IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, individually and on behalf of others similarly situated, Plaintiff, v. DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as a Senator and Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury, Defendants.	)	Case No. 1:20-cv-02531 SJC JURY DEMANDED

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND/OR DECLARATORY JUDGMENT

NOW COMES Plaintiff, John Doe, (hereinafter "Doe" or "Plaintiff"), individually and on behalf of the proposed class, by and through his attorneys, Blaise & Nitschke, P.C. and Khalaf & Abuzir, LLC, and pursuant to Federal Rule of Civil Procedure 65 and submits his Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment ("Emergency Motion").

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INTRODUCTION

This Emergency Motion seeks an Order prohibiting Defendants, DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as United States Senator and the Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury (hereinafter collectively referred to as "Defendants"), from enforcement of the S. 3548-Coronavirus Aid, Relief, and Economic Security Act (hereinafter "CARES Act") as written and as applied to the Plaintiff and the putative class (hereinafter "Putative Class") in this action. The Emergency Motion further requests a declaratory judgment that the CARES Act provision at issue in this case, as written and as applied to Plaintiff and the Putative Class, violates the First Amendment to the U.S. Constitution; the Due Process Clause of the Fifth Amendment to the U.S. Constitution; Equal Protection and Privileges and Immunities under the Fourteenth Amendment to the U.S. Constitution under the Reverse Incorporation Doctrine; the well-established fundamental right to marry; and denies Plaintiff and the Putative Class rights, privileges, immunities, and/or benefits to which they would otherwise be entitled.

PROCEDURAL HISTORY

1. On April 24, 2020, Plaintiff filed a class action complaint against Defendants (the "Complaint"). *See* Dkt No. 1.

2. On April 27, 2020, Plaintiff filed his First Amended Class Action Complaint (the "First Amended Complaint") against Defendants. *See* Dkt. No. 11.

3. On April 29, 2020, Plaintiff effectuated service of the First Amended Complaint on Defendants. See Dkt. No. 12.

THE EXIGENT FACTS THAT NECESSITATE THIS MOTION

4. On March 11, 2020, the World Health Organization's Director General categorized the current coronavirus (hereinafter "COVID-19") outbreak as a pandemic (hereinafter the "Pandemic"). *WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020*, WORLD HEALTH ORGANIZATION (March 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020 (last visited April 30, 2020).

5. On March 13, 2020, President Donald J. Trump, proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, WHITEHOUSE.GOV (March 13, 2020), https://www.whitehouse.gov/presidential-actions/ proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/(last visited April 30, 2020).

6. As of April 29, 2020, the Center for Disease Control and Prevention reported 1,005,147 Covid-19 Cases in the United States. *Coronavirus Disease 2019 (COVID-19): Cases in the US*, CDC.GOV (April 29, 2020), https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last visited April 30, 2020).

7. According to the U.S. Department of Labor, as of March 2020, the unemployment rate increased by 0.9 percentage point to 4.4 percent – the largest over-the-month increase in the rate since January 1975. *News Release: The Employment Situation – March 2020*, BUREAU OF LABOR STATISTICS (April 3, 2020), https://www.bls.gov/news.release/pdf/empsit.pdf (last visited April 30, 2020).

8. The number of unemployed persons rose by 1.4 million to 7.1 million in March 2020. The sharp increases in these measures reflect the effects of COVID-19 and efforts to contain it. *Id.*

9. According to the U.S. Department of Labor, as of Thursday April 23, 2020, the insured unemployment rate was 11% for the week ending April 11, 2020, which is the highest seasonally adjusted insured unemployment rate in the history of the seasonally adjusted series. *See Unemployment Insurance Weekly Claims*, DEPARTMENT OF LABOR (April 23, 2020), https://www.dol.gov/ui/data.pdf (last visited April 29, 2020).

