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8 JANE DOE and JOHN DOE, INDIVIDUALLY AND  
9 ON BEHALF OF OTHERS SIMILARLY SITUATED

10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13 **SOUTHERN DIVISION**

14 JANE DOE and JOHN DOE, individually  
15 and on behalf of others similarly situated,

16 Plaintiffs,

17 v.

18 DONALD J. TRUMP, in his individual  
19 and official capacity as President of the  
20 United States; MITCH MCCONNELL, in  
21 his individual and official capacity as a  
22 Senator and Sponsor of S. 3548 CARES  
23 Act; and STEVEN MNUCHIN, in his  
24 individual and official capacity as the  
25 Acting Secretary of the U.S. Department  
26 of Treasury; CHARLES RETTIG, in his  
27 individual and official capacity as U.S.  
28 Commissioner of Internal Revenue; U.S.  
DEPARTMENT OF THE TREASURY;  
the U.S. INTERNAL REVENUE  
SERVICE; and the UNITED STATES OF  
AMERICA,

Defendants.

CASE NO: 8:20-cv-00858-SVW-JEM  
*Assigned to the Hon. Stephen V. Wilson*

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

Action Filed: May 6, 2020

NOW COME Plaintiffs, JANE DOE and JOHN DOE (hereinafter collectively referred to as “Plaintiffs”), individually and on behalf of the proposed class, by and through their attorneys, Blaise & Nitschke, P.C. and Matern Law Group, P.C., and submit their first amended class action complaint against DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH

1 MCCONNELL, in his individual and official capacity as United States Senator and  
2 the Sponsor of S. 3548 CARES Act; STEVEN MNUCHIN, in his individual and  
3 official capacity as the Acting Secretary of the U.S. Department of Treasury,  
4 CHARLES RETTIG, in his individual and official capacity as U.S. Commissioner of  
5 Internal Revenue; U.S. DEPARTMENT OF TREASURY; the U.S. INTERNAL  
6 REVENUE SERVICE; and the UNITED STATES OF AMERICA, (hereinafter  
7 collectively referred to as “Defendants”). In furtherance whereof, Plaintiffs state as  
8 follows:

9 **NATURE OF THE CASE**

10 This is a class action based upon Defendants’ unconstitutional deprivation of  
11 the rights, privileges, benefits and/or protections provided to United States citizens,  
12 via the enactment and subsequent enforcement of the Coronavirus Aid, Relief, and  
13 Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (hereinafter the  
14 “CARES Act”).

15 **PARTIES**

16 1. Plaintiff, JANE DOE, is a U.S. citizen who at all times mentioned in this  
17 Complaint resided in the Central District of California.

18 2. Plaintiff, JOHN DOE, is a U.S. citizen who at all times mentioned in this  
19 Complaint resided in the Central District of California.

20 3. “Jane Doe” and “John Doe” are not Plaintiffs’ actual names, but rather  
21 fictitious names for actual persons as herein described, in order to protect their actual  
22 identities.

23 4. Defendant, DONALD J. TRUMP, in his individual and official capacity  
24 as President of the United States, is the President of the United States who signed into  
25 law the CARES Act on March 27, 2020.

1           5.     Defendant, MITCH MCCONNELL, in his individual and official  
2 capacity as United States Senator, is the Sponsor of the CARES Act, introduced in  
3 the Senate as S. 3548 on March 19, 2020, and signed into law on March 27, 2020.

4           6.     Defendant, STEVEN MNUCHIN, in his individual and official capacity,  
5 is the Acting Secretary of the U.S. Department of Treasury. In that capacity, among  
6 other things, he oversees the collection of revenue, the preparation of plans for the  
7 improvement and management of the revenue and the preparation and report of  
8 estimates of the public revenue and public expenditures. As Secretary, Defendant  
9 Mnuchin exercises full authority to administer and enforce the internal revenue laws  
10 and has the power to create an agency to enforce these laws. As part of his duties,  
11 Defendant Mnuchin oversees the issuance of recovery payments to eligible  
12 individuals under the CARES Act.

13           7.     Defendant, CHARLES RETTIG, in his individual and official capacity  
14 is the United States Commissioner of Internal Revenue Service. In that capacity,  
15 Defendant Rettig administers the application of the internal revenue laws and tax  
16 conventions to which the United States is a party. 26 U.S.C. § 7803. Defendant Rettig  
17 reports to the Secretary of the Treasury Defendant Mnuchin. As part of his duties,  
18 Defendant Rettig oversees the issuance of recovery payments to eligible individuals  
19 under the CARES Act.

20           8.     Defendant, U.S. DEPARTMENT OF THE TREASURY, is an agency of  
21 the U.S. government. The Department of the Treasury operates and maintains  
22 systems that are critical to the nation's financial infrastructure, such as the production  
23 of coin and currency, the disbursement of payments to the American public, revenue  
24 collection, and the borrowing of funds necessary to run the federal government.

