

CONTROL UNLAWFUL FUGITIVE FELONS ACT OF 2017

SEPTEMBER 21, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2792]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2792) to amend the Social Security Act to make certain revisions to provisions limiting payment of benefits to fugitive felons under titles II, VIII, and XVI of the Social Security Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
I. SUMMARY AND BACKGROUND .....	2
A. Purpose and Summary .....	2
B. Background and Need for Legislation .....	2
C. Legislative History .....	3
II. EXPLANATION OF THE BILL .....	3
Section 1: Short Title .....	3
Section 2: Revisions to Provisions Limiting Payments of Benefits to Fugitive Felons Under Title XVI of the Social Security Act ..	4
III. VOTES OF THE COMMITTEE .....	7
IV. BUDGET EFFECTS OF THE BILL .....	10
A. Committee Estimate of Budgetary Effects .....	10
B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority .....	10
C. Cost Estimate Prepared by the Congressional Budget Office .....	10
V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE .....	16
A. Committee Oversight Findings and Recommendations .....	16

B. Statement of General Performance Goals and Objectives .....	16
C. Information Relating to Unfunded Mandates .....	16
D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits .....	16
E. Duplication of Federal Programs .....	16
F. Disclosure of Directed Rule Makings .....	17
VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED	17
VII. DISSENTING VIEWS .....	28

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Control Unlawful Fugitive Felons Act of 2017”.

**SEC. 2. REVISIONS TO PROVISIONS LIMITING PAYMENT OF BENEFITS TO FUGITIVE FELONS UNDER TITLE XVI OF THE SOCIAL SECURITY ACT.**

(a) FUGITIVE FELON WARRANT REQUIREMENT.—Section 1611(e)(4)(A)(i) of the Social Security Act (42 U.S.C. 1382(e)(4)(A)(i)) is amended—

(1) by striking “fleeing to avoid” and inserting “the subject of an arrest warrant for the purpose of”;

(2) by striking “the place from which the person flees” the first place it appears and inserting “the jurisdiction issuing the warrant”; and

(3) by striking “the place from which the person flees” the second place it appears and inserting “the jurisdiction”.

(b) PROBATION AND PAROLE WARRANT REQUIREMENT.—Section 1611(e)(4)(A)(ii) of such Act (42 U.S.C. 1382(e)(4)(A)(ii)) is amended to read as follows:

“(ii) the subject of an arrest warrant for violating a condition of probation or parole imposed under Federal or State law.”.

(c) DISCLOSURE.—Section 1611(e)(5) of such Act (42 U.S.C. 1382(e)(5)) is amended—

(1) by striking “any recipient of” and inserting “any individual who is a recipient of (or would be such a recipient but for the application of paragraph (4)(A))”; and

(2) by striking “the recipient” each place it appears and inserting “the individual”.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months that begin on or after January 1, 2021.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H.R. 2792, as amended, the “Control Unlawful Fugitive Felons Act,” as ordered reported by the Committee on Ways and Means on September 13, 2017, amends the Social Security Act to make certain revisions to provisions limiting payment of benefits to fugitive felons under title XVI.

### B. BACKGROUND AND NEED FOR LEGISLATION

Under the 1996 welfare reform law, fugitive felons and probation and parole violators were made ineligible for Supplemental Security Income (SSI) benefits. Similar provisions were also included in the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families program, and some housing assistance programs.

In addition to being an important program integrity measure, this policy had the added benefit of helping law enforcement find thousands of criminals who had been evading the law. A 2007 report by the Social Security Administration’s (SSA) Office of the Inspector General (OIG) found that “the impact of this program reaches beyond Social Security to local communities across the

United States. OIG efforts contributed to over 59,000 arrests since the program's inception in 1996.”<sup>1</sup>

However, a series of court cases during the mid- to late-2000's determined that SSA's enforcement of the law was too broad, primarily questioning SSA's interpretation of “actively fleeing”. As a result of these cases, SSA only discontinues benefits to those who have escaped from prison or are avoiding imprisonment, significantly reducing the impact of the policy.

H.R. 2792 restores the original intent of the 1996 law, revising current law to discontinue benefits for individuals who are “the subject of an arrest warrant . . .” compared to the previous language of “fleeing to avoid” arrest, which was the main legal challenge.

H.R. 2792 applies only to felony charges, or a crime carrying a minimum term of one or more years in prison. This policy does not intend to punish individuals convicted of misdemeanors, such as outstanding parking tickets.

As a result of the court cases, SSA is now required to provide additional notice to individuals and the opportunity for them to establish “good cause” for not suspending benefits, protecting SSI recipients. If SSI benefits are suspended incorrectly, SSA has processes in place to restore benefits quickly.

## C. LEGISLATIVE HISTORY

### *Background*

H.R. 2792, the “Control Unlawful Fugitive Felons Act,” was introduced on June 6, 2017, by Representative Kristi Noem and Representative Sam Johnson, and was referred to the Committee on Ways and Means.

### *Committee hearings*

On June 3, 2015, the Ways and Means Subcommittee on Human Resources held the hearing titled, “Protecting the Safety Net from Waste, Fraud, and Abuse.”

### *Committee action*

The Committee on Ways and Means marked up H.R. 2792, the “Control Unlawful Fugitive Felons Act,” on September 13, 2017. The bill was ordered favorably reported to the House of Representatives, as amended, by a roll call vote of 23 yeas to 14 nays.

## II. EXPLANATION OF THE BILL

### SECTION 1: SHORT TITLE

#### PRESENT LAW

No provision.

#### EXPLANATION OF PROVISION

This Act may be cited as “Control Unlawful Fugitive Felons Act of 2017”.

<sup>1</sup> Social Security Administration, Office of the Inspector General, Semiannual Report to Congress, April 1, 2007–September 30, 2007, Page 16.

## REASON FOR CHANGE

The Committee believes that the short title accurately reflects the policy actions included in the legislation.

## EFFECTIVE DATE

These provisions are effective upon enactment.

