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Retired with Nothing to Retire On: A Proposal for Social Security Credits for the Burge Exonerees

Katie Burnett†

The Social Security Act of 1935 was enacted for the purpose of providing a financial safety net for retirees.¹ To qualify for this financial safety net, an individual must contribute into it, which means working for at least 10 years at a job that excises a contribution into a retirement fund.² These requirements render many exonerees, or those who are found innocent of a crime for which they were wrongfully convicted, unable to qualify for or collect their Social Security benefits at retirement age.³ They are unable to contribute to Social Security while incarcerated and often cannot accrue the requisite credits post-release, leaving most exonerees ineligible to collect when they reach retirement age.⁴

One of these exonerees is James Kluppelberg, who was arrested at age twenty-two.⁵ For four years prior to his wrongful conviction, he worked steadily, and before his conviction, intended to work his whole life.⁶ However, after twenty-six years in prison, his Social Security statement is miniscule due to his inability to contribute while incarcerated.⁷ Now entering his mid-fifties, he fears for his uncertain financial future.⁸

Kluppelberg's story is not unique.⁹ In Illinois' Cook County alone, there have been at least 120 exonerations, many of which stem directly from investi-

† J.D. Candidate, Loyola University Chicago School of Law (2017). The author wishes to thank Laura Caldwell, Director of Life After Innocence, for her valuable suggestions and comments.

¹ MARGARET C. JASPER, *SOCIAL SECURITY LAW* 6 (2d ed., 2004).

² *Id.* at 35.

³ Frederick H. Lowe, *Tortured, Jailed Black Seniors Released—But Denied Social Security*, *NEW AMERICA MEDIA* Apr. 21, 2015, <http://newamericamedia.org/2015/04/tortured-jailed-blacks-released-paid—but-denied-social-security.php> [hereinafter Lowe].

⁴ *Id.*

⁵ *James Kluppelberg*, National Registry of Exonerations (Jun. 2012), <https://www.law.umich.edu/special/exoneration/pages/casedetail.aspx?caseid=3908>.

⁶ Interview by Laura Caldwell with James Kluppelberg, in Springfield, Ill. (Apr. 22, 2015).

⁷ *Id.*

⁸ *Id.*

⁹ As of April 2016, there have been 1,775 exonerations nationally. NATIONAL REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited Apr. 22, 2016). See also Lowe, *supra* note 4 (discussing the plight of exonerees who do not receive Social Security).

gations into former Chicago Police commander Jon Burge's torture of criminal suspects in Area 2 and Area 3.¹⁰ If these exonerees are representative of the average exoneree, they will have a 14-year gap in their employment record. Assuming that they would have been working, this amounts to 14 years of contributions missing from their Social Security statements.¹¹

Despite popular belief, exonerees do not receive any kind of automatic compensation or state-sponsored support upon their release from prison; in reality, all exoneration guarantees is release from prison.¹² Once released, there are few remedies available to exonerees, and those available are often inadequate in fully addressing exonerees' post-release needs.¹³ Therefore, the future is bleak for those unable to find jobs and nearing retirement age: if an exoneree is able to find a job, he or she then must accrue a total of at least 10 years of work in order to meet even the minimum eligibility.¹⁴ For this reason, both the Burge exonerees and exonerees nationwide face Kluppelberg's same fears.¹⁵

This article will examine how the Burge exonerees, or Burge's torture victims who were wrongfully convicted of crimes and later exonerated, could be compensated in Social Security credits as though they had not lost time incarcerated.¹⁶ Although the Burge reparations fund and Illinois' compensation statute both attempt to provide restitution for the hardships these individuals

¹⁰ NATIONAL REGISTRY OF EXONERATIONS, *supra* note 9 (tracking the number of exonerees nationwide and within Cook County); G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. REV. 329, 358-361 (2014) (discussing the investigations into Burge's torture of criminal suspects).

¹¹ See *Exonerated: Cases by the Numbers*, CNN (Dec. 4, 2013, 1:07 AM), <http://www.cnn.com/2013/12/04/justice/prisoner-exonerations-facts-innocence-project/> (providing averages and other statistics for exonerations up until the date of publication).