25           9.     Defendant, U.S. INTERNAL REVENUE SERVICE, is a bureau of the  
26 U.S. Department of the Treasury organized to carry out the responsibilities of the  
27 Secretary of the Treasury under 26 U.S.C. § 7801. The Internal Revenue Service was  
28

1 created based on the legislative grant of authority to the Secretary of the Treasury to  
2 enforce the internal revenue laws. The IRS calculates and sends recovery payments to  
3 those eligible under the CARES Act.

4 10. Defendant, UNITED STATES OF AMERICA, acted in respect to this  
5 matter through its agencies, U.S. DEPARTMENT OF THE TREASURY and U.S.  
6 INTERNAL REVENUE SERVICE.

7 11. That Defendants are each sued in their individual and official capacities  
8 and are the persons and/or offices most responsible for the conduct alleged herein.

9 12. Each of the Defendants had actual and/or constructive knowledge of the  
10 acts of the other Defendants as described herein, and ratified, approved, joined in,  
11 acquiesced in, and/or authorized the acts of the other, and/or retained the benefits of  
12 the said acts.

13 **JURISDICTION AND VENUE**

14 12. This Court has Federal Question Jurisdiction pursuant to 28 U.S.C. §  
15 1331 because the case arises under the Constitution, laws, or treaties of the United  
16 States.

17 13. Venue is appropriate in the United States District Court for the Central  
18 District of California pursuant to 28 U.S.C. §1391(b) because a substantial part of the  
19 events giving rise to the claims alleged herein occurred in this judicial district.

20 14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1367,  
21 which gives the district court supplemental jurisdiction over state law claims.

22 **STATEMENT OF FACTS**

23 15. This civil rights action challenges the CARES Act on constitutional  
24 grounds. The CARES Act denies tax-paying U.S. citizens their rights, privileges,  
25 benefits and/or protections embodied in section 2201 of the legislation, captioned  
26 “2020 Recovery Rebates for Individuals.”  
27  
28

1           16. The CARES Act was introduced in the United States Senate (the  
2 “Senate”) on March 19, 2020, as S. 3548, by Mitch McConnell (for himself,  
3 Mr. Alexander, Mr. Crapo, Mr. Grassley, Mr. Rubio, Mr. Shelby, and Mr. Wicker).  
4 166 Cong. Rec. S1828 (daily ed. Mar. 19, 2020).

5           17. The CARES Act was signed into law by President Donald J. Trump on  
6 March 27, 2020. *Statement by the President*, WHITEHOUSE.GOV (March 27, 2020)  
7 <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-38/>  
8 (last visited April 24, 2020).

9           18. Among other goals, the CARES Act seeks to provide “direct financial  
10 help for the American people” affected by the 2020 coronavirus pandemic (“COVID-  
11 19”). 166 Cong. Rec. S1828 (daily ed. Mar. 19, 2020).

12           19. The CARES Act payments are being distributed “automatically” and  
13 there is “no action required for most people” to receive the Advance Payment. *See* IR  
14 2020-61, March 30, 2020, attached hereto and incorporated herein as Exhibit A.

15           20. Section 2201 of the CARES Act aims to deliver on this goal by directing  
16 the Internal Revenue Service to disburse so-called 2020 recovery rebates (hereinafter  
17 “the Advance Payments”), with eligibility for and amounts of those Advance  
18 Payments determined based on recipients’ immigration status, filing status for  
19 Federal income tax purposes, and Federal income tax liability. The CARES Act’s  
20 sponsor, Mitch McConnell, spelled out the objective of sending out the Advance  
21 Payments: “to put cash in the hands of the American people” in an effort to “beat  
22 back this virus.” 166 Cong. Rec. S1818 (daily ed. Mar. 19, 2020).

23           21. To allow for the issuance of the Advance Payments, the CARES Act  
24 adds to the Internal Revenue Code of 1986 (“Code”) new section 6428, which  
25 provides for a refundable tax credit in the applicable amount of the Advance Payment  
26 against the given eligible individual’s 2020 Federal income tax liability. CARES Act,  
27 sec. 2201(a).  
28

1           22. Ordinarily, a refundable tax credit in the Code would generate a payment  
2 to the taxpayer, if at all, only upon filing and processing of the return for the  
3 applicable year. That would, however, defer the issuance of the Advance Payments  
4 until 2021, at the earliest, and defeat the legislative intent for authorizing their  
5 issuance in the first place—immediate financial relief. Therefore, Code section  
6 6428(f) provides for the credit to be refunded even before the end of the 2020 tax  
7 year. In form, then, the Advance Payments constitute early payment of the section  
8 6428 refundable tax credit, which otherwise would have become available only in  
9 2021 or later.