## SECTION 2: REVISIONS TO PROVISIONS LIMITING PAYMENTS OF BENEFITS TO FUGITIVE FELONS UNDER TITLE XVI OF THE SOCIAL SECURITY ACT

## (A) FUGITIVE FELON WARRANT REQUIREMENTS

## PRESENT LAW

Under current law, a person is not eligible for Supplemental Security Income (SSI) benefits during any month in which the person is “fleeing to avoid prosecution, or custody or confinement after conviction” for a crime which is a felony, or in a state that does not classify crimes as felonies, punishable by death or imprisonment of more than one year (commonly referred to as the fugitive felon prohibition).<sup>2</sup> A similar prohibition exists for Social Security Old-Age, Survivors, and Disability Insurance (OASDI) benefits under Title II of the Social Security Act<sup>3</sup> and Special Benefits for World War II Veterans (SVB) under Title VIII of the Act<sup>4</sup> and for a person serving as a representative payee for a beneficiary under any program administered by the Social Security Administration (SSA).<sup>5</sup>

Prior to April 1, 2009, the SSA interpreted this provision to prohibit benefits to any person for whom an arrest warrant for a felony was active, regardless of whether or not there was any evidence or indication that the person was fleeing. Pursuant to the class-action settlement agreement in *Martinez v. Astrue*,<sup>6</sup> the SSA, effective April 1, 2009, adopted the present policy of only applying the fugitive felon prohibition in SSI, OASDI, SVB, and representative payee cases in which a person has a felony arrest warrant for one of the following National Crime Information Center (NCIC) Uniform Offense Classification Codes:

- 4901: escape from custody;
- 4902: flight to avoid prosecution or confinement; and
- 4999: flight-escape.<sup>7</sup>

## EXPLANATION OF PROVISION

This subsection would change the fugitive felon provision for SSI payments and SSI representative payees only by removing all ref-

<sup>2</sup>Section 1614(e)(4)(A) of the Social Security Act [42 U.S.C. § 1382(e)(4)(A)].

<sup>3</sup>Section 202(x)(1)(A)(iv) of the Social Security Act [42 U.S.C. § 402(x)(1)(A)(iv)].

<sup>4</sup>Section 804(a)(2) of the Social Security Act [42 U.S.C. § 1004(a)(2)].

<sup>5</sup>Sections 1631(a)(2)(B)(iii)(V) [for SSI], 205(j)(2)(C)(i)(V) [for OASDI], and 807(d)(1)(E) [for SVB] of the Social Security Act [42 U.S.C. §§ 1683(a)(2)(B)(iii)(V), 405(j)(2)(C)(i)(V), and 807(d)(1)(E)].

<sup>6</sup>*Martinez v. Astrue*, No. 08–CV–4735 CW (N.D. Cal. 2009). In an earlier case, *Fowlkes v. Adamec* [432 F.3d 90 (2d. Cir. 2005)], the U.S. Court of Appeals for the Second Circuit concluded that the SSA’s interpretation of the fugitive felon prohibition was inconsistent with the statute because the SSA’s policy did not require any finding that the person was fleeing from prosecution or punishment and that under the statute “benefits may be suspended only as of the date of a warrant or order issued by a court or other authorized tribunal on the basis of a finding that an individual has fled or was fleeing from justice.”

<sup>7</sup>Social Security Administration, Program Operations Manual System (POMS), GN 02613.860.

erences to a person fleeing to avoid prosecution or punishment. Under this subsection, a person would be ineligible for SSI benefits (or to serve as an SSI representative payee) if the person was subject to an arrest warrant for a crime that is a felony, or in a state that does not classify crimes as felonies, punishable by death or imprisonment for more than one year, regardless of any consideration of whether or not the person was fleeing. This subsection would essentially codify the SSA’s policy in effect before the Martinez settlement.

(B) PROBATION AND PAROLE WARRANT REQUIREMENT

PRESENT LAW

Under current law, a person is not eligible for SSI, OASDI, or SVB benefits during any month in which the person is “violating a condition of probation or parole imposed under federal or state law.”<sup>8</sup> This prohibition also applies to a person serving as an SSI representative payee, but not a representative payee for any other Social Security program.<sup>9</sup>

Prior to May 9, 2011, the SSA interpreted this provision to prohibit the payment of benefits to a person solely due to the presence of a warrant for one of the following NCIC Uniform Offense Classification Codes:

- 5011: parole violation;
- 5012: probation violation;
- 8101: juvenile offenders—abscond while on parole;
- 8102: juvenile offenders—abscond while on probation;
- 9999: with an offense charge symbol of probation or parole violation;
- “blank:” with an offense charge symbol of probation or parole violation; and
- any other four-digit code, except 4901, 4902, or 4999, with an offense charge symbol of probation or parole violation.

In 2010, the U.S. Court of Appeals for the Second Circuit held in *Clark v. Astrue* that the SSA policy of suspending benefits solely due to the presence of a warrant for a probation or parole violation was inconsistent with the probation and parole violation suspension provisions of the Social Security Act because the mere presence of a warrant is not evidence that a probation or parole violation has actually occurred.<sup>10</sup> Pursuant to the *Clark* decision, on May 9, 2011, the SSA stopped its practice of suspending benefits solely on the basis of a probation or parole violation warrant.<sup>11</sup>

EXPLANATION OF PROVISION

This subsection would change the probation and parole violation suspension provision for SSI benefits and SSI representative payees only. The requirement that a person be violating a condition of his or her probation or parole to be ineligible for benefits would be changed to the requirement that the person merely have a warrant

<sup>8</sup> Sections 1611(e)(4)(A)(ii) [for SSI], 202(x)(1)(A)(v) [for OASDI], and 804(a)(3) [for SVB] of the Social Security Act [42 U.S.C. §§ 1382(e)(4)(A)(ii), 404(x)(1)(A)(v), and 1004(a)(3)].

<sup>9</sup> Section 1631(a)(2)(B)(iii)(V) of the Social Security Act [42 U.S.C. § 1683(a)(2)(B)(iii)(V)].

<sup>10</sup> *Clark v. Astrue*, 602 F.3d 140 (2d Cir. 2010).

<sup>11</sup> Social Security Administration, Program Operations Manual System (POMS), GN 02615.100.

for a probation or parole violation. This subsection would essentially codify the SSA's policy in effect before the Clark decision.

(C) DISCLOSURE

PRESENT LAW

Under current law, the SSA is required to disclose to any federal, state, or local law enforcement officer, upon request and if the location or apprehension of the beneficiary is within the officer's official duties, the current address, Social Security Number, and photograph (if applicable) of an individual receiving SSI or OASDI benefits. This disclosure is to be made if the officer notifies the SSA that the beneficiary is (1) fleeing to avoid prosecution or custody after conviction for a crime that is a felony (or in a state that does not classify crimes as felonies, punishable by death or imprisonment of more than one year) or (2) violating a condition of his or her probation or parole.<sup>12</sup>

EXPLANATION OF PROVISION

This subsection would expand this provision to require the SSA to also disclose to law enforcement the current address, Social Security Number, and photograph (if applicable) of an individual who would be receiving SSI benefits if not for the fugitive felon or probation and parole prohibitions.

REASON FOR CHANGE

The Committee believes that these provisions will restore the original intent of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, to discontinue Supplemental Security Income benefits for individuals who are "the subject of an arrest warrant" compared to the previous language of "fleeing to avoid" arrest.