¹² Baumgartner, Westervelt & Cook, Public Policy Responses to Wrongful Convictions in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 251, 262 (Allison D. Redlich et al. eds., 2014).

¹³ *Compensating the Wrongly Convicted*, INNOCENCE PROJECT, <http://www.innocenceproject.org/compensating-wrongly-convicted/> (last visited Apr. 24, 2016).

¹⁴ Lowe, *supra* note 3.

¹⁵ *Id.*

¹⁶ This argument can similarly be applied to exonerees as a whole. However, for the purpose of this article, it will discuss only the Cook County exonerees who were also Burge victims. These individuals include (but are not limited to) James Andrews, David Bates, Darrell Cannon, Eric Caine, David Faultneroy, Madison Hopley, Stanley Howard, Melvin Jones, Ronald Kitchen, James Kluppelberg, Alton Logan, Leroy Orange, Aaron Patterson, Marvin Reeves, Michael Tillman, Shawn Whirl, and Stanley Wrice. *Torture Survivors*, CHICAGO TORTURE JUSTICE MEMORIALS, <http://chicagotorture.org/history/#torture-survivors> (last visited Apr. 22, 2016) (providing a list of known Burge victims which I cross-referenced with the list of known Cook County exonerees).

have faced, I will propose that providing the number of credits that each exonerée would have earned had they not been incarcerated more fully addresses the challenges faced by exonerees while also promoting states interests. Because statistics about Cook County's exonerees and Burge's victims are not widely available, this article will assume that the nationwide exoneration statistics apply to the Burge exonerees.¹⁷

AVAILABLE REMEDIES

As a matter of principle, society values fairness in terms of compensating victims who have suffered losses.¹⁸ For example, persons receive adequate payment when their land has been seized for public use; crime victims and their families receive compensation for their suffering; and tort victims receive payment to make themselves whole.¹⁹ It is possible that the Burge exonerees have suffered the worst kind of state-inflicted harm of all of the Burge victims: they endured torture, a wrongful conviction, a fight to clear their name, and now must pay a steep price for their freedom.²⁰ After exoneration, exonerees are faced with new challenges, both monetary and non-monetary, as they struggle to leave prison behind them and re-enter society.²¹ For this reason, fairly remedying wrongful convictions is a moral and social obligation rather than a legal one.²²

¹⁷ This is not an unreasonable assumption. Illinois has the second highest number of exonerations of any state, and in 2015, Cook County had the fourth-highest number of exonerations. NATIONAL REGISTRY OF EXONERATIONS, *supra* note 9.

¹⁸ *Executive Summary: "Making up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation"*, INNOCENCE PROJECT (Dec. 2, 2009), <http://www.innocenceproject.org/executive-summary-making-up-for-lost-time-what-the-wrongfully-convicted-endure-and-how-to-provide-fair-compensation/>.

¹⁹ *Id.*

²⁰ See, e.g., Kevin Davis, *After Years, Even Decades, the Exonerated Leave Prison Walls Behind—Only to Find New Barriers*, ABA JOURNAL (Jan. 1, 2011), http://www.abajournal.com/magazine/article/after_years_even_decades_the_exonerated_leave_prison_walls_behind/ (discussing the hardships that Marvin Reeves and Ronnie Kitchen, both Burge exonerees, faced after exoneration).

²¹ Robert J. Norris, *Exoneree Compensation: Current Policies and Future Outlook in Wrongful Conviction and Criminal Justice Reform: Making Justice* 289, 289 (2014).

²² Shawn Armbrust, *When Money Isn't Enough: the Case for Holistic Compensation of the Wrongfully Convicted*, 41 AM. CRIM. L. REV. 157, 161 (2004) (explaining that the government has a moral obligation to provide some form of compensation); Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 405, 452 (2007-2008) (explaining that has a moral obligation to see that justice is served through restitution).