10           23. Code section 6428(f)(3) urges the Internal Revenue Service to issue the  
11 Advance Payments “as rapidly as possible.”

12           24. Accordingly, Code section 6428(f)(1) authorizes the Internal Revenue  
13 Service to, in effect, determine eligibility for and applicable amount of the Advance  
14 Payment for an individual based on that individual’s immigration status, filing status,  
15 and tax liability for tax year 2019.

16           25. Moreover, for individuals who have not filed 2019 tax returns at the time  
17 the Internal Revenue Service makes determinations with respect to their Advance  
18 Payments, Code section 6428(f)(5) authorizes the agency to base that determination  
19 on those individuals’ immigration status, filing status, and tax liabilities for tax year  
20 2018.

21           26. An “eligible individual;” i.e., one entitled to receive the Advance  
22 Payment, is any individual other than someone who is a nonresident alien or someone  
23 who can be claimed as a dependent on another individual’s return. Code sec. 6428(d).

24           27. Code section 6428(a) sets the maximum amount of the Advance  
25 Payment equal to the sum of: (1) \$1,200 for each eligible individual (\$2,400 for two  
26 eligible individuals who together file a joint return); and (2) \$500 multiplied by the  
27 number of dependents under the age of 17 claimed on the eligible individual’s return.  
28

1           28. That maximum amount is to be reduced by 5 percent of the amount by  
2 which the given eligible individual's adjusted gross income exceeds a prespecified  
3 threshold, determined by that individual's filing status. That threshold is: \$150,000 if  
4 the individual files a joint return; \$112,500 if the individual files as head of  
5 household; and \$75,000 if the individual files as a single or is not required to file.  
6 Code sec. 6428(c).

7           29. Notwithstanding the preceding eligibility criteria and amount  
8 determinants for Advance Payments, Code section 6428(g) contains an exclusion  
9 provision. It excludes issuance of Advance Payments to any otherwise eligible  
10 individual without a "valid" Social Security number; i.e., one valid for employment  
11 purposes. It similarly excludes Advance Payments on account of dependents lacking  
12 valid Social Security numbers claimed on an eligible individual's return. For a joint  
13 return, the provision requires valid Social Security numbers for both spouses. The  
14 only exception is a joint return where at least one spouse was a member of the U.S.  
15 Armed Forces during "the taxable year," in which case only one spouse need have a  
16 valid Social Security number. Code sec. 6428(g)(3).

17           30. Even though the CARES Act structures the issuance of an Advance  
18 Payment as early payment of a 2020 refundable tax credit, it is evident from the  
19 legislative history as well as the text, context, and structure of the statute that  
20 Congress intended the Advance Payment itself, rather than the credit, as the  
21 substantive relief being provided to taxpayers "to beat back the virus." 166 Cong.  
22 Rec. S1818 (daily ed. Mar. 19, 2020).

23           31. First, as noted above, the CARES Act's sponsor, Mitch McConnell,  
24 underscored the importance of "put[ting] cash in the hands of the American people."

25           32. Second, and also as mentioned earlier, the statutory text charges the  
26 Internal Revenue Service with sending out the Advance Payments "as rapidly as  
27 possible," authorizing the agency to determine eligibility and amounts payable based  
28

1 on immigration status and tax filing information from, alternatively, tax years 2019  
2 and 2018. *See* Code sec. 6428(f)(1), (3), (5).

3 33. Third, the U.S. Department of Treasury stresses, “The CARES Act  
4 Works for All Americans.” U.S. Department of Treasury, *The CARES Act Works for*  
5 *All Americans*, TREASURY.GOV, <https://home.treasury.gov/policy-issues/cares> (last  
6 visited June 2, 2020).

7 34. Finally, Code section 6428(e) provides that if for a given individual,  
8 immigration status and tax filing information for tax year 2020 yield a higher amount  
9 payable than the Advance Payment actually paid out in the calendar year 2020, then  
10 the excess will continue to be available as a refundable credit to be applied against  
11 the individual’s tax liability for tax year 2020. More importantly, however, the  
12 converse does not apply. Therefore, if the Advance Payment actually paid out in  
13 calendar year 2020 exceeds the amount payable as determined by immigration status  
14 and tax filing information for tax year 2020, then the individual is entitled to retain  
15 the entirety of the Advance Payment and is not required to return any portion of the  
16 Advance Credit received. *See* Code sec. 6428(e)(2). In other words, a given  
17 individual’s Advance Payment amount represents the floor of the congressionally  
18 intended relief directed toward that individual.

19 35. The Internal Revenue Service’s determination of an individual’s  
20 eligibility for an Advance Payment and the amount of that Advance Payment  
21 constitutes “final agency action” within the meaning of the Administrative Procedure  
22 Act (APA), 5 U.S.C.A. § 704.

23 36. Congress has appropriated approximately \$300 billion for the payment  
24 of the Advance Payments. CARES Act, sec. 2201(f).

