefit suspensions under the fugitive felon provision present
appeal the recipient’s benefits are temporarily reinstated, but if the appeal is unsuccessful, the suspension is immediately restored. In the absence of a successful appeal, SSI benefits will be restored only when the SSA is provided with documentation that the warrant has been satisfied.72

This involved matching process has been successful in assisting law enforcement in apprehending fugitive felons and in helping the SSA suspend SSI benefits of ineligible fugitive felons on the program’s rolls. For example, in September 2002 the SSA reported that the fugitive felon program has been “instrumental in helping identify approximately 45,000 fugitives who improperly collected at least $82 million in [SSI] benefits.”73 In addition, as of March 31, 2004, application of the provision has led to the investigation of 158,482 fugitives, and the arrest of 20,190 fugitives specifically using SSA data obtained through the matching process.74 Furthermore, the SSA’s application of the provision has had a substantial economic benefit. According to the OIG’s “Assessment of the Supplemental Security Income Fugitive Felon Project” Audit Report,75 between August 1996 and February 2003, the fugitive felon provision saved the SSI program an estimated $83.4 million, made up of $74.1 million in SSI payments that would have been paid had the SSA not been authorized to suspend fugitive felons’ benefits and $9.3 million in SSI overpayments recovered from fugitives.76

Finally, there is also plenty of anecdotal evidence that attests to the provision’s success. For example, in February 2001 agents from the New York OIG office, New Jersey state troopers, and Essex County, New York sheriff’s office arrested one fugitive wanted on arson charges and another individual wanted on charges of manufacturing and distributing controlled substances.77

procedural due process concerns. For example, as Kathryn Lewis explains, while the United States Supreme Court has stated that “due process requires the government to provide a pre-termination evidentiary hearing, fair notice, and the opportunity to be heard before terminating certain benefits,” a person whose benefits are suspended under the fugitive felon provision receives inadequate notice that benefits have been suspended when, in “most cases, SSA notifies the recipient less than two weeks before benefits are withheld.” Lewis, supra note 70, at 7. Additionally, SSI recipients who are homeless may never receive notice because they lack a mailing address. Id.; see also Gerald McIntyre, Have You Seen a Fleeing Felon? Social Security Administration Targets SSI Recipients with Outstanding Warrants, 36 CLEARINGHOUSE REV. 474, 478 (2003) (“A percentage of notices are virtually meaningless; they simply recite the statute without stating whether the individual is alleged to be in violation of probation or fleeing to avoid prosecution, or where and when the alleged offense occurred.”).
The arrest of these two individuals was the result of the combined efforts of the SSA’s OIG and the FBI’s NCIC, and their participation and sharing of information as part of the matching process described above. Following the arrest, both felons were placed in the custody of the Essex jail and had their SSI benefits suspended, thereby meeting both goals of the fugitive felon provision.

Similarly, in Michigan, the OIG’s Detroit office participated in an operation put into action under the direction of the U.S. Attorney’s Office for the Eastern District of Michigan. The aim of the operation was to locate and arrest four hundred adult and juvenile “chronic violent offenders.” After three days, the operation led to the location and arrest of eighty-two individuals wanted for a myriad of crimes ranging from “criminal sexual conduct to armed robbery and assault with intent to do bodily harm.” Moreover, of the eighty-two arrested as part of this operation, sixty-seven were living off the public dole as SSI recipients.

Given the foregoing statistical, economic, and anecdotal successes, it seems as though the fugitive felon provision is fulfilling its measure in a way that not many, if any, would dispute. Indeed, it is unlikely that anyone would look unfavorably upon arresting fugitives and removing them from SSI’s roles. However, the provision is quietly harming some undeserving disabled individuals as a result of how the SSA has interpreted the provision’s language.

B. The SSA’s Interpretation of the Fugitive Felon Provision and Its Effect

As described above, the SSA goes through a comprehensive, painstaking process of identifying fugitives, confirming that they have identified the correct person, and ensuring that the warrant is active before moving to suspend SSI benefits. Additionally, the SSA’s final regulation comprehends that SSI benefits will only be suspended when a warrant is issued on the basis of an appropriate finding that the individual is “fleeing, or has fled, to avoid prosecution.” Thus, this language in the final provision combined with the careful warrant matching and verification process would seemingly make it very difficult for the SSA to suspend benefits under the statute where the only benefits suspended would be those of individuals most deserving suspension.