10. Morgan Stanley has forecast that the unemployment rate should top 15% in April 2020 and it predicts the U.S. will experience a 16.4% unemployment rate in May, "higher than any point since the Great Depression." Charisse Jones, *Jobless Claims May Reach 30 Million in Six Weeks as COVID-19 Layoffs Continue to Soar*, USA TODAY (April 29, 2020), https://www.usatoday.com/story/money/2020/04/29/coronavirus-likely-lead-another-3-5-million-file-jobless-claims/3037057001 (last visited April 30, 2020).

11. Jobless claims have reached 22 million, and the Federal Reserve estimates that up to 47 million jobs could be lost. Alexander Kalev, *Research: U.S. Unemployment Rising Faster for Women and People of Color*, HARVARD BUSINESS REVIEW (April 20, 2020) https://hbr.org/2020/04/research-u-s-unemployment-rising-faster-for-women-and-people-of-color (last visited April 30, 2020).

12. More troubling is that women and minorities are overrepresented in industries at high risk of layoffs, such as retail, hospitality, recreation, and manufacturing. *Id; see also Foreign-Born Workers: Labor Force Characteristics – 2018*, BUREAU OF LABOR STATISTICS (May 16, 2019), https://www.bls.gov/news.release/pdf/forbrn.pdf (last visited April 30, 2020).

13. Additionally, women and minorities are in greater danger of losing their jobs in these troubled times not only because they work in high-layoff-risk industries but also because most companies reflexively put them at the top of their layoff lists. Kalev, *supra*.

14. In 2018, median usual weekly earnings of foreign-born, full-time wage and salary workers were 83.3 percent of the earnings of their native-born counterparts. Bureau of Labor Statistics, *supra*.

15. Further, many parents, like our Plaintiff, must elect to have at least one parent stay home to care for their minor children that are now unable to attend school due to COVID-19 closures, resulting in loss of family income. *See* Affidavit of Plaintiff John Doe, attached hereto and incorporated herein as Exhibit A, redacted to preserve Plaintiff's anonymity, and available for this Court's *in camera* review

16. As outlined in the First Amended Complaint, the CARES Act was introduced in the United States Senate (the "Senate") on March 19, 2020 by Mitch McConnell (for himself, Mr. Alexander, Mr. Crapo, Mr. Grassley, Mr. Rubio, Mr. Shelby, and Mr. Wicker). S. 3548, 116th Cong. (2020).

17. The CARES Act was signed into law by President Donald J. Trump on March 27, 2020. *See* Dkt No. 2.

18. The CARES Act full title reads: "To ***provide emergency assistance*** and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic." S. 3548, 116th Cong. (2020) (*emphasis added*).

19. During the House of Representatives debate on the CARES Act, Representative TJ Cox highlighted what he called "this bill's glaring shortcomings" which included the fact that

the bill "punishes mixed-status households and denies some American citizens benefits they deserve." 166 Cong. Rec. H1841 (daily ed. Mar. 27, 2020) (statement of Rep. Cox of CA).

20. Section 2101 of the CARES Act amends Subchapter B of chapter 65 of subtitle F of the Internal Revenue Code of 1986 by inserting a new section relating to the Pandemic, entitled SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS ("Section 6428"). Section 6428 (a) provides stimulus payments (hereinafter "Stimulus Check") to individuals. Under section 6428 (a) each "eligible individual" receives $1,200, and "eligible individuals filing a joint return" receive $2,400. Section 6428 (a)(2) provides each eligible individual an additional $500 for each of the individual's "qualifying children." Section 6428 (c) lessens these amounts for individuals making more than $75,000 and married couples filing jointly who make more than $150,000.

21. Under the new Section 6428 (h) the Identification Number Requirements for eligibility for the Stimulus Check are defined as follows:

> h) Identification Number Requirement.—
>
> "(1) IN GENERAL.—No credit shall be allowed under subsection (a) to an eligible individual who does not include on the return of tax for the taxable year—
>
> "(A) such individual's valid identification number,
>
> **"(B) in the case of a joint return, the valid identification number of such individual's spouse, and** [(hereinafter the "Exclusion Provision")]
>
> "(C) in the case of any qualifying child taken into account under subsection (b)(1)(B), the valid identification number of such qualifying child.
>
> "(2) VALID IDENTIFICATION NUMBER.—
>
> "(A) IN GENERAL.—For purposes of paragraph (1), **the term 'valid identification number' means a social security number** (as such term is defined in section 24(h)(7)).