25 37. The Advance Payment has already been issued to one hundred million  
26 Americans.



1           38. There are 1.2 million Americans married to immigrants who do not hold  
2 Social Security numbers. *Profile of the Unauthorized Population: United States*,  
3 MIGRATION POLICY INSTITUTE, [https://www.migrationpolicy.org/data/unauthorized-](https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US)  
4 [immigrant-population/state/US](https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US) (last visited May 29, 2020).

5           39. Of these 1.2 million Americans, those who file joint tax returns and are  
6 not in the military are ineligible for an Advance Payment and deprived of the right(s),  
7 benefit(s) and/or privilege(s) conferred upon all other U.S. citizens who otherwise  
8 qualify.

9           40. Plaintiff Jane Doe is a U.S. citizen who earns less than \$75,000 in  
10 adjusted gross income, whose children are also U.S. citizens, and is excluded from  
11 the government's \$300 billion coronavirus financial relief package because she files  
12 her taxes jointly with her spouse, an immigrant who does not have a Social Security  
13 number.

14           41. Plaintiff Jane Doe is married to an immigrant who pays taxes and files  
15 tax returns with an Individual Taxpayer Identification Number. The couple file joint  
16 tax returns and neither is in the military.

17           42. Had Plaintiff Jane Doe not been married to an immigrant with an  
18 Individual Taxpayer Identification Number, Plaintiff and her children would have  
19 qualified for an Advance Payment.

20           43. Plaintiff John Doe is a U.S. citizen who earns less than \$75,000 in  
21 adjusted gross income, whose children are also U.S. citizens, and is excluded from  
22 the government's \$300 billion coronavirus financial relief package because he files  
23 her taxes jointly with his spouse, an immigrant who does not have a Social Security  
24 number.

25           44. Plaintiff John Doe is married to an immigrant who pays taxes and files  
26 tax returns with an Individual Taxpayer Identification Number. The couple file joint  
27 tax returns and neither is in the military.

28

1 45. Had Plaintiff John Doe not been married to an immigrant with an  
2 Individual Taxpayer Identification Number, Plaintiff and his children would have  
3 qualified for an Advance Payment.

4 **CLASS ACTION ALLEGATIONS**

5 46. Plaintiffs bring this claim individually and on behalf of the following  
6 putative classes:

7 **All United States Citizens married to immigrants that file**  
8 **joint taxes wherein the immigrant-spouses file tax returns**  
9 **using an Individual Taxpayer Identification Number who**  
10 **would have otherwise qualified for the Advance Payment.**

11 47. The Class (“Class”) is so numerous that joinder of all individual  
12 members (individually, “Class Member” or collectively, “Class Members”) in one  
13 action would be impracticable, given the expected Class size and modest value of  
14 individual claims.

15 48. There are more than 1.2 million Americans that are married to  
16 immigrants who lack Social Security numbers.

17 49. Of the 1.2 million Americans, those who file joint tax returns and are not  
18 in the military would meet the above-referenced Class definition.

19 50. Class Members can be identified through Defendants’ records.

20 51. Plaintiffs’ claims are typical of the claims of the Class Members, as they  
21 are based on the same legal theory and arise from the same unlawful conduct.

22 52. There are common questions of law and fact affecting Class Members,  
23 which common questions predominate over questions that may affect individual  
24 members. These common questions include, but are not limited to:

- 25 a. Whether and to what extent Defendants have deprived Class  
26 Members of their First Amendment Rights; Equal Protection and Due  
27 Process under the Law;

- b. Whether and to what extent Defendants have deprived Class Members of their property interest;
- c. Whether and to what extent Defendants have deprived Class Members of their rights, privileges, and immunities secured by the Constitution of the United States;
- d. Whether Class members are entitled to actual damages, statutory damages, and/or punitive damages as a result of Defendants' wrongful conduct;
- e. Whether Class Members are entitled to injunctive relief to redress the imminent and currently ongoing harm faced as a result of their exclusion from the CARES Act; and
- f. Whether or not Class Members are entitled to Declaratory Judgment relating to their classification and exclusion, among others, under the CARES Act.

53. Plaintiffs will fairly and adequately represent the Class Members. Plaintiffs have no interests that conflict with the interests of Class Members. Plaintiffs have retained counsel experienced in handling civil rights cases, class actions, and tax litigation. Neither Plaintiffs nor their counsel have any interests that might cause them not to pursue these claims vigorously.

54. This action should be maintained as a class action because the prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual members that would establish incompatible standards of conduct for the parties opposing the Class.