Illinois recognizes this obligation and attempts to meet it by providing avenues through which exonerees may obtain remedies for their wrongful convictions and the torture that they endured under Burge and his detectives.²³ For example, Illinois has a compensation statute that grants exonerees up to \$85,350 for wrongful imprisonment of five years or less; up to \$170,000 for wrongful imprisonment between five and fourteen years; and up to \$199,150 for wrongful imprisonment greater than 14 years.²⁴ Illinois also offers reentry services and non-monetary remedies, including job search and placement services, higher education grants, and mental health services.²⁵

In addition to what is offered under the statute, exonerees who have “a credible claim that they were tortured or physically abused by Jon Burge or one of the officers under his command at Area 2 or Area 3 Police Headquarters between May 1, 1972 and November 30, 1991” were also eligible to apply for reparations from the City of Chicago’s Burge reparations fund.²⁶ They were required to apply by August 4, 2015, and were permitted to collect up to \$100,000 so long as they had not already received a settlement arising out of the torture or physical abuse for which they were collecting from the fund.²⁷ The City of Chicago also offered non-monetary benefits, including free access to job training and certification programs; free tuition at the City Colleges of Chicago; job placement services; senior care services; and specialized psychological, family, substance abuse, and other counseling.²⁸

²³ Norris, *supra* note 21 at 289.

²⁴ 705 ILL. COMP. STAT. 505/8 (2009). The amount of the award is ultimately at the discretion of the court, and is adjusted according to changes in the Consumer Price Index. As of 2016, these figures are slightly higher than they were at the time of the statute’s adoption.

²⁵ 20 ILL. COMP. STAT. 1015/2 (2008) (providing job search and placement services); 20 ILL. COMP. STAT. 1710/1710-125 (2011) (providing mental health services); 110 ILL. COMP. STAT. 947/62 (2016) (providing grants for exonerated persons so long as the person demonstrates satisfactory academic progress).

²⁶ *Burge Reparations Information*, CITY OF CHICAGO, http://www.cityofchicago.org/city/en/depts/dol/supp_info/burge-reparations-information.html. Whether or not a victim has a “credible claim” is determined by “(1) when and under what circumstances the claim of torture or physical abuse was first made or reported to someone, (2) the consistency of the claim over time, and (3) any credible affirmative proof rebutting the claim.” *Ordinance*, CITY OF CHICAGO, http://www.cityofchicago.org/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/ORDINANCE.pdf.

²⁷ *Ordinance*, *supra* note 26. If the settlement was for an amount that is less than \$100,000, that individual may collect up to \$100,000 minus the amount of the settlement.

²⁸ *Resolution*, CITY OF CHICAGO, http://www.cityofchicago.org/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/BurgeRESOLUTION.pdf.

Both of these remedies are commendable. Illinois' exoneree compensation statute is currently one of the best the nation in terms of the amounts of compensation and non-monetary services offered, and the Burge reparation fund has received significant praise as a historic achievement.²⁹ However, even if an exoneree is successful in pursuing both remedies, they leave certain subsequent needs unmet in light of the injustices suffered by exonerees.³⁰ Instead, these remedies should be supplemented with one that would further recognize the exonerees' quantifiable long-term financial challenges, and compensate them for those losses.³¹ For example, exonerees bear significant losses to their income, including wages the exoneree would have earned and, as proposed in this article, the Social Security contributions he or she would have made through her employment had it not been for their incarceration.³² The currently available remedies only address the injustices suffered while tortured and incarcerated, and only scratch the surface of the present or future financial losses that ripple from a wrongful conviction.³³

MECHANICS OF SOCIAL SECURITY'S OASDI FUND

The Social Security system was introduced in 1935 for the purpose of providing economic security after an age when people may not be able to support themselves.³⁴ Social Security provides a variety of benefits but most commonly refers to Old Age, Survivors and Disability Insurance ("OASDI"), which pays money to retirees, survivors of deceased workers, and people who

²⁹ *Wrongful Conviction Compensation Statutes*, CNN, <http://www.cnn.com/interactive/2012/03/us/table.wrongful.convictions/> (last visited Apr. 24, 2016). See also *Chicago City Council Passes Landmark Police Torture Reparations Ordinance*, AMNESTY INTERNATIONAL (May 6, 2015), <http://www.amnestyusa.org/news/press-releases/chicago-city-council-passes-landmark-police-torture-reparations-ordinance> (praising Chicago for its reparations fund).