However, the SSA’s interpretation of the regulation does not require a finding that the individual is fleeing. As discussed earlier, SSA field offices

78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
83 Id.
84 Id.
85 Id.
87 McIntyre, supra note 71, at 477.
suspend the benefits of every SSI recipient matched to an active warrant, regardless of whether there is evidence in the record that the person is "fleeing to avoid prosecution." This practice ignores the plain language in the provision which requires that the SSI recipient be found "fleeing" before the provision triggers a benefit suspension. As a result of this interpretation, the SSA hardly ever makes a finding that an individual is fleeing before suspending the person’s benefits.

In its internal Program Operations Manual System, the SSA explains its interpretation of the fugitive felon provision:

As long as a United States warrant or court order is active, SSA considers an individual to be a “fugitive felon” for SSI eligibility determination purposes. This is true even if the law enforcement agency is unwilling to extradite . . . .

. . . . Although the warrant may not specifically state that the individual is a fugitive, [or that the individual is fleeing,] SSA still considers the individual to meet the ineligibility criteria of the fugitive felon provision until the warrant is resolved.

As a consequence of the SSA’s interpretive assumption that an active warrant constitutes per se “fleeing to avoid prosecution” and triggers SSI ineligibility, criticism of the program is growing slowly as unfair benefit suspensions are coming to light. Some have observed that “[m]ost of those caught are the aged, blind and disabled who are accused of [committing] . . . nonviolent crimes, many of which are decades old.” As Los Angeles County Public Defender Bruce Schweiger observed, the SSA makes “this sound like a law enforcement jihad, when they actually are getting old, toothless people who are easy to find and not fleeing from anyone.”

For example, a great-grandmother in Los Angeles lost her SSI benefits because she “never completed probation on a 1973 drug possession conviction.” Consider also the story of Martin who had been a SSI recipient

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88McIntyre, supra note 71, at 477.

89POMS, supra note 70, § 00530.030.

90Berry, supra note 5.

91Id. In San Diego County, Chief Deputy Public Defender Bob Stall echoed this observation, saying most of the cases “are quite old, 15 years or older, and involve nonviolent offenses, drugs, [or] bad-check cases.” Id.

92Id.
since 1980. Martin was arrested, in 1992, in the state of Washington for alleged drug possession, but was released shortly after his arrest. However, having failed to appear for his arraignment, Martin’s guilt or innocence as to the charge was never determined. Later, in 2001, nine years after his arrest, Martin’s SSI benefits were suspended while he was “living in California and suffering from chronic and disabling symptoms of AIDS.” Relying exclusively on his monthly SSI benefit, the suspension left Martin “[s]tranded without income and homeless.” To make matters worse, under these circumstances, Martin could in no way afford to travel to Seattle and hire an attorney in order to clear the warrant and have his SSI benefits reinstated. In addition, Washington “would not pay to transport [Martin] back to face charges, the public defender’s office in Washington had no duty or time to assist him, and California would not take him into custody.” Although Martin had a warrant out for his arrest, it could hardly be said that he was using his SSI benefits to assist him in “fleeing to avoid prosecution” for the charge against him, or that he was a threat to society. However, SSI’s interpretation of the provision directly caused Martin’s benefits to be suspended. Unfortunately, as of June 2002, Martin was still without his SSI benefits and “without means to address the cause of suspension.”

The facts of one of the few cases that has moved out of the SSA’s administrative realm and into court further illustrates the repercussions of the SSA’s interpretive practice. Edith Hull had received SSI benefits from January 2002 through February 2004. On January 29, 2002, the SSA sent Hull notification that she was ineligible to receive SSI benefits as a result of an outstanding warrant that had been issued for her in Nevada. Additionally, the SSA simultaneously notified Hull that she needed to repay a benefit overpayment in the amount of $8957 stemming from payments made to her from the first month the warrant was issued until the day of the benefit suspension. The warrant for Hull’s arrest was issued in 1995 for felony charges of “obtaining money by false pretenses and uttering a forged...
Specifically, it was alleged that Hull cashed an unauthorized check for $962.65 for goods and cash on the account of her employer.  