**COUNT I**  
**Violation(s) of United States Constitution**  
**(On Behalf of Plaintiffs and the Class)**

55. Plaintiffs re-allege and incorporate paragraphs 1-54 of this Complaint as though fully set forth herein.

1           56. The Defendants, in their individual and official capacities as President of  
2 the United States, Senator and Sponsor of the CARES Act in the United States, and  
3 Acting Secretary of the U.S. Department of Treasury, violated Plaintiffs’ procedural  
4 and substantive due process rights and deprived Plaintiffs of their rights, privileges,  
5 and immunities secured by the Constitution of the United States.

6           57. The Defendants have engaged and continue to engage in behavior that  
7 violates Plaintiffs’ constitutional property interest rights individually and as taxpayers  
8 in the United States and have thereby irreparably injured Plaintiffs.

9           58. Defendants, acting under color of law, have violated rights secured to  
10 Plaintiffs by the First, Fifth, and Fourteenth Amendments to the United States  
11 Constitution including the right of association, the right to due process of law, the  
12 right to equal protection under the law, and the penumbra of privacy rights created by  
13 the First, Third, Fourth, and Fifth Amendments that creates a fundamental right to  
14 marriage. Specifically, Defendants have failed, as applied to Plaintiffs, to treat them  
15 as equal to their fellow United States citizens based solely on whom they chose to  
16 marry.

17           59. Plaintiffs have lawfully filed taxes in the United States, yet they are  
18 being denied the rights and privileges under the CARES Act.

19           60. Similarly situated U.S. citizens who are not married to immigrants and  
20 who filed joint tax returns have not been denied such rights and privileges under the  
21 “CARES” Act.

22           61. Plaintiffs bring this action against Defendants in their individual and  
23 official capacities for purposes of seeking declaratory and injunctive relief and  
24 challenges the practices and policies of discrimination both facially and as applied to  
25 them, individually, and as the putative Class Plaintiffs.

26           62. The Fifth Amendment to the United States Constitution provides that no  
27 person shall be “deprived of life, liberty or property without due process of law.” U.S.  
28

1 Const. amend. V.

2 63. The Fourteenth Amendment to the United States Constitution,  
3 enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall “deny to any  
4 person within its jurisdiction the equal protection of the laws.” U.S. Const. amend.  
5 XIV, § 1. In addition, the Privileges and Immunities Clause of the Fourteenth  
6 Amendment states that “the citizens of each state shall be entitled to all privileges and  
7 immunities of citizens in the several states.” U.S. Const. amend. XIV, § 1 Clause 2.  
8 Although the Fourteenth Amendment expressly applies to the State, it has been  
9 construed to apply to the Federal Government through the Reverse Incorporation  
10 Doctrine under *Bolling v. Sharpe*, 347 U.S. 497 (1954) and its progeny. *See Brown v.*  
11 *Board of Education of Topeka*, 347 U.S. 483 (1954); *Adarand Constructors, Inc. v.*  
12 *Peña* 515 U.S. 200 (1995) (applying strict scrutiny to the federal government based  
13 on equal protection grounds).

14 **Marriage as a Fundamental Right Emanating From**  
15 **Our First, Fifth, and Fourteenth Amendments**

16 64. The Supreme Court has reiterated in numerous contexts that the right to  
17 marry is a fundamental right under the Due Process Clause. *See, e.g., M. L. B. v. S. L.*  
18 *J.*, 519 U.S. 102, 116, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996); *Cleveland Bd. of*  
19 *Ed. v. LaFleur*, 414 U.S. 632, 639-640, 94 S. Ct. 791, 39 L. Ed. 2d 52  
20 (1974); *Griswold, supra*, at 486, 85 S. Ct. 1678, 14 L. Ed. 2d  
21 510; *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541, 62 S. Ct. 1110, 86  
22 L. Ed. 1655 (1942); *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed.  
23 1042 (1923).

24 65. Discrimination based on the fundamental right to marry is presumptively  
25 unconstitutional and subject to strict scrutiny.

26 66. The First Amendment to the U.S. Constitution states: “Congress shall  
27 make no law respecting an establishment of religion, or prohibiting the free exercise  
28 thereof; or abridging the freedom of speech, or of the press; or the right of the people

1 peaceably to assemble, and to petition the Government for a redress of grievances.”  
2 U.S. Const. amend. I.

3 67. Specific guarantees in the Bill of Rights have penumbras, formed by  
4 emanations from those guarantees that help give them life and substance. Various  
5 guarantees create zones of privacy. The right of association contained in the  
6 penumbra of the First Amendment is one of those fundamentally protected zones of  
7 privacy. *Griswold v. Connecticut*, 381 U.S. 479, 480, 85 S. Ct. 1678, 1679 (1965).

8 68. The right of privacy was first recognized as protected by the Constitution  
9 in *Griswold v. Connecticut*, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965),  
10 wherein the *Griswold* Court began by noting that “specific guarantees in the Bill of  
11 Rights have penumbras, formed by emanations from those guarantees that help give  
12 them life and substance.” 381 U.S. at 484.