³⁰ See generally Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 405 (2007-2008) (discussing the shortcomings of current remedies).

³¹ Alberto B. Lopez, *\$10 and a Denim Jacket? A Model Statute for Compensating the Wrongly Convicted*, 36 GA. L. REV. 665, 712 (2001-2002).

³² Lonergan, *supra* note 30, at 420-21 (arguing that caps on compensation do not provide adequate compensation for lost wages). See also Lopez, *supra* note 31, at 713 (advocating for calculation of losses stemming from incarceration).

³³ Shawn Armbrust, *When Money Isn't Enough: the Case for Holistic Compensation of the Wrongfully Convicted*, 41 AM. CRIM. L. REV. 157, 170 (2004).

³⁴ JASPER, *supra* note 1, at xi. See also President William Clinton, Presidential Radio Address (Mar. 21, 1998) (recording available at <http://www.c-span.org/video/?102027-1/presidential-radio-address>) (discussing Social Security as a reflection of the United States' deepest values and the belief that "all Americans deserve to retire with dignity").

have become disabled.³⁵ A significant number of Americans both rely on and receive the OASDI benefits. For example, in 2015, the Social Security Administration (“SSA”) paid \$932 billion to more than sixty-five million beneficiaries, which is approximately ninety percent of individuals over the age of sixty-five.³⁶ That year, fifty-two percent of married couples and seventy-four percent of unmarried individuals relied on the benefits for more than half of their income.³⁷

The OASDI is primarily financed by payroll taxes, or contributions, made by nearly all workers; approximately 96% of jobs in the United States contribute to the fund.³⁸ These contributions are then used to provide monthly retirement benefits to the current beneficiaries.³⁹ To qualify as a beneficiary, the individual must be of retirement age, or at least age 65.⁴⁰ Then, the individual must have contributed a requisite amount of money via payroll taxes, or in the terms used by the SSA, “accrued” a requisite number of “credits”.⁴¹ Credits are accrued based on an individual’s earnings.⁴² In 2015, \$1,220 of wages earns an individual one credit, and an individual may earn up to four credits per year.⁴³ Currently, individuals must earn forty credits throughout their lifetime, which equates to a minimum of 10 years of work for those earning at least \$4,880 per

³⁵ JASPER, *supra* note 1, at 6. The other aspect of the modern social security program, Supplemental Security Income (“SSI”), is not at issue in this Article. SSI is financed by general revenues from the U.S. Treasury.

³⁶ Overview of the Social Security Administration *in* SSA’s FY 2015 AGENCY FINANCIAL REPORT 7, 7 (2015), <https://www.ssa.gov/finance/2015/Full%20FY%202015%20AFR.pdf> [hereinafter SSA’s FY 2015 REPORT].

³⁷ *Id.* at 8.

³⁸ JASPER, *supra* note 1, at 33.

³⁹ *Id.* The OASDI also offers disability benefits, for which the SSA uses a calculation apparatus based on the number of credits earned and the age at which the individual became disabled. An individual must be recognized as disabled as defined by 42 U.S.C.A. § 423(d). *See also How You Earn Credits*, SOCIAL SECURITY ADMINISTRATION, <http://www.ssa.gov/pubs/EN-05-10072.pdf> [hereinafter *How You Earn Credits*].

⁴⁰ If an individual was born before 1942, that person’s full retirement age is 65. For an individual born between 1943 and 1959, that person’s full retirement age is 66. For an individual born after 1960, that person’s full retirement age is 67. *Retirement Planner: Benefits by Year of Birth*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/planners/retire/agereduction.html>.

⁴¹ *See* 42 U.S.C.A. § 414 (explaining what is required to qualify as a beneficiary).

⁴² *How You Earn Credits*, *supra* note 39.