Hull lived in Nevada until late July 1995, at which point she moved to Oregon. The criminal charges against Hull were not filed in Nevada until October 1995. Indeed, Hull never “made any appearance and had no knowledge of the Nevada charges until she got the suspension letter from SSA in January 2002.” While in Oregon, Hull obtained an Oregon driver’s license and lived at one address for four years and a subsequent address for three years. She did not change her name or evade law enforcement in any way.  

Prior to receiving the 2002 letter from the SSA, Hull had not taken any action to clear the warrant and it was still active in Sparks, Nevada. In the end, Hull’s benefits were suspended, and the fugitive felon matching program led to her arrest at her home on April 22, 2004. As in the cases of the Los Angeles great-grandmother and Martin, Hull was not using her SSI benefit to fuel a scheme to flee from and avoid prosecution for the crime, nor did she pose any threat to the public. In fact, Hull was not even aware that she had been charged with a crime.

IV. THE SSA SHOULD CONFORM ITS INTERPRETATION AND APPLICATION OF ITS FUGITIVE FELON PROVISION TO THE PLAIN MEANING OF THE PROVISION’S LANGUAGE

The SSA’s interpretive practice has had the unfortunate result of suspending essential SSI benefits of many disabled individuals who are often unaware that a warrant has been issued for their arrest and are certainly not fleeing prosecution. This approach has caused benefits to be suspended for individuals who are petitioning the warrant-issuing jurisdiction for extradition, or, alternatively, who are trying to clear the warrant when the issuing jurisdiction has little interest in its satisfaction, and the individual is unable to return to that jurisdiction to clear the warrant. In fact, an SSI recipient living outside the warrant-issuing jurisdiction could go to the local authorities, submit to arrest for the warrant, have the local jurisdiction contact the warrant-issuing jurisdiction. When the issuing jurisdiction declines extradition and requests that the local authorities release the individual, the SSA will still treat the person as fleeing from prosecution and ineligible for SSI benefits. Surely this type of situation does not fulfill the provision’s policy objective of preventing

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106 Id.
107 Id. at 1114–15.
108 Id. at 1115.
109 Id.
110 Id.
111 Id.
112 Id.
113 Id. at 1114–15.
114 Id. at 1115.
fugitive felons from being sustained with taxpayer money, and makes clear the necessity for reform.

Moreover, at the moment that the SSA suspends benefits, the burden shifts from the SSA having to prove ineligibility, to the SSI recipient having to prove eligibility through proof that their warrant has been cleared. The problem with this burden shift is that, more often than not, meeting the burden is an insurmountable task given the age, disabilities, and financially poor condition of SSI recipients. Disabled individuals who receive public assistance because they are unable to make money in the job market have virtually no income to live on, let alone to satisfy the demands of the warrant. They struggle under suspended essential benefits and find it nearly impossible to challenge the suspension on the ground that the individual is not “fleeing to avoid prosecution,” and therefore does not fall under the purview of the provision. Even ignoring the potential monetary cost of a challenge, the SSA’s appellate process takes at least one year, and up to as many as three years to complete. Thus, before a recipient whose benefits have been suspended can even petition a court, they may have lived without essential SSI benefits for anywhere from one to three years and may still have no guarantee that the court will find in their favor. To avoid these problems while still satisfying the provision’s goal of preventing the public dole from financing fugitive flight, the SSA should change its interpretation of the fugitive felon provision in a way that makes the plain language of the provision operative—to wit, requiring a finding of intent to flee before benefit suspension.