13 69. The *Griswold* opinion stressed the sanctity of marriage lying within the  
14 zone of privacy created by several fundamental constitutional guarantees. *Griswold v.*  
15 *Connecticut*, 381 U.S. 479, 485, 85 S. Ct. 1678, 1682 (1965)

16 70. Defendants discriminate against Plaintiffs on the basis of their  
17 fundamental rights of marriage.

18 71. The CARES Act provision at issue, on its face and as applied, or  
19 threatened to be applied, violates the First Amendment of the United States  
20 Constitution; Due Process Clause of the Fifth Amendment; Equal Protection and  
21 Privileges and Immunities afforded under the Fourteenth Amendment under Reverse  
22 Incorporation Doctrine; and the well-established fundamental right to marry.

23 72. The First, Fifth, and Fourteenth Amendments all amount to well-  
24 established constitutional rights of which a reasonable person would have known was  
25 violated personally and officially by the Defendants.

1 73. Defendants have no compelling interest justifying their policies of  
2 discrimination based on marriage, and they cannot show that these classifications are  
3 necessary to serve any legitimate governmental interest.

4 74. The Defendants treat Plaintiffs differently than U.S. Citizens who file  
5 jointly with other U.S. Citizens, who are similarly situated.

6 75. The CARES Act singles out law-abiding and tax-paying U.S. Citizens  
7 by excluding them from a benefit they and their children would otherwise be entitled  
8 to with no compelling interest justifying the law and without serving any legitimate  
9 governmental interest.

10 76. Sec. 6428 is not narrowly tailored to advance a compelling government  
11 interest, nor is it rationally related to any legitimate government interest.

12 77. Accordingly, the CARES Act provision at issue violates the First  
13 Amendment to the United States Constitution; Due Process Clause of the Fifth  
14 Amendment to the United States Constitution; Equal Protection and Privileges and  
15 Immunities under the Fourteenth Amendment under the Reverse Incorporation  
16 Doctrine; and the well-established fundamental right to marry.

17 **Alienage as a Suspect Class**

18 78. “[Classifications] based on alienage, like those based on nationality or  
19 race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are  
20 a prime example of a ‘discrete and insular’ minority . . . for whom such heightened  
21 judicial solicitude is appropriate.” *Graham v. Richardson*, 403 U.S. 365, 372  
22 (1971) (footnotes and citations omitted).

23 79. Discrimination based on the alienage of a U.S. citizen’s spouse is  
24 presumptively unconstitutional and subject to strict scrutiny.

25 80. Defendants discriminate against Plaintiffs on the basis of the alienage of  
26 their spouses.

1 81. The CARES Act provision at issue, on its face and as applied, or  
2 threatened to be applied, violates the First Amendment to the United States  
3 Constitution; Due Process Clause of the Fifth Amendment; Equal Protection and  
4 Privileges and Immunities under the Fourteenth Amendment under the Reverse  
5 Incorporation Doctrine; and the well-established fundamental right to marry.

6 82. Defendants have no compelling interest justifying their policies of  
7 discrimination based on the marriage to a non-U.S. Citizen, and they cannot show  
8 that this suspect class is necessary to serve any legitimate governmental interest.

9 83. The Defendants treat Plaintiffs differently than U.S. Citizens who marry  
10 other U.S. Citizens, who are similarly situated.

11 84. Sec. 6428 is not narrowly tailored to advance a compelling government  
12 interest, nor is it rationally related to any legitimate government interest.

13 85. Accordingly, the CARES Act provision at issue violates the First  
14 Amendment of the United States Constitution; Due Process Clause of the Fifth  
15 Amendment to the United States Constitution; Equal Protection and Privileges and  
16 Immunities under the Fourteenth Amendment under the Reverse Incorporation  
17 Doctrine; and the well-established fundamental right to marry.

18 **COUNT II**

19 **Action for Temporary Restraining Order (“TRO”);**  
20 **Preliminary and Permanent Injunction;**  
21 **and Declaratory Relief Against All Defendants**  
**(On Behalf of Plaintiffs and the Class)**

22 86. Plaintiffs re-allege and incorporate paragraphs 1-85 of this Complaint as  
23 though fully set forth herein.

24 87. Plaintiffs seek the entry of a temporary restraining order, preliminary  
25 and permanent injunction, and Declaratory Relief, including but not limited to the  
26 following:  
27  
28



- 1 a. Issue a temporary, preliminary and permanent injunction against the
- 2 Defendants and all those acting in concert prohibiting enforcement of
- 3 the laws, as applied, at issue in this action; and
- 4 b. Issue a declaratory judgment that the CARES Act provision at issue
- 5 in this case, as applied to Plaintiffs and the putative class, violates the
- 6 constitutional and statutory rights of Plaintiffs and denies Plaintiffs
- 7 the privileges and immunities to which they would otherwise be
- 8 entitled.