⁴³ *Benefits Planner: Social Security Credits*, SOCIAL SECURITY ADMINISTRATION, <http://www.ssa.gov/planners/credits.html>.

year.⁴⁴ However, if an individual does not earn at least forty credits or work for at least 10 years, the only way to qualify as a beneficiary for retirement benefits is through additional work.⁴⁵ Thus, due to these requirements, many exonerees are not able to earn the number of credits necessary to collect retirement benefits.⁴⁶

SOCIAL SECURITY CREDITS AS A REMEDY

Providing social security credits for the Burge exonerees in proportion to the years lost while incarcerated would constitute an additional meaningful remedy that satisfies both society's moral and social obligations and more fully complements post-release needs. For example, studies suggest that perceptions of fairness are extremely important in terms of, first, meeting society's social and moral obligation of providing a remedy and, second, preventing post-exoneration offending.⁴⁷ One study found that exonerees who receive compensation above a certain threshold were far less likely to offend post-exoneration.⁴⁸ This finding was attributed to exonerees having financial security and a general respect for law.⁴⁹ Most individuals follow the law because they respect it, they view the institutions that uphold the law as legitimate, and they feel respected and valued by it.⁵⁰ Thus, those who feel respected by the law will, in turn, follow the law.⁵¹ Meaningful compensation is the first way to eliminate the perception of unfairness or disrespect and to make exonerees feel valued by such institutions.⁵²

⁴⁴ See 42 U.S.C.A. § 414(a)(2) and 42 U.S.C.A § 402(a) (describing the requirements for receiving old-age benefits). It is common to earn more than the 40 credits required to be eligible for benefits. However, these extra credits do not affect the amount of the benefit; average earnings over the course of the lifetime affect the size of the monthly payment. JASPER, *supra* note 1, at 35.

⁴⁵ See generally JASPER, *supra* note 1, at 34-35 (discussing the intricacies of the SSA's eligibility requirements).

⁴⁶ Lowe, *supra* note 3.

⁴⁷ Evan J. Mandery et al., *Compensation Statutes and Post-Exoneration Offending*, 103 J. CRIM. L. & CRIMINOLOGY, 553, 555 (2013). See also *supra* notes 19-20 and accompanying text (explaining society's proclivity for fairness).

⁴⁸ Mandery, *supra* note 47, at 577. The statistic applied regardless of whether the individual had a prior history of offending before the underlying wrongful conviction. *Id.* at 572. See also Lonergan, *supra* note 30, at 435.

⁴⁹ Mandery, *supra* note 47, at 579.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Mandery, *supra* note 47, at 582.

Further, a common observation from the study of exonerees' post-release challenges is that exonerees are unable to manage their money.⁵³ Those who were able to receive a remedy, whether by the compensation statute or the Burge reparations fund, were provided a one-time lump sum.⁵⁴ However, that money may run out quickly, and some exonerees, if they have little or no experience managing money, may misspend what they do have.⁵⁵ Exonerees who have just been released from prison often spend large amounts of money because they feel they owe others and want to be accepted.⁵⁶ Additionally, after attaining their freedom, they may be inclined to spend the new money and enjoy oneself.⁵⁷

Although it may appear paternalistic, providing a monthly Social Security payment once an exoneree reaches retirement age would address exonerees' common challenge of managing their money post-release.⁵⁸ It would not only ensure that money is properly allocated among the various needs of the exonerated, but could also potentially prevent them from falling into poverty, a genuine concern for many exonerees.⁵⁹ Studies suggest that nearly two-thirds of exonerees have not achieved financial independence after their releases.⁶⁰ Currently, among recipients of Social Security benefits, only 9.1 percent are considered to be in poverty, but if the benefits were removed, approximately 44.4 percent of elderly Americans would fall below the poverty line.⁶¹ Thus, receiving monthly Social Security benefits may actually address exonerees' long-term challenges more fully than the lump sum compensation currently available.⁶²

⁵³ Armbrust, *supra* note 33, at 173.

⁵⁴ Mandery, *supra* note 47, at 560.

⁵⁵ Armbrust, *supra* note 33, at 173.