A. “Fleeing To Avoid Prosecution” Requires an Element of Intent

The plain meaning of the phrase “fleeing to avoid prosecution” implies an element of intent.115 Indeed, the provision requires that the individual be “fleeing to avoid prosecution”116 rather than “fleeing while subject to prosecution or some similar language.”117 Surely, “[f]leeing to avoid something necessarily implies an intent to avoid that thing.”118 In this way, the SSA’s interpretation of the provision is “unreasonable to the extent that it presumes that the statute applies merely from the existence of an arrest warrant” regardless of whether there is any evidence of an intent to flee or avoid prosecution.119

Criminal law has long recognized the notion that to be “fleeing to avoid prosecution” a defendant must conceal himself “with the intent to avoid

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117 Thomas, 2004 U.S. Dist. LEXIS 11608, at *11 (internal quotation marks omitted).
118 Id. (internal quotation marks omitted).
119 Id.
prosecution.”

Although the United States Supreme Court has not provided a bright line rule as to exactly what constitutes “fleeing,” the Court has noted that it is both important and sufficient “that there is a flight with the intention of avoiding being prosecuted.” Based on this statement, a general principle has emerged from the lower courts, “that in order to be considered ‘fleeing’ from justice . . . the accused must have acted with an intent to avoid arrest or prosecution.”

This principle derives from the interpretation of 18 U.S.C § 3290, which states that “[n]o statute of limitations shall extend to any person fleeing from justice.” Section 3290 effectively tolls the statutes of limitations “during the time a person is fleeing from justice.” This prevents fugitives from hiding from authorities during the statute of limitations period, then emerging free of fear from the now-expired charge. The crux in applying section 3290 is identifying when a person is “fleeing to avoid justice;” accordingly, as a result of lower courts grappling with the issue, the general principle requiring intent has materialized and is now followed by the vast majority of the circuit courts.

For example, in United States v. Rivera-Ventura, the Second Circuit concluded that the defendant was “fleeing from justice” when he was aware that he was subject to criminal prosecution and knowingly provided law enforcement with false names and addresses for the purpose of concealing himself. Accordingly, under the purview of section 3290, the court rejected the defendant’s argument that the indictment “was barred by the five-year statute of limitations” on the grounds that the statute of limitations tolled during the defendant’s flight. To reach its decision, the court relied on the Supreme Court’s suggestion in Streep that “the concept of flight includes an element of intent,” and “rejected the district court’s ruling that mere absence

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122 Kemper, supra note 120, at 588.
123 18 U.S.C § 3290 (2002).
124 See Kemper, supra note 120, at 583.
125See United States v. Hart, 112 Fed. Appx. 855, 857 (3rd Cir. 2004); Ross v. United States Marshall, 168 F.3d 1190, 1194 (10th Cir. 1999); Greever, 134 F.3d at 780; United States v. Fonseca-Machado, 53 F.3d 1242, 1243–44 (11th Cir. 1995); United States v. Marshall, 856 F.2d 896, 900 (7th Cir. 1988); United States v. Singleton, 702 F.2d 1159, 1169 (D.C. Cir. 1983); United States v. Wazney, 529 F.2d 1287, 1288–89 (9th Cir. 1976); Donnell v. United States, 229 F.2d 560, 563–64 (5th Cir. 1956); Brouse v. United States, 68 F.2d 294, 295–96 (1st Cir. 1933).
126 72 F.3d 277 (2d Cir. 1995).
127 Id. at 285.
128 Id. at 279.
129 Id. at 285.
from the jurisdiction constituted flight." 130 Moreover, the court poignantly noted that “[t]he phrase ‘fleeing from justice’ carries a common sense connotation that only those persons shall be denied the benefit of the statute of limitations who have absented themselves from the jurisdiction of the crime with the intent of escaping prosecution.” 131 

The principle that “fleeing” requires intent also applies in cases where the individual accused of fleeing has not left the jurisdiction. In such cases, the principle still mandates a finding of intent, and burdens the government with proving, by a preponderance of the evidence, that the accused “concealed” him- or herself within the jurisdiction “with the intent to avoid arrest or prosecution.” 132 As a proper extension of this general principle, where an individual does not have knowledge that a warrant has been issued for his arrest, contrary to the SSA’s practice, the Sixth Circuit has recognized that “there is no logical basis on which to infer that the [individual has] developed an intent to avoid prosecution.” 133