The original intent emphasized that assistance through the SSI program is intended for the aged, blind, and disabled, and that those with outstanding arrest warrants for a felony or probation or parole violators should not be supported through federal benefits. These measures aim to improve cooperation between states, SSA, and law enforcement officials in locating and apprehending these individuals.

It makes little sense to the Committee to limit the scope of this common sense restriction to only those who are actively on the run from law enforcement, and to not apply it as well to those who may no longer be actively on the run because they have successfully evaded law enforcement and their responsibilities under the law.

H.R. 2792 prohibits SSI benefits to any individual who is the subject of: (1) an outstanding arrest warrant for a felony, or (2) an outstanding arrest warrant for violating a condition of prohibition or parole imposed under federal or state law. These provisions only apply to felony charges, or a crime carrying a minimum term of one or more years in prison. It is not the intent of this policy to punish individuals convicted of misdemeanors.

<sup>12</sup>Sections 1611(e)(5) [for SSI] and 202(x)(3)(C) [for OASDI] of the Social Security Act [42 U.S.C. §§ 1382(e)(5) and 402(x)(3)(C)].

In addition, the Committee expects SSA to continue and improve certain aspects of the implementation of this provision. Currently, SSA provides an “advance notice” to recipients containing information on why SSA is suspending payments and where, why, when the warrant was issued. This allows the individuals to use the period of time before payments are suspended to resolve the matter and to protest the decision to suspend payments. During this protest, the individual may also apply to SSA for a “good cause” exception to the suspension, adding an additional layer of protections for SSI recipients. Specifically, SSA may continue SSI payments to an individual whose criminal offense was non-violent and not drug related, not charged with a felony crime since the warrant was issued, and if law enforcement reports it will not act on the warrant. In addition, if recipients meet the above criteria and lacks the mental capacity to resolve the warrant, which includes, but is not limited to, those in a nursing home or mental treatment facility, SSA may continue to provide SSI payments without any disruption.

If for some reason Social Security benefits are denied due to incorrect information, payments can be immediately restored once the affected individual resolves any outstanding issues with their local Social Security Administration field office. Recipients may also then be eligible for an underpayment, correcting for any missed payments.

#### EFFECTIVE DATE

These provisions are effective on January 1, 2021.

### III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 2792, the “Control Unlawful Fugitive Felons Act,” on September 13, 2017.

An amendment in the nature of a substitute was offered by Chairman Brady and adopted by voice vote (with a quorum being present).

The amendment by Rep. Sewell to the amendment in the nature of a substitute to H.R. 2792, which would require SSI payments be made to those with felony arrest warrants or parole/probation violations unless the Commissioner could certify that no one with a felony arrest warrant for court fees, supervision fees, or monetary fines would be impacted, was not agreed to by a roll call vote of 22 nays to 15 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady .....		X	.....	Mr. Neal .....	X		.....
Mr. Johnson .....		X	.....	Mr. Levin .....	X		.....
Mr. Nunes .....		X	.....	Mr. Lewis .....	X		.....
Mr. Tiberi .....			.....	Mr. Doggett .....	X		.....
Mr. Reichert .....		X	.....	Mr. Thompson .....	X		.....
Mr. Roskam .....		X	.....	Mr. Larson .....			.....
Mr. Buchanan .....		X	.....	Mr. Blumenauer .....	X		.....
Mr. Smith (NE) .....		X	.....	Mr. Kind .....	X		.....
Ms. Jenkins .....		X	.....	Mr. Pascrell .....	X		.....
Mr. Paulsen .....		X	.....	Mr. Crowley .....	X		.....
Mr. Marchant .....		X	.....	Mr. Davis .....	X		.....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Black .....				Ms. Sánchez .....	X		
Mr. Reed .....		X		Mr. Higgins .....	X		
Mr. Kelly .....		X		Ms. Sewell .....	X		
Mr. Renacci .....		X		Ms. DelBene .....	X		
Mr. Meehan .....		X		Ms. Chu .....	X		
Ms. Noem .....		X					
Mr. Holding .....		X					
Mr. Smith (MO) .....		X					
Mr. Rice .....		X					
Mr. Schweikert .....		X					
Ms. Walorski .....		X					
Mr. Curbelo .....		X					
Mr. Bishop .....		X					

The amendment by Mr. Davis to the amendment in the nature of a substitute to H.R. 2792, which would require SSI payments be made to those with felony arrest warrants or parole/probation violations unless the Commissioner could certify that there will be no effects on race or ethnicity, was not agreed to by a roll call vote of 22 nays to 15 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady .....		X		Mr. Neal .....	X		
Mr. Johnson .....		X		Mr. Levin .....	X		
Mr. Nunes .....		X		Mr. Lewis .....	X		
Mr. Tiberi .....				Mr. Doggett .....	X		
Mr. Reichert .....		X		Mr. Thompson .....	X		
Mr. Roskam .....		X		Mr. Larson .....			
Mr. Buchanan .....		X		Mr. Blumenauer .....	X		
Mr. Smith (NE) .....		X		Mr. Kind .....	X		
Ms. Jenkins .....		X		Mr. Pascrell .....	X		
Mr. Paulsen .....		X		Mr. Crowley .....	X		
Mr. Marchant .....		X		Mr. Davis .....	X		
Ms. Black .....				Ms. Sánchez .....	X		
Mr. Reed .....		X		Mr. Higgins .....	X		
Mr. Kelly .....		X		Ms. Sewell .....	X		
Mr. Renacci .....		X		Ms. DelBene .....	X		
Mr. Meehan .....		X		Ms. Chu .....	X		
Ms. Noem .....		X					
Mr. Holding .....		X					
Mr. Smith (MO) .....		X					
Mr. Rice .....		X					
Mr. Schweikert .....		X					
Ms. Walorski .....		X					
Mr. Curbelo .....		X					
Mr. Bishop .....		X					

The amendment by Mr. Crowley to the amendment in the nature of a substitute to H.R. 2792, which would require SSI payments be made to those with felony arrest warrants or parole/probation violations unless the Commissioner could certify that no one would be at risk of becoming homeless due to the implementation of the provision, was not agreed to by a roll call vote of 22 nays to 15 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady .....		X		Mr. Neal .....	X		
Mr. Johnson .....		X		Mr. Levin .....	X		
Mr. Nunes .....		X		Mr. Lewis .....	X		
Mr. Tiberi .....				Mr. Doggett .....	X		
Mr. Reichert .....		X		Mr. Thompson .....	X		



Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Roskam		X		Mr. Larson			
Mr. Buchanan		X		Mr. Blumenauer	X		
Mr. Smith (NE)		X		Mr. Kind	X		
Ms. Jenkins		X		Mr. Pascrell	X		
Mr. Paulsen		X		Mr. Crowley	X		
Mr. Marchant		X		Mr. Davis	X		
Ms. Black				Ms. Sánchez	X		
Mr. Reed		X		Mr. Higgins	X		
Mr. Kelly		X		Ms. Sewell	X		
Mr. Renacci		X		Ms. DelBene	X		
Mr. Meehan		X		Ms. Chu	X		
Ms. Noem		X					
Mr. Holding		X					
Mr. Smith (MO)		X					
Mr. Rice		X					
Mr. Schweikert		X					
Ms. Walorski		X					
Mr. Curbelo		X					
Mr. Bishop		X					

The amendment offered by Ms. Chu to the amendment in the nature of a substitute to H.R. 2792, which would require SSI payments be made to those with felony arrest warrants or parole/probation violations unless the Commissioner could certify that no one with a felony arrest warrant who has dementia or other cognitive impairments would be impacted, was not agreed to by a roll call vote of 22 nays to 15 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady		X		Mr. Neal	X		
Mr. Johnson		X		Mr. Levin	X		
Mr. Nunes		X		Mr. Lewis	X		
Mr. Tiberi				Mr. Doggett	X		
Mr. Reichert		X		Mr. Thompson	X		
Mr. Roskam		X		Mr. Larson			
Mr. Buchanan		X		Mr. Blumenauer	X		
Mr. Smith (NE)		X		Mr. Kind	X		
Ms. Jenkins		X		Mr. Pascrell	X		
Mr. Paulsen		X		Mr. Crowley	X		
Mr. Marchant		X		Mr. Davis	X		
Ms. Black				Ms. Sánchez	X		
Mr. Reed		X		Mr. Higgins	X		
Mr. Kelly		X		Ms. Sewell	X		
Mr. Renacci		X		Ms. DelBene	X		
Mr. Meehan		X		Ms. Chu	X		
Ms. Noem		X					
Mr. Holding		X					
Mr. Smith (MO)		X					
Mr. Rice		X					
Mr. Schweikert		X					
Ms. Walorski		X					
Mr. Curbelo		X					
Mr. Bishop		X					

The bill, H.R. 2792, was ordered favorably reported to the House of Representatives as amended by a roll call vote of 23 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady	X			Mr. Neal		X	
Mr. Johnson	X			Mr. Levin		X	
Mr. Nunes	X			Mr. Lewis		X	

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Tiberi .....				Mr. Doggett .....		X	
Mr. Reichert .....	X			Mr. Thompson .....		X	
Mr. Roskam .....	X			Mr. Larson .....			
Mr. Buchanan .....	X			Mr. Blumenauer .....		X	
Mr. Smith (NE) .....	X			Mr. Kind .....	X		
Ms. Jenkins .....	X			Mr. Pascrell .....		X	
Mr. Paulsen .....	X			Mr. Crowley .....		X	
Mr. Marchant .....	X			Mr. Davis .....		X	
Ms. Black .....				Ms. Sánchez .....		X	
Mr. Reed .....	X			Mr. Higgins .....		X	
Mr. Kelly .....	X			Ms. Sewell .....		X	
Mr. Renacci .....	X			Ms. DelBene .....		X	
Mr. Meehan .....	X			Ms. Chu .....		X	
Ms. Noem .....	X						
Mr. Holding .....	X						
Mr. Smith (MO) .....	X						
Mr. Rice .....	X						
Mr. Schweikert .....	X						
Ms. Walorski .....	X						
Mr. Curbelo .....	X						
Mr. Bishop .....	X						

#### IV. BUDGET EFFECTS OF THE BILL

##### A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 2792, as reported. The Committee agrees with the estimate prepared by the Congressional Budget Office (CBO), which is included below.

##### B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

##### C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 20, 2017.*

Hon. KEVIN BRADY,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2792, the Control Unlawful Fugitive Felons Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Noah Meyerson.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 2792—Control Unlawful Fugitive Felons Act of 2017*

Summary: H.R. 2792 would, beginning in calendar year 2021, expand the number of people who are considered “fugitive felons” and who would therefore be ineligible for benefits under the Supplemental Security Income (SSI) program.

CBO estimates that enacting H.R. 2792 would decrease direct spending by about \$2.1 billion over the 2018–2027 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2792 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 2792 are shown in the following table. The effects of this legislation fall within budget functions 550 (health) and 600 (income security).

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
<b>INCREASES OR DECREASES (–) IN DIRECT SPENDING</b>													
Supplemental Security Income:													
Estimated Budget Authority .....	0	0	0	0	–200	–280	–290	–300	–340	–370	–410	–480	–2,190
Estimated Outlays .....	0	0	0	0	–200	–280	–290	–300	–340	–370	–410	–480	–2,190
Medicaid:													
Estimated Budget Authority .....	0	0	0	0	10	20	20	20	20	20	20	30	130
Estimated Outlays .....	0	0	0	0	10	20	20	20	20	20	20	30	130
Total:													
Estimated Budget Authority .....	0	0	0	0	–190	–260	–270	–280	–320	–350	–390	–450	–2,060
Estimated Outlays .....	0	0	0	0	–190	–260	–270	–280	–320	–350	–390	–450	–2,060

Basis of estimate: The Social Security Administration (SSA) currently withholds SSI payments for recipients who are considered fleeing felons (people for whom there is an active arrest warrant for “crimes of flight”). H.R. 2792 would expand the groups of people ineligible to receive payments to those who have an active arrest warrant for a felony or for a parole or probation violation.

Under the Social Security Act, a person is not eligible for SSI payments during any month in which the person is “fleeing to avoid prosecution, or custody or confinement after conviction” for a crime that is a felony or during any month in which the person is “violating a condition of probation or parole imposed under federal or state law.” SSA originally interpreted this provision to prohibit payments to any recipients with an active arrest warrant for a felony or for a violation of parole or probation. Following two court cases (*Martinez v. Astrue* in 2009 and *Clark v. Astrue* in 2010), SSA adjusted its policies and now suspends payments only when the warrant is for “crimes of flight,” such as escape from custody or flight to avoid prosecution. (Similar prohibitions on payment exist for Old-Age, Survivors, and Disability Insurance; H.R. 2792 would not affect those programs.)

H.R. 2792 would amend the Social Security Act to essentially reinstate, for SSI recipients, the policy of suspending benefits for all people with active warrants for felonies or violations of probation or parole. The bill would take effect in calendar year 2021.