⁵⁶ *Id.* See also ALISON FLOWERS, EXONEREE DIARIES: THE FIGHT FOR INNOCENCE, INDEPENDENCE, AND IDENTITY 113, 212 (forthcoming 2016) (providing anecdotes from exonerees regarding the inability to hold onto money).

⁵⁷ Armbrust, *supra* note 33, at 173.

⁵⁸ Lonergan, *supra* note 30, at 426.

⁵⁹ *Id.*

⁶⁰ Mandery, *supra* note 47, at 578.

⁶¹ Paul N. Van de Water, Arloc Sherman, & Kathy Ruffing, *Social Security Keeps 22.2 Million People Out of Poverty: A State-by-State Analysis*, CENTER ON BUDGET AND POLICY PRIORITIES (Oct. 25, 2013), <http://www.cbpp.org/research/social-security-keeps-22-million-americans-out-of-poverty-a-state-by-state-analysis>.

⁶² See *supra* notes 53-57 and accompanying text.

POTENTIAL BARRIERS

This proposal presents many counter-arguments. First, the social security system, and particularly OASDI, is facing a long-term deficit, and is expected to remain solvent only until the year 2028.⁶³ Without additional funding from some other source, expanding benefits to exonerees may not be feasible within the federal budget or, if feasible, it may expedite the system's insolvency. However, Congress has the power to amend the Social Security Act to save it from insolvency, and it is expected to do so.⁶⁴

In addition, states have long argued that the cost of providing comprehensive benefits to exonerees is too high for the state budgets.⁶⁵ However, providing funds to the Social Security system for the benefit of exonerees is unlikely to have high costs.⁶⁶ For example, the average exoneree is incarcerated for 14 years.⁶⁷ If it cost state governments the same amount of money that it costs a working individual to accrue 14 years' worth of credits, it would cost approximately \$68,320.⁶⁸ In other words, a working individual would need to earn a minimum of \$68,320 over the course of 14 years in order to accrue a full 14 years' worth of credits. Thus, \$68,320 would make up for the 14 years of work lost, and it would provide monthly financial assistance to an exoneree from the time he reaches retirement age through the remainder of his life. Meanwhile, in some states, the cost of incarcerating one inmate is \$60,000 *per year*.⁶⁹

Next, this proposal may raise the argument that the Social Security system already has two systems in place which assists people like exonerees with their

⁶³ *A Summary of the 2015 Annual Reports*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/oact/trsum/>.

⁶⁴ Kathryn L. Moore, *Social Security in an Era of Retrenchment: What Would Happen if the Social Security Trust Funds Were Exhausted?*, 28 ABA J. LAB. & EMP. L. 43, 56-57 (2012).

⁶⁵ Armbrust, *supra* note 33, at 181-82. See, e.g., Lolly Bowean, *Freed from prison, but waiting compensation as state budget fight drags on*, CHICAGO TRIBUNE, Oct. 9, 2015, <http://www.chicagotribune.com/news/ct-exonerated-payouts-held-met-20151009-story.html>.

⁶⁶ Armbrust, *supra* note 33, at 181-82.

⁶⁷ See *supra* note 11.

⁶⁸ This figure was calculated using the Social Security Administration's 2015 requirements for earning one credit, or \$1,220. An individual is only able to earn up to 4 credits per year, so in 2015, if an individual earned at least \$4,880, he or she would have earned the maximum number of credits for that year. Then, multiplying \$4,880 by 14 years of incarceration equals \$68,320. This number was calculated using the highest "price" of one credit. Each year, the "price" is increased to adjust for standard of living or inflation. Thus, \$68,320 represents the maximum for 2015, and does not account for prior years' credit "price" requirements, which were likely much less. *How You Earn Credits*, *supra* note 39.