As further evidence that “fleeing to avoid prosecution” requires an element of intent, the U.S. Department of Agriculture, in administering the same fugitive felon provision within its Food Stamp Program, requires a showing of intent to avoid prosecution in order to be “fleeing.” Thus, as it pertains to the Food Stamp Program, the plain language of the fugitive felon provision is operative and only causes benefit suspension when there is evidence that the recipient is “acting with the intent to avoid prosecution and that an individual must have knowledge that a warrant has been issued for his arrest.” 134

The foregoing brings to light the unreasonableness of the SSA’s interpretive assumption that an active warrant is sufficient to constitute flight and trigger SSI benefit suspension. Such an interpretation ignores the plain language of the provision and veers from the general principle that intent to flee is a necessary element of “fleeing to avoid prosecution.” Thus, the SSA should adjust its procedures and interpretation of the provision to comply with the provision’s plain meaning.

In this vein, the SSA should require, as the Department of Agriculture does, that prior to suspending SSI benefits and placing the burden on the SSI  

130 Id. at 283; see also Wazney, 529 F.2d at 1289 (stating that to establish that individual is fleeing, prosecution has burden of proving accused “concealed himself with the intent to avoid arrest or prosecution”).
131 Rivera-Ventura, 72 F.3d at 283 (quoting Jhirad v. Ferrandina, 486 F.2d 442, 444–45 (2d Cir. 1973)).
132 United States v. Ballesteros-Cordova, 586 F.2d 1321, 1323 (9th Cir. 1978); see also United States v. Greever, 134 F.3d 777, 780 (6th Cir. 1998) (stating that “defendant must conceal himself with the intent to avoid prosecution” to be “fleeing from justice”).
134 McIntyre, supra note 71, at 477 (quoting Transmittal from Arthur T. Foley, Director, Program Dev. Div., Food Stamp Program, U.S. Dep’t of Agric. (Nov. 9, 2001) (internal quotation marks omitted)).
recipient, there be evidence in the record that the recipient is aware of the warrant and is acting with the intent necessary to be considered “fleeing to avoid prosecution.” In this manner, the SSA’s fugitive felon provision will serve its measure in apprehending true fugitive felons and preventing them from utilizing hard-earned taxpayer money to sustain their flights from justice. However, it will avoid suspending disabled individuals’ essential benefits in cases where the individual is unaware that a warrant is out for his arrest, is not acting to conceal himself or herself from law enforcement, or otherwise harbors no intent to avoid prosecution for his crime, and therefore is not using the public dole to fuel his flight.

B. Enforcing the Fugitive Felon Provision’s Plain Language Should Not Be Left to the Courts

Although the SSA continues to cling to its interpretation of the provision, as SSI fugitive felon cases begin to seep out of the SSA’s administrative juggernaut and into courts, positive signs are emerging to suggest that the judiciary will force the SSA to adhere to the provision’s plain language. Indeed, some judges have begun to whisper a call for the SSA to adhere to the plain meaning of the provision by declaring the SSA’s interpretation unreasonable and reinstating benefits in cases where no evidence of flight exists.

For example, in Hull v. Barnhart, the court concluded that the SSA had not proven that “Hull falls within the statutory provision that fleeing felons are ineligible for SSI benefits.” The judge supported his decision by reasoning that there was insufficient evidence in the record to conclude that Hull was fleeing to avoid prosecution. The court poignantly stated that it “makes no sense to deem an individual ineligible if they do not even know the charges exist and consequently do not flee.” Furthermore, the court observed that the SSA’s interpretation of the provision to merely require an active warrant renders “superfluous” the requirement in the provision that a finding of fleeing be made prior to suspending SSI benefits. Similarly, in Thomas v. Barnhart, the court ruled that intent to avoid prosecution is indeed an element that must be proved to establish that a recipient is fleeing and thus falls under the provision’s purview.