Based on data provided by SSA about the number of payments that were withheld when SSA prohibited payment to all people with the relevant types of arrest warrants and the number that are withheld under current policy, CBO estimates that the bill would reduce the SSI monthly caseload by roughly 30,000 recipients. CBO projects that the affected individuals would lose federal payments that are, on average, 10 percent higher than the average federal SSI payment. The withheld monthly benefits would average about \$700 in 2022. On that basis, CBO estimates that total federal SSI payments would be reduced by \$2.2 billion over the 2018–2027 period.

Most SSI recipients are automatically eligible for Medicaid, which is a joint federal-state program that pays for health care services for low-income individuals. Under H.R. 2792, individuals who would no longer receive their SSI benefits also would stop receiving Medicaid benefits under their eligibility for SSI. However many of those people would be eligible for other reasons. CBO estimates that about three quarters of the people who would stop receiving SSI benefits under H.R. 2792 would be able to retain their Medicaid eligibility under other criteria that have the same average federal matching rate as for those who are eligible for SSI (about 57 percent). Therefore, CBO does not expect any change in federal Medicaid spending for the most of the individuals who stop receiving SSI benefits under the bill. Of the remaining one quarter of people affected by the bill, CBO estimates that most would gain eligibility through the Affordable Care Act’s optional state expansion of Medicaid coverage. At least 90 percent of the cost for people in that eligibility group is paid for by the federal government. The additional federal costs for those people would be larger than the federal savings generated from the small number of people who would not be able to qualify for Medicaid under other criteria and

would thus lose all access to Medicaid under the bill. CBO estimates that, on net, federal Medicaid spending would increase by \$130 million over the 2018–2027 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.



Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 2792 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Noah Meyerson (SSI) and Andrea Noda (Medicaid); Impact on state, local, and tribal governments: Zachary Byrum; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## **V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE**

### **A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS**

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

### **B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES**

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, Committee establishes the following performance related goals and objectives for this legislation: To limit the paying of benefits to fugitive felons under Title XVI (Supplemental Security Income) of the Social Security Act.

### **C. INFORMATION RELATING TO UNFUNDED MANDATES**

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4). The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### **D. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS**

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

### **E. DUPLICATION OF FEDERAL PROGRAMS**

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public



Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

F. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (115th Congress), the following statement is made concerning directed rule makings: The Committee advises that the bill requires no directed rulemakings within the meaning of such section.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**SOCIAL SECURITY ACT**

\* \* \* \* \*

**TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

\* \* \* \* \*

**PART A—DETERMINATION OF BENEFITS**

**ELIGIBILITY FOR AND AMOUNT OF BENEFITS**

**Definition of Eligible Individual**

SEC. 1611. (a)(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1612(b), is at a rate of not more than \$1,752 (or, if greater, the amount determined under section 1617) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1613(a), are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this title.

(2) Each aged, blind, or disabled individual who has an eligible spouse and

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1612(b), is at a rate of not more than \$2,628 (or, if greater, the amount determined under section 1617) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1613(a), are not more than the applicable amount determined under paragraph (3)(A), shall be an eligible individual for purposes of this title.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be \$2,250 prior to January 1, 1985, and shall be increased to \$2,400 on January 1, 1985, to \$2,550 on January 1, 1986, to \$2,700 on January 1, 1987, to \$2,850 on January 1, 1988, and to \$3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be \$1,500 prior to January 1, 1985, and shall be increased to \$1,600 on January 1, 1985, to \$1,700 on January 1, 1986, to \$1,800 on January 1, 1987, to \$1,900 on January 1, 1988, and to \$2,000 on January 1, 1989.

#### Amounts of Benefits

(b)(1) The benefit under this title for an individual who does not have an eligible spouse shall be payable at the rate of \$1,752 (or, if greater, the amount determined under section 1617) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1612(b), of such individual.

(2) The benefit under this title for an individual who has an eligible spouse shall be payable at the rate of \$2,628 (or, if greater, the amount determined under section 1617) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1612(b), of such individual and spouse.

#### Period for Determination of Benefits

(c)(1) An individual's eligibility for a benefit under this title for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), (4), (5), and (6), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Commissioner of Social Security so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Commissioner of Social Security.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Commissioner of Social Security so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Commissioner of Social Security so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the first month following a period of ineligibility in which eligibility is restored after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if eligibility had been restored on the first day of such month as the number of days in such month including and following the date of restoration of eligibility bears to the total number of days in such month.

(3) For purposes of this subsection, an increase in the benefit amount payable under title II (over the amount payable in the preceding month, or, at the election of the Commissioner of Social Security, the second preceding month) to an individual receiving benefits under this title shall be included in the income used to determine the benefit under this title of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1617, or

(B) at the election of the Commissioner of Social Security, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Commissioner of Social Security determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this title for such month may be determined on the basis of such information.

(B) The Commissioner of Social Security shall prescribe by regulation the circumstances in which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this title.

(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State program funded under part A of title IV, (B) section 472 of this Act (relating to foster care assistance), (C) section 412(e) of the Immigration and Nationality Act (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) the Act of November 2, 1921 (42 Stat. 208), as amended (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(6) The dollar amount in effect under subsection (b) as a result of any increase in benefits under this title by reason of section 1617 shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this title to an individual (and the eligible

spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.

(7) For purposes of this subsection, an application of an individual for benefits under this title shall be effective on the later of—

(A) the first day of the month following the date such application is filed, or

(B) the first day of the month following the date such individual becomes eligible for such benefits with respect to such application.

(8) The Commissioner of Social Security may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) on an individual's eligibility and benefit amount for a month (to the extent either such limitation is applicable by reason of such individual's presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the individual's removal from such institution or facility. Upon waiver of such limitations, the Commissioner of Social Security shall apply, to the month preceding the month of removal, or, if the Commissioner of Social Security so determines, the two months preceding the month of removal, the benefit rate that is appropriate to such individual's living arrangement subsequent to his removal from such institution or facility.

(9)(A) Notwithstanding paragraphs (1) and (2), any nonrecurring income which is paid to an individual in the first month of any period of eligibility shall be taken into account in determining the amount of the benefit under this title of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(B) For purposes of subparagraph (A), payments to an individual in varying amounts from the same or similar source for the same or similar purpose shall not be considered to be nonrecurring income.

(10) For purposes of this subsection, remuneration for service performed as a member of a uniformed service may be treated as received in the month in which it was earned, if the Commissioner of Social Security determines that such treatment would promote the economical and efficient administration of the program authorized by this title.

#### Special Limits on Gross Income

(d) The Commissioner of Social Security may prescribe the circumstances under which, consistently with the purposes of this title, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this title. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1954.