9 88. Plaintiffs have no adequate remedy at law and is suffering irreparable  
10 harm. There is no harm to the Defendants by this Court granting an injunction  
11 prohibiting enforcement of the challenged CARES Act provision. Meanwhile, the  
12 harm to Plaintiffs is severe. The public interest is clearly served by this Court acting  
13 to order recognition of U.S. Citizens and their children consistent with the manner in  
14 which the Federal Government treats similarly situated U.S. Citizens, without regard  
15 to their marital status. Only prompt action by this federal Court ordering declaratory  
16 and injunctive relief will serve the public interest.

17 89. Injunctive relief is appropriate under the circumstances because  
18 Defendants have intentionally excluded otherwise eligible U.S. Citizens from  
19 receiving the Advance Payment and more damaging, excluding them from a benefit  
20 conferred upon all other U.S. Citizens simply because of whom they chose to marry,  
21 which is facially discriminatory and retributive.

22 90. Plaintiffs have suffered, and will continue to suffer, immediate and  
23 irreparable harm by reason of the conduct described above. Such immediate and  
24 irreparable harm includes, but is not limited to, meeting the basic necessities of life,  
25 including the ability to put food on the table, paying rent, insurance, health insurance,  
26 and loss of privacy, reputation in the community, and dignity.

1 91. Plaintiffs do not have an adequate remedy at law to protect and re-  
2 establish the rights which currently have been, and continue to be, violated by  
3 Defendants' actions. Plaintiffs' rights cannot be obtained except through injunctive  
4 relief.

5 92. Entering the injunctive relief that Plaintiffs are seeking will cause the  
6 Defendants no harm.

7 93. Defendants will suffer no loss, if compelled to act in accordance with the  
8 law, by refraining from discriminating against U.S. Citizens based upon their marital  
9 status to immigrants.

10 94. There is a reasonable likelihood that the Plaintiffs will succeed on the  
11 merits of their claims.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs JANE DOE and JOHN DOE, individually and on  
14 behalf of the proposed Class, by and through their attorneys, pray for relief as  
15 follows:

- 16 a. For an Order certifying this action as a class action and appointing Plaintiffs  
17 and their Counsel to represent the Class;
- 18 b. An Order granting Blaise & Nitschke, P.C., Matern Law Group, P.C.,  
19 \*Khalaf & Abuzir, LLC, and \*Moore Tax Law Group, LLC as class  
20 counsel;
- 21 c. A temporary, preliminary and/or permanent injunction against the  
22 Defendants, and all those acting in concert, prohibiting enforcement of the  
23 laws as written and instead applying the provision as follows;
- 24 i. Issuing a Temporary Restraining Order to CARES Act Section 2101  
25 to be applied as follows:  
26  
27  
28

1 “(a) In General.—Subchapter B of chapter 65 of subtitle F of the  
2 Internal Revenue Code of 1986 is amended by inserting after section  
3 6427 the following new section:

4 SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS  
5 [. . .]

6 “(h) Identification Number Requirement.—

7 “(1) IN GENERAL.—No credit shall be allowed under  
8 subsection (a) to an eligible individual who does not include on  
9 the return of tax for the taxable year—

10 “(A) such individual’s valid identification number,

11 “(B) in the case of a joint return, the valid identification  
12 number ~~of such individual’s spouse~~ for at least one of the filing  
13 spouses, and

14 “(C) in the case of any qualifying child taken into account  
15 under subsection (b)(1)(B), the valid identification number of  
16 such qualifying child.

17 “(2) VALID IDENTIFICATION NUMBER.—

18 “(A) IN GENERAL.—For purposes of paragraph (1), the term  
19 ‘valid identification number’ means a social security number  
20 (as such term is defined in section 24(h)(7)).

21 ii. Issuing a Preliminary and Permanent Injunction amending the  
22 CARES Act as identified above and enjoining Defendants from  
23 affixing any new terms to the CARES Act, or any future legislation  
24 designed to provide economic stimulus to United States citizens that  
25 excludes mixed immigration status families.

26 d. A determination that the Exclusion Provision is unconstitutional and should  
27 not be enforced;

28

- 1 e. Issue a declaratory judgment that the CARES Act provision at issue in this  
2 case is subject to strict scrutiny;
- 3 f. Issue a declaratory judgment that the CARES Act provision at issue in this  
4 case, as applied to the Plaintiffs, violates the constitutional and statutory  
5 rights of Plaintiffs;
- 6 g. Issue a declaratory judgment striking from the CARES Act those provisions  
7 that are violative of the protections afforded to Plaintiff and those similarly  
8 situated under the United States Constitution, federal statutes, and those  
9 cases interpreting the same under which this Court is bound under the  
10 principles of *stare decisis*;
- 11 h. Enter an Order requiring the Defendants treat Plaintiffs and the Putative  
12 Class equally in extending disbursement of the Advance Payment equally to  
13 Plaintiffs and the Putative Class; *Heckler v. Matthews* 465 U.S. 728, 740  
14 (1984); (quoting *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247  
15 (1931);
- 16 i. For an award of attorneys' fees and costs; and
- 17 j. Such other and further relief as this court may deem just and proper.