> "(B) ADOPTION TAXPAYER IDENTIFICATION NUMBER.—For purposes of paragraph (1)(C), in the case of a qualifying child who is adopted, the term 'valid identification number' shall include the adoption taxpayer identification number of such child.

S. 3548, 116th Cong. § 2101(a) (2020) (**emphasis added**).

22. As written, Section 6428(h) only permits a joint filing married citizen to receive a Stimulus Check if both parties to the marriage possess Social Security numbers – an unlawful exclusion of Plaintiff and the Putative Class.

23. The CARES Act was enacted explicitly to provide *emergency assistance* to American citizens, and Plaintiff and the Putative Class have intentionally been excluded from the group of citizens entitled to such assistance because they filed tax returns with their spouses, who lack Social Security numbers. Moreover, more than 80 million qualifying Americans should have already received their Stimulus Checks, and the remaining qualifying Americans (other than Plaintiff and the Putative Class) should receive them on or about April 29, 2020 and May 5, 2020. *See* Michelle Singletary, *If You're Still Waiting on Your $1,200 Stimulus Check, Here are Key Dates for the Next Set of Payments*, THE WASHINGTON POST (April 27, 2020) https://www.washingtonpost.com/business/2020/04/27/more-1200-stimulus-checks-are-way-here-are-key-dates-next-set-payments/ (last visited April 30, 2020).

24. As the supporting declarations attached to this Motion make clear, Plaintiff and other similarly situated individuals are suffering grave economic hardships that will be ameliorated by treating them similarly to their fellow U.S. Citizens. *See* Exhibit A.

25. Specifically, due to the Pandemic, Plaintiff's monthly family income has been reduced to the point that it is extremely difficult to make ends meet; with his minor child's

school closure as a result of the Pandemic and the requirements of e-learning, his wife has been forced to remain at home with their two (2) minor children, who are also U.S. citizens, and is unable to work outside the home. *See* Exhibit A. While it has always been difficult to provide a decent life for his family with the income he earns, it is now nearly impossible to meet his financial obligations for the minimum necessities of life, including the ability to put food on his family's table. *See id*. Indeed, Plaintiff's food expenses have significantly increased as a result of his minor child being home from school. *See id.* Plaintiff is on the verge of being unable to pay his mortgage, and his insurance premiums and health insurance deductibles. *See id.* The CARES Act stimulus check would make it possible to meet some of his family's basic necessities during the Pandemic. *See id.*

26. To be eligible to receive a payment, an individual:

- must be a U.S. citizen, permanent resident or qualifying resident alien;
- cannot be claimed as a dependent on someone else's return;
- must have a Social Security number ("SSN") that is valid for employment ("valid SSN")
    - Exception: If either spouse is a member of the U.S. Armed Forces at any time during the taxable year, then only one spouse needs to have a valid SSN;

  and
- must have an adjusted gross income below an amount based on his or her filing status and the number of his or her qualifying children.

See Dkt No. 11.

27. Any family that files a joint tax return where one of the spouses has a Social Security number and one has an Individual Taxpayer Identification Number, which the Internal Revenue Service issues to workers who lack Social Security numbers, cannot receive a Stimulus Check — unless one spouse is a member of the U.S. Armed Forces. *See* Dkt No. 11.