#### Limitation on Eligibility of Certain Individuals

(e)(1)(A) Except as provided in subparagraphs (B), (C), (D), (E), and (G), no person shall be an eligible individual or eligible spouse

for purposes of this title with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month (subject to subparagraph (G)), in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, or an eligible individual is a child described in section 1614(f)(2)(B), or, in the case of an eligible individual who is a child under the age of 18, receiving payments (with respect to such individual) under any health insurance policy issued by a private provider of such insurance the benefit under this title for such individual for such month shall be payable (subject to subparagraph (E))—

(i) at a rate not in excess of \$360 per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of \$360 per year (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the one who is in such facility), and

(II) the applicable rate specified in subsection (b)(1) (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the other); and

(iii) at a rate not in excess of \$720 per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who has an eligible spouse, if both of them are in such a facility throughout such month.

For purposes of this subsection, a medical treatment facility that provides services described in section 1917(c)(1)(C) shall be considered to be receiving payments with respect to an individual under a State plan approved under title XIX during any period of ineligibility of such individual provided for under the State plan pursuant to section 1917(c).

(C) As used in subparagraph (A), the term “public institution” does not include a publicly operated community residence which serves no more than 16 residents.

(D) A person may be an eligible individual or eligible spouse for purposes of this title with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(E) Notwithstanding subparagraphs (A) and (B), any individual who—

(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

(II) is in a medical treatment facility throughout any month as described in subparagraph (B),

(ii) was eligible under section 1619(a) or (b) for the month preceding such month, and

(iii) under an agreement of the public institution or the medical treatment facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this title (and entitled to a benefit determined on the basis of the rate applicable under subsection (b)) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1619(a) or (b) for such month for purposes of clause (ii) of such subparagraph.

(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or is in a medical treatment facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance, if it is determined in accordance with subparagraph (H) or (J) that—

(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

(H) The Commissioner of Social Security shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.

(I)(i) The Commissioner shall enter into an agreement, with any interested State or local institution comprising a jail, prison, penal institution, or correctional facility, or with any other interested

State or local institution a purpose of which is to confine individuals as described in section 202(x)(1)(A)(ii), under which—

(I) the institution shall provide to the Commissioner, on a monthly basis and in a manner specified by the Commissioner, the first, middle, and last names, social security account numbers or taxpayer identification numbers, prison assigned inmate numbers, last known addresses, dates of birth, confinement commencement dates, dates of release or anticipated dates of release, dates of work release, and, to the extent available to the institution, such other identifying information concerning the inmates of the institution as the Commissioner may require for the purpose of carrying out this paragraph and clause (iv) of this subparagraph and the other provisions of this title; and

(II) the Commissioner shall pay to any such institution, with respect to each individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (that so furnishes such information) as described in section 202(x)(1)(A)(ii), a benefit under this title for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this title by reason of confinement based on the information provided by such institution, \$400 (subject to reduction under clause (ii)) if the institution furnishes the information described in subclause (I) to the Commissioner within 30 days after the date such individual becomes an inmate of such institution, or \$200 (subject to reduction under clause (ii)) if the institution furnishes such information after 30 days after such date but within 90 days after such date.

(ii) The dollar amounts specified in clause (i)(II) shall be reduced by 50 percent if the Commissioner is also required to make a payment to the institution with respect to the same individual under an agreement entered into under section 202(x)(3)(B).

(iii) The Commissioner shall provide, on a reimbursable basis, information obtained pursuant to agreements entered into under clause (i) to any Federal or federally-assisted cash, food, or medical assistance program for eligibility and other administrative purposes under such program, for statistical and research activities conducted by Federal and State agencies, and to the Secretary of the Treasury for the purposes of tax administration, debt collection, and identifying, preventing, and recovering improper payments under federally funded programs.

(iv) Payments to institutions required by clause (i)(II) shall be made from funds otherwise available for the payment of benefits under this title and shall be treated as direct spending for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985.

(v)(I) The Commissioner may disclose information received pursuant to this paragraph to any officer, employee, agent, or contractor of the Department of the Treasury whose official duties require such information to assist in the identification, prevention, and recovery of improper payments or in the collection of delinquent debts owed to the United States, including payments certified by the head of an executive, judicial, or legislative paying

agency, and payments made to individuals whose eligibility, or continuing eligibility, to participate in a Federal program (including those administered by a State or political subdivision thereof) is being reviewed.

(II) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law, the Secretary of the Treasury may compare information disclosed under subclause (I) with any other personally identifiable information derived from a Federal system of records or similar records maintained by a Federal contractor, a Federal grantee, or an entity administering a Federal program or activity and may redisclose such comparison of information to any paying or administering agency and to the head of the Federal Bureau of Prisons and the head of any State agency charged with the administration of prisons with respect to inmates whom the Secretary of the Treasury has determined may have been issued, or facilitated in the issuance of, an improper payment.

(III) The comparison of information disclosed under subclause (I) shall not be considered a matching program for purposes of section 552a of title 5, United States Code.

(J) For the purpose of carrying out this paragraph, the Commissioner of Social Security shall conduct periodic computer matches with data maintained by the Secretary of Health and Human Services under title XVIII or XIX. The Secretary shall furnish to the Commissioner, in such form and manner and under such terms as the Commissioner and the Secretary shall mutually agree, such information as the Commissioner may request for this purpose. Information obtained pursuant to such a match may be substituted for the physician's certification otherwise required under subparagraph (G)(i).

(2) No person shall be an eligible individual or eligible spouse for purposes of this title if, after notice to such person by the Commissioner of Social Security that it is likely that such person is eligible for any payments of the type enumerated in section 1612(a)(2)(B), such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3) Notwithstanding anything to the contrary in the criteria being used by the Commissioner of Social Security in determining when a husband and wife are to be considered two eligible individuals for purposes of this title and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this Act may (in the administration of such plan) treat a husband and wife living in the same medical treatment facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this title (rather than two eligible individuals), after they have continuously lived in the same such facility for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.

(4)(A) 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—



(i) **【fleeing to avoid】** *the subject of an arrest warrant for the purpose of prosecution, or custody or confinement after conviction, under the laws of 【the place from which the person flees】 the jurisdiction issuing the warrant, 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】 the jurisdiction, or, in jurisdictions that do not define crimes as felonies, is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed; or*

**【(ii) violating a condition of probation or parole imposed under Federal or State law.】**

*(ii) the subject of an arrest warrant for violating a condition of probation or parole imposed under Federal or State law.*

(B) Notwithstanding subparagraph (A), the 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), or

(ii) the person was erroneously implicated in connection with the criminal offense by reason of identity fraud.