These decisions provide hope that the judiciary will enforce the provision’s plain meaning and curb the growing problem of unfair benefit

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136 Id. at 1117.
137 Id.
138 Id.
139 Id. at 1116.
141 Id. at *12.
suspension even if the SSA refuses to do so. However, relying on the judiciary to properly enforce the provision is unacceptable for two reasons. First, case law in this area is in its infancy, with the majority of decisions coming in 2004. Thus, there is no certainty that as cases emerge the decisions will be as favorable as those just described. In fact, there have been sound decisions that have supported the SSA’s interpretation and appear to be grounded in solid legal reasoning, suggesting that the judiciary cannot be relied on to quell the injustice.

For example, in Blakely v. Commissioner, the court deferred to the SSA’s interpretation of the fugitive felon provision in upholding an SSI suspension. In its analysis, the court noted that the Social Security Act “confers upon the Commissioner general authority to ‘make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions.’” In addition, the court noted that the SSA Commissioner’s reasonable interpretation of the statute is binding unless it conflicts with the plain meaning of the statute. On this basis, the court concluded that the intention of Congress in implementing the fugitive felon provision was to “make sure tax payers did not subsidize a fugitive’s freedom,” and therefore that the SSA’s interpretation that an active warrant is enough to satisfy the fleeing requirement of the provision was reasonable and binding. Therefore, if courts follow the reasonable jurisprudential approach adopted in Blakely, the future of the fugitive felon provision may be one of deferral and unfair suspensions.

The second reason that reliance on the judiciary in this area is unsound is based on policy and morality. So long as the SSA ignores the plain meaning of the statute, nonfleeing SSI recipients will face benefit suspension. In cases where the recipient cannot afford to satisfy the warrant, or is physically unable to travel in order to clear the warrant, their only option will be to wade through the swamp of SSA appeals and take a chance in a court of law. However, looking to the courts for relief presents the fundamental problem that during the drawn out process of forcing the SSA, through court order, to adhere to the language of its provision, the disabled individual will suffer with virtually no

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143 Id. at 917–18.
144 Id. at 917 (quoting 42 U.S.C. § 405(a) (2000)).
145 Id.
146 Id. The court’s reasoning on this point seems to implicitly follow the Supreme Court’s guideline for review of a governmental agency’s construction of a statute. See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842–43 (1984). In short, the Court’s guidelines provide that where Congress has spoken directly to the issue and their intent is clear, that interpretation controls. Id. If, on the other hand, Congress has not directly addressed the issue in question, the court should not impose its own meaning on the statute but, rather, the court should determine whether the agency’s interpretation of the statute is “based on a permissible construction of the statute.” Id. at 843.
income. To be sure, the SSA could prevent this unjust result if it would simply adhere to the plain language of the provision. Thus, reliance on the judiciary to enforce the provision’s plain language is unacceptable, and responsibility for change remains squarely in the lap of the SSA.

V. CONCLUSION

In 1996, Congress adopted fugitive felon provisions as part of a comprehensive welfare overhaul to ensure that public funds are not employed to fuel a fugitive’s escape from the law. Subsequently, the SSA incorporated the provision into its administrative bylaws with language that suspends the SSI benefits of disabled individuals who have warrants out for their arrest and are fleeing to avoid prosecution. Indeed, the SSA has worked successfully with the FBI and local law enforcement agencies to both apprehend fugitive felons and suspend SSI benefits, thereby fulfilling the provision’s measure.

However, the SSA has interpreted the provision’s phrase “fleeing to avoid prosecution” to mean only that an active warrant has been issued for an individual’s arrest. Thus, an active warrant is per se grounds for benefit suspension. However, the SSA’s interpretation is unreasonable in so far as it ignores the plain meaning and general understanding of “fleeing to avoid prosecution,” which requires intent to flee. As a result of the SSA’s interpretation, the SSI benefits of many disabled individuals are being suspended when those individuals have no intent to flee prosecution and are often unaware that a warrant has been issued for their arrest. Benefit suspensions in this context do not fulfill the aim of the provision. Thus, the SSA should adhere to the plain meaning of “fleeing to avoid prosecution” and in so doing require a finding of intent to flee before suspensions are triggered. Applied in this way, the fugitive felon provision will maintain its integrity and fulfill its worthy measure while avoiding unjust results.

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