⁶⁹ *The Cost of a Nation of Incarceration*, CBS NEWS, Apr. 23, 2012, <http://www.cbsnews.com/news/the-cost-of-a-nation-of-incarceration/>.

financial troubles: Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”).⁷⁰ Both SSDI and SSI have the potential to benefit exonerees, but only if they qualify.⁷¹ For SSDI, an exoneree would have to qualify by, once again, accruing the required number of credits through work. SSI, a branch of Social Security, is designed to help the aged, disabled, and those with little or no income.⁷² However, for both programs, an exoneree would need to have a recognized disability.⁷³ Thus, this suggestion is only a solution for some exonerees, and basic fairness requires that there be compensation for all exonerees if there is compensation for some exonerees.⁷⁴

Last, this article presumes that, in the fourteen years that the average exoneree was incarcerated, the exoneree would have otherwise worked. While there is no simple way to prove that an exoneree would have otherwise worked had he or she not been wrongfully incarcerated, it is not a far-fetched presumption. The number of hours of work required in order to attain one credit, or the maximum of four credits, is not that high. For example, the federal national minimum wage is currently \$7.25.⁷⁵ In 2015, the required minimum amount of earnings needed to accrue the maximum yearly credits is \$4,880.⁷⁶ Dividing \$4,880 by the \$7.25 minimum wage equals 673 hours of work per year, or approximately 13 hours of work per week in order to earn four credits for the year. The average American between the ages of 25 and 54 works 8.9 hours per day, and the average American over the age of 55 works 3.5 hours per day.⁷⁷ Thus, it is likely that exonerees would have also worked a minimum of 13 hours per week had they not been incarcerated.⁷⁸

⁷⁰ See *supra* note 35.

⁷¹ See generally Jeffrey Chinn & Ashley Ratliff, “I Was Put Out the Door with Nothing”—Addressing the Needs of the Exonerated Under a Refugee Model, 45 CAL. W. L. REV. 405, 414-15 (2008-2009) (explaining how the SSDI and SSI programs have helped exonerees in the past).

⁷² *What is Supplemental Security Income?*, SOCIAL SECURITY ADMINISTRATION, <https://www.ssa.gov/ssi/>.

⁷³ See *supra* note 39 and accompanying text (discussing SSDI’s requirement of a recognized disability). See also LOLA VOLLEN & DAVE EGGERS, SURVIVING JUSTICE: AMERICA’S WRONGFULLY CONVICTED AND EXONERATED 112 (2005) (explaining that exonerees suffer from post-traumatic stress disorder and depression, which may qualify them for these programs).

⁷⁴ Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. CHI. L. SCH. ROUNDTABLE 73, 93 (1999).

⁷⁵ *Minimum Wage*, DEPARTMENT OF LABOR, <http://www.dol.gov/whd/minimumwage.htm>.

⁷⁶ *How You Earn Credits*, *supra* note 39.

⁷⁷ *Charts from the American Time Use Survey*, Department of Labor: Bureau of Labor Statistics (Oct. 26, 2015), <http://www.bls.gov/tus/charts/#older>.

⁷⁸ In addition, the actions taken by exonerees while incarcerated and after exoneration may be strong indicators of their work habits. For example, before James Kluppelberg’s wrongful

CONCLUSION

While the remedies currently offered to the Burge exonerees in Illinois are commendable, both remedies could be more fully complemented to address the exonerees' long-term financial challenges. One way to address these financial challenges is by calculating exonerees' future financial losses, and compensating them for those losses. This calculation would inevitably include the loss of OASDI credits. Providing OASDI credits in proportion with the years spent incarcerated is an inexpensive remedy that has the potential to make a significant difference in the lives of exonerees. This remedy may prevent them from falling into poverty and from post-exoneration offending, while at the same time fulfilling society's moral and social obligation to fairly compensate them for their state-inflicted harm.

conviction, he was employed in a maintenance operation for four years. Then, in prison, he held many jobs, including entering data for vehicle registrations; manufacturing mattresses; operating printing machines; doing electrical repairs; and maintaining the prison's plumbing. After his exoneration, he spent his days looking for jobs and nights filling out applications. As to his job search, he said, "My dream would be an apartment-complex maintenance man. That would be really nice." Alison Flowers, *Exoneree Diaries: James Kluppelberg Struggles to Find Work*, WBEZ, Mar. 10, 2014, <http://www.wbez.org/series/exoneree-diaries/exoneree-diaries-james-kluppelberg-struggles-find-work-109829>.