(C) Notwithstanding subparagraph (A), the Commissioner may, for good cause shown based on mitigating circumstances, treat the person referred to in subparagraph (A) as an eligible individual or eligible spouse if the Commissioner determines that—

(i) the offense described in subparagraph (A)(i) or underlying the imposition of the probation or parole described in subparagraph (A)(ii) was nonviolent and not drug-related, and

(ii) in the case of a person who is not considered an eligible individual or eligible spouse pursuant to subparagraph (A)(ii), the action that resulted in the violation of a condition of probation or parole was nonviolent and not drug-related.

(5) Notwithstanding any other provision of law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of **【any recipient of】** *any individual who is a recipient of (or would be such a recipient but for the application of paragraph (4)(A)) benefits under this title, if the officer furnishes the Commissioner with the name of 【the recipient】 the individual, and other identifying information as reasonably required by the Commissioner to establish the unique identity of 【the recipient】 the individual, and notifies the Commissioner that—*

(A) **【the recipient】** *the individual* is described in clause (i) or (ii) of paragraph (4)(A); and

(B) the location or apprehension of **【the recipient】** *the individual* is within the officer's official duties.

Suspension of Payments to Individuals Who Are Outside the  
United States

(f)(1) Notwithstanding any other provision of this title, no individual (other than a child described in section 1614(a)(1)(B)(ii)) shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

(2) For a period of not more than 1 year, the first sentence of paragraph (1) shall not apply to any individual who—

(A) was eligible to receive a benefit under this title for the month immediately preceding the first month during all of which the individual was outside the United States; and

(B) demonstrates to the satisfaction of the Commissioner of Social Security that the absence of the individual from the United States will be—

(i) for not more than 1 year; and

(ii) for the purpose of conducting studies as part of an educational program that is—

(I) designed to substantially enhance the ability of the individual to engage in gainful employment;

(II) sponsored by a school, college, or university in the United States; and

(III) not available to the individual in the United States.

Certain Individuals Deemed To Meet Resources Test

(g) In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title I, X, XIV, or XVI,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in sections 1611(a)(1)(B) and 1611(a)(2)(B) during any period that the resources of such individual or such individual and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

Certain Individuals Deemed To Meet Income Test

(h) In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title X or XVI,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1612 without application of this subsection.

Application and Review Requirements for Certain Individuals

(i) For application and review requirements affecting the eligibility of certain individuals, see section 1631(j).

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## VII. DISSENTING VIEWS

Over 110 national, state, and local groups representing seniors, people with disabilities, children, and families have contacted the Committee to warn us that H.R. 2792 is a cruel bill that could have catastrophic consequences for some of our most vulnerable citizens. In addition, civil right groups strongly oppose the bill because it would magnify the serious racial, ethnic, and socioeconomic inequities in our criminal justice system.

We agree that dangerous criminals should not be supported by public benefits while fleeing justice. However, under current law, the Social Security Administration (SSA) already provides regular notification to law enforcement of the whereabouts of any Social Security or Supplemental Security Income (SSI) beneficiary who has an outstanding arrest warrant for an alleged felony or an alleged violation of a condition of probation or parole. After notification, law enforcement officials can, and do, use that information to arrest individuals so that our legal system can determine whether they are guilty. However, past experience has revealed that, in many cases, law enforcement officials choose not to arrest these individuals, despite having their names and addresses, as the warrants essentially are inactive.

Law enforcement also informs SSA when it is unable to arrest individuals who are actual fugitives charged with fleeing or escaping. When they do, SSA terminates benefits. That is current law.

Despite the title of the bill, the seniors and people with severe disabilities who would be harmed by this bill are not felons, as the Chairman acknowledged at our markup. They are people who have been accused of a felony, or accused of a parole or probation violation. They have not been tried or convicted of the offense underlying the warrant. In many instances, they are not even accused of committing a felony, as probation can result from a misdemeanor offense alone.

In the United States of America, individuals are innocent until proven guilty. H.R. 2792 would create a severe new punishment—loss of basic income—for individuals who have only been accused of a crime—not tried or convicted—and whom law enforcement did not seek to arrest after being notified of their whereabouts and their receipt of Social Security or SSI.

The Majority's only answer to the clear danger that this bill would cut off the last lifeline for people in nursing homes, individuals with dementia or other cognitive impairments, and those at risk of being homeless was to cite the very limited discretionary authority already in existing law for the Commissioner of Social Security to hear appeals and grant exceptions in narrow circumstances. This glib response ignores SSA's average waiting time of 600 days for appeals hearings. Also, this policy of "cut off benefits first, let them appeal later" ignores the reality of the people who receive

SSI, many of whom have cognitive impairments and limited education, and all of whom have no resources to fall back on as they wait years to have their income restored.

Past experience with this policy was that many vulnerable individuals who pose no danger to the community, and who often were not even aware that warrants for long-ago, alleged offenses still (or ever) existed, lost benefits they needed to survive. Despite this, the Majority failed to hold a hearing on H.R. 2792 to examine the problem they are trying to solve or learn about potentially harmful consequences before moving to enact this bill.

If the Majority had held a hearing, they would have learned that, in the past, individuals who lost benefits under this policy included individuals who had dementia or severe intellectual disability; who were confined to wheelchairs and tethered to oxygen tanks; who years ago were charged with theft of \$50; whose arrest warrant related to their own attempted suicide; whose charge was kicking a staff member at a detention center when they ran away from an abusive stepfather at age 12; or were wrongly identified, having a different gender, Social Security number, and race than the accused individual, yet had to hire an attorney before SSA would restore benefits. We believe that a better understanding of the issue would have resulted in adoption of many of our amendments, particularly Ms. Chu's amendment to ensure that the policy did not take effect if it would result in people with dementia and other cognitive impairments losing their basic income.

Therefore, we opposed H.R. 2792.

RICHARD E. NEAL,  
*Ranking Member.*

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MR. CHAIRMAN: On H.R. 2792, I am in full agreement with the dissenting views of my Democratic colleagues. Had I been present for the votes on the amendments submitted by my Democratic colleagues, I would have supported them.

Had I been present for the vote on reporting H.R. 2792 out of the Committee, I would have voted No.

JOHN B. LARSON,  
*Member of Congress.*

### ADDITIONAL DISSENTING VIEWS

In addition to the overall concerns outlined by the Ranking Member that H.R. 2792 would harm poor seniors and people with disabilities, we express deep concerns that this bill: (1) directly contradicts the constitutional presumption of innocence; (2) deprives individuals of due process and lowers the legal standard for deprivation of government benefits based on a mere accusation rather than conviction; (3) increases the likelihood of errors in termination of SSI benefits; (4) magnifies the deep inequities in our criminal justice system based on race, ethnicity, and income; and (5) decreases the overall safety of our communities.