18 **JURY DEMAND**

19 Plaintiffs respectfully demand a trial by jury of all matters so triable.

20 **DOCUMENT PRESERVATION DEMAND**

21 Plaintiffs hereby demand that Defendants take affirmative steps to preserve all  
22 recordings, data, documents, and all other tangible things that relate to Plaintiffs and  
23 the putative class and the events described herein. These materials are likely very  
24 relevant to the litigation of this claim. If Defendants are aware of any third party that  
25 has possession, custody, or control of any such materials, Plaintiffs demand that  
26 Defendants request that such third party also take steps to preserve the materials. This  
27  
28

1 demand shall not narrow the scope of any independent document preservation duties  
2 of the Defendants.

3 **NOTICE OF LIEN AND ASSIGNMENT**

4 All rights relating to attorneys' fees have been assigned to counsel.

5 DATED: June 3, 2020

Respectfully submitted,

6 JANE DOE and JOHN DOE, individually and  
7 on behalf of others similarly situated.

8  
9 By: /s/ Heather L. Blaise

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forthcoming



# Economic impact payments: What you need to know

*Updated with new information for seniors, retirees on April 1, 2020. Also see [Treasury news release](#).*

## **Check IRS.gov for the latest information: No action needed by most people at this time**

IR-2020-61, March 30, 2020

WASHINGTON — The Treasury Department and the Internal Revenue Service today announced that distribution of economic impact payments will begin in the next three weeks and will be distributed automatically, with no action required for most people. However, some taxpayers who typically do not file returns will need to submit a simple tax return to receive the economic impact payment.

### **Who is eligible for the economic impact payment?**

Tax filers with adjusted gross income up to \$75,000 for individuals and up to \$150,000 for married couples filing joint returns will receive the full payment. For filers with income above those amounts, the payment amount is reduced by \$5 for each \$100 above the \$75,000/\$150,000 thresholds. Single filers with income exceeding \$99,000 and \$198,000 for joint filers with no children are not eligible. Social Security recipients and railroad retirees who are otherwise not required to file a tax return are also eligible and will not be required to file a return.

Eligible taxpayers who filed tax returns for either 2019 or 2018 will automatically receive an economic impact payment of up to \$1,200 for individuals or \$2,400 for married couples and up to \$500 for each qualifying child.

### **How will the IRS know where to send my payment?**

The vast majority of people do not need to take any action. The IRS will calculate and automatically send the economic impact payment to those eligible.

For people who have already filed their 2019 tax returns, the IRS will use this information to calculate the payment amount. For those who have not yet filed their return for 2019, the IRS will use information from their 2018 tax filing to calculate the payment. The economic impact payment will be deposited directly into the same banking account reflected on the return filed.

### **The IRS does not have my direct deposit information. What can I do?**

In the coming weeks, Treasury plans to develop a web-based portal for individuals to provide their banking information to the IRS online, so that individuals can receive payments immediately as opposed to checks in the mail.

### **I am not typically required to file a tax return. Can I still receive my payment?**

Yes. The IRS will use the information on the Form SSA-1099 or Form RRB-1099 to generate Economic Impact Payments to recipients of benefits reflected in the Form SSA-1099 or Form RRB-1099 who are not required to file a tax return and did not file a return for 2018 or 2019. This includes senior citizens, Social Security recipients and railroad retirees who are not otherwise required to file a tax return.

Since the IRS would not have information regarding any dependents for these people, each person would receive \$1,200 per person, without the additional amount for any dependents at this time.

### **I have a tax filing obligation but have not filed my tax return for 2018 or 2019. Can I still receive an economic impact payment?**

Yes. The IRS urges anyone with a tax filing obligation who has not yet filed a tax return for 2018 or 2019 to file as soon as they can to receive an economic impact payment. Taxpayers should include direct deposit banking information on the return.

### **I need to file a tax return. How long are the economic impact payments available?**

For those concerned about visiting a tax professional or local community organization in person to get help with a tax return, these economic impact payments will be available throughout the rest of 2020.

### **Where can I get more information?**

The IRS will post all key information on [IRS.gov/coronavirus](https://www.irs.gov/coronavirus) as soon as it becomes available.

The IRS has a reduced staff in many of its offices but remains committed to helping eligible individuals receive their payments expeditiously. Check for updated information on [IRS.gov/coronavirus](https://www.irs.gov/coronavirus) rather than calling IRS assistors who are helping process 2019 returns.