28. An Individual Taxpayer Identification Number ("ITIN") is a tax processing number issued by the Internal Revenue Service. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible

to obtain, a Social Security number from the Social Security Administration. I.R.C. § 6109; Treas. Reg. § 301.6109-1(a)(1)(ii)(B). Individuals who are present in the United States without formally completing the immigration process may nevertheless be issued an ITIN for the purpose of paying their taxes. An ITIN does not confer any immigration status or provide work authorization or eligibility for social services programs. *Instructions for Form W-7*, INTERNAL REVENUE SERVICE (September 2019), https://www.irs.gov/pub/irs-pdf/iw7.pdf (last visited April 30, 2020). Federal law generally requires all wage earners to file tax returns and use an identification number. I.R.C. § 1. Individuals apply for an ITIN by submitting a W-7 form and a completed tax return to the IRS. I.R.C. § 6109.

29. The ITIN application process is not an immigration enforcement tool, and the IRS is prohibited by law from sharing any taxpayer information with any other governmental agencies. I.R.C. § 6103(a). An estimated 4.3 million adults file taxes using an ITIN. *How the Tax Rebate in the Senate's Bill Compares to Other Proposals*, INSTITUTE ON TAXATION AND ECONOMIC POLICY (March 25, 2020), https://itep.org/how-the-tax-rebate-in-the-senates-bill-compares-to-other-proposals/ (last visited April 30, 2020).

30. The IRS estimates ITIN tax filers pay over $9 billion in annual payroll taxes. *IRS Nationwide Tax Forum: Immigration and Taxation*, INTERNAL REVENUE SERVICE (2014), https://www.irs.gov/pub/irs-utl/20-Immigration%20and%20Taxation.pdf (last visited April 30, 2020).

31. In addition, the IRS notes that the following categories of individuals who are present in the United States legally must pay taxes but *may not* be eligible for a SSN and may obtain an ITIN:

a. A non-resident foreign national who owns or invests in a U.S. business and receives taxable income from that U.S. business, but lives in another country;

b. A foreign national student who qualifies as a resident of the United States (based on days present in the United States);

c. A dependent or spouse of a U.S. citizen or lawful permanent resident; and

d. A dependent or spouse of a foreign national on a temporary visa such as a H-4 and J-2.

Individual Taxpayer Identification Number, INTERNAL REVENUE SERVICE (April 16, 2020), https://www.irs.gov/individuals/individual-taxpayer-identification-number (last visited April 30, 2020). *See also* Affidavit of Attorney Vivian Khalaf, Esq., attached hereto and incorporated herein as Exhibit B.

32. There are 1.2 million Americans married to immigrants who do not hold Social Security numbers. *See* Dkt No. 11 at ¶ 20.

33. Of the 1.2 million Americans, those who file joint tax returns and are not in the military are ineligible for a Stimulus Check and deprived of the rights, privileges, immunities, and/or benefits conferred upon all other U.S. citizens who otherwise qualify. *See* Dkt No. 11 at ¶ 21.

34. The Migration Policy Institute reported that 4.1 million U.S. Citizen children live with at least one undocumented immigrant parent. U.S. Randy Capps, Michael Fix, and Jie Zong, *A Profile of U.S. Children with Unauthorized Immigrant Parents*, MIGRATION POLICY INSTITUTE (January 2016), https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents (last visited April 29, 2020).

35. Plaintiff and the Putative Class have no adequate remedy at law and are suffering irreparable harm. Defendants will suffer no harm should this Court grant an injunction prohibiting enforcement of the Exclusion Provision as written, which is discriminatory on its face, and amending it as described hereinbelow. Meanwhile, the imminent harm to Plaintiff and the Putative Class is severe. The public interest is clearly served by this Court acting to order recognition of U.S. Citizens and their U.S. children consistent with the manner in which the Federal Government treats similarly situated U.S. Citizens, without regard to their mixed family status. Only prompt action by this federal Court ordering declaratory and injunctive relief will serve the public interest.

36. Injunctive relief is appropriate under the circumstances because Defendants have intentionally excluded otherwise eligible U.S. Citizens from receiving the Stimulus Check, and more damaging, denied them a benefit conferred upon all other otherwise qualifying U.S. Citizens simply because of whom they chose to marry, which is facially discriminatory and retributive.