H.R. 2792 assumes all individuals accused of a crime and issued an arrest warrant for a felony or for a violation of a condition of probation or parole are guilty. This directly contradicts the constitutional presumption of innocence and deprives individuals of due process via adjudication of guilt or innocence based on a simple accusation rather than a conviction. The conviction—not an accusation of a crime—should be the predicate for the loss of benefits. The denial of due process then deprives the individual of government benefits based on accusations rather than conviction, in direct contradiction of volumes of case law.

In addition, the denial of due process based on accusation—rather than conviction—increases the likelihood of termination errors, which the adjudication process could have addressed. Multiple federal, state, and organization studies demonstrate the inaccuracies of criminal justice databases. For example, a 2016 Minnesota Law Review article focused on the inaccuracies of criminal justice databases and noted the lack of evidence of accurate arrest warrant information in state and local databases. A 2015 report by the Government Accountability Office noted that an FBI audit in 2012 found that 10 states had 50% or fewer of their criminal justice records that included final dispositions and that another FBI audit for 2011–2013 indicated that 12 of the 44 states examined had data systems that failed federal data accuracy requirements. A 2013 report by the Legal Action Center focused on problems with criminal records, including a 2007 study by the Bronx Defenders in which 62% of a random sample of New York State records had at least one significant error and 32% had multiple errors.

Further, the denial of due process based on accusation rather than conviction increases the likelihood of harm to individuals who are racial/ethnic minorities and/or poor, harm that the adjudication process could have limited. The racial and ethnic biases of the criminal justice system are well-documented, including the following examples discussed during Committee markup:

- A 2015 report by the Brennan Center for Justice at New York University School of Law reviewing research related to racial/ethnic disparities in the criminal justice system indicated the following: Although Caucasians are more likely to sell drugs and equally likely to use drugs, African Americans are arrested almost four times as often as white individuals for selling drugs and twice as often for drug possession; African American and Latino defendants are more than twice as likely as their white counterparts to experience pretrial detention;

African American and Latino individuals experience longer parole and probation periods than their white counterparts, increasing the likelihood of low-level or technical violations; and African American and Latino persons experience greater hardship from criminal justice collections and fees.

- The Sentencing Project released a report this month showing the Black/White disparities in juvenile incarceration have grown in recent years. Black youth were more than five times as likely as white youth to be detained or committed. According to this study, in six states (New Jersey, Wisconsin, Montana, Delaware, Connecticut, and Massachusetts), black youth were at least ten times as likely to be held in placement as white youth.

- A 2009 National Council on Crime and Delinquency report found that Native Americans were admitted to prison over four times and arrested at 1.5 times the rate as whites.

The denial of due process based on accusation—rather than conviction—also criminalizes poverty. Increasingly, costs associated with the criminal justice system have escalated dramatically causing disproportionate harm to individuals with limited financial resources. No uniform threshold for a felony exists, giving states wide latitude to define offenses involving relatively low monetary values as criminal felonies. A report by the Marshall Project indicated that, although dozens of states have increased their felony thresholds since 2000 to better capture the cost of goods, 13 states have not and four of these states—Florida, Massachusetts, Virginia and New Jersey—have the lowest thresholds in the country defining felonies as losses of \$300 or less—vastly different than the \$2,500 thresholds set in Texas or Wisconsin. Additionally, individuals on probation for underlying misdemeanor offenses (e.g., vagrancy, shoplifting, traffic violations) can violate probation due to inability to pay court fees, restitution, or fines, resulting in an arrest warrant for an alleged violation of probation.

Under H.R. 2792, these individuals would lose SSI benefits due to such alleged violations. In contrast to the Majority's assurances during markup that only individuals charged with violent offenses or costly financial theft could have felony arrest warrants or violations of probation or parole, we remain deeply alarmed that the classification of small property crimes or non-payment of fees and fines could easily result in the loss of SSI benefits to the elderly and disabled without due process, consistent with the harm caused when SSA terminated benefits for outstanding arrest warrants in the past.

By denying the right and protections of due process, this legislation contradicts the Fifth and Fourteenth Amendments of the U.S. Constitution. The deprivation of government benefits based on accusation rather than conviction also threatens the safety of our communities by increasing the likelihood of crime and recidivism. If we terminate vital benefits that impoverished individuals who are disabled and elderly use for food and shelter, the probability is great that they will turn to crime to meet their basic needs, decreasing community safety by increasing crime.

Despite these concerns, the Majority rejected every and all amendments to protect vulnerable SSI recipients against disparate

harm based on income or race/ethnicity. Specifically, the Majority rejected an amendment requiring the Commissioner of Social Security to certify that the policy will not have a disparate impact due to race or ethnicity prior to implementation as well as a separate amendment requiring the Commissioner of Social Security—prior to implementation—to certify that the policy will not result in the loss of benefits for individuals for whom an arrest warrant was issued for nonpayment of court fees, supervisions, or monetary fines.

Further, the Majority claimed that the very limited authority given to the Social Security Commissioner under current law to issue “good cause exemptions” was sufficient to prevent unfair and hardship-inducing loss of benefits. That authority provides 35 days between notification of intent to terminate benefits and actual benefit termination for persons with extremely limited financial resources who are severely disabled or elderly, and who may no longer live in the jurisdiction where the warrant was issued. The timeline is impractical and unfair. Resolving errors within the criminal justice system is a long-process that typically must be done in the geographic jurisdiction of the court and necessitates legal counsel.

In the past when SSA applied the arrest-warrant termination standard, many affected individuals were unaware of outstanding arrest warrants in other states, the resolution of which required travel and long wait times for court dates. Given that SSI is only available to people who are low-income elderly and disabled, 35 days is insufficient time for individuals with limited financial resources, poor health, and mental or physical impairments to hire counsel and resolve complicated criminal justice problems, even if the Commissioner were able to act on all the exemption requests for people unfairly targeted in a timely manner.

Given these concerns, we strongly oppose H.R. 2792. This mean-spirited legislation will: (1) deprive government benefits for poor, elderly, and disabled individuals in direct contradiction of the constitutional presumption of innocence; (2) deny these vulnerable adults due process and lower the legal standard for deprivation of government benefits based on a mere accusation rather than a conviction; (3) increase the likelihood of wrongful termination; (4) magnify the deep inequities in our criminal justice system based on race, ethnicity, and income; and (5) decrease the overall safety of our communities. Passing this bill would result in devastating consequences for the individuals affected and those who love and care for them.

DANNY K. DAVIS.  
LLOYD DOGGETT.  
JOHN LEWIS.  
TERRI SEWELL.