37. Plaintiff and the Putative Class have suffered, and will continue to suffer, immediate and irreparable harm by reason of the conduct described above. Such immediate and irreparable harm includes, but is not limited to, the loss of a minimum of $1,200.00 U.S. Dollars which has made many, if not all, of the putative class members fraught with worry and despair that they will be unable to sustain the basic necessities of life for themselves and their children if they are denied the benefits available to other similarly situated Americans who are not married to immigrants filing jointly with ITIN numbers in light of the COVID pandemic which the CARES Act sought to provide emergency response; a loss of privacy, due process, equal protection, reputation in the community, and dignity. *See* Affidavit of John Doe; *see also*

Affidavits of Thomas J. Nitschke, Esq., Lana B. Nassar, Esq., and Heather L. Blaise, Esq. attached hereto and incorporated herein as Group Exhibit C.

38. Plaintiff and the Putative Class do not have an adequate remedy at law to protect and re-establish their rights which currently have been, and continue to be, violated by Defendants' actions. Plaintiff's rights cannot be secured except through injunctive relief.

39. Entering the injunctive relief that Plaintiff is seeking will cause the Defendants no harm.

40. Defendants will suffer no loss, if compelled to act in accordance with the law, by refraining from discriminating against U.S. Citizens based upon their marriage to immigrants.

41. There is a reasonable likelihood that the Plaintiff will succeed on the merits of his claims.

42. As a result of the foregoing, Plaintiff and the Putative Class request this Honorable Court consider this Motion on an emergency basis and grant a temporary restraining order prohibiting the Defendants from enforcing the Exclusion Provision in the CARES Act and amending the text of the Exclusion Provision as described herein to afford all citizens the rights and benefits to which they are entitled by the Constitution of the United States.

LAW

To determine whether a party is entitled to a preliminary injunction or temporary restraining order, "a district court engages in an analysis that proceeds in two distinct phases: a threshold phase and a balancing phase." *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, 549 F.3d 1079, 1085–86 (7th Cir. 2008). To meet the threshold standard, a plaintiff must show that (1) he has a reasonable likelihood of success on the merits of the underlying claim; (2) no adequate remedy at law exists; and (3) he will suffer irreparable harm if the TRO is denied. *Harder v. Vill. of Forest Park*, 2005 U.S. Dist. LEXIS 28068, ¶ 4-5 (*citing Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470, 474-475 (7th Cir. 2001)).

Once these threshold requirements are met, the court "must somehow balance the nature and degree of the plaintiff's injury, the likelihood of prevailing at trial, the possible injury to the defendant if the injunction is granted, and the wild card that is the 'public interest.'" *Lawson Prods., Inc. v. Avnet, Inc.*, 782 F.2d 1429, 1433 (7th Cir. 1986). Courts in the Seventh Circuit employ a "sliding scale" approach to weigh these interests: "The more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor." *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 389 (7th Cir. 1984). As demonstrated below, Plaintiff and the Putative Class easily meets the elements of a prima facie case for injunctive relief and the balance of harm weighs heavily in their favor.

Where circumstances are such that even the time needed to hear a request for a preliminary injunction is too long to prevent irreparable harm, a temporary restraining order (T.R.O.) may issue while a court considers a request for a preliminary injunction. *See Charles Alan Wright*, *et al.,* Temporary Restraining Orders, 11A Federal Practice and Procedure § 2951 (3d ed. 2019). Where, as here, the opposing party receives actual notice of the request for a T.R.O., the procedure courts follow does not differ from an application for a preliminary injunction, and no special procedural requirements apply. *Id.*; *see also Budget Rent A Car Corp. v. Harvey Kidd Automotive*, 249 F. Supp. 2d 1048, 1049 (N.D. Ill. 2003).

The fact that this Plaintiff seeks relief applicable to the entire Putative Class in the form of a temporary restraining order prior to a ruling on class certification does not bar relief for Plaintiff and the Putative Class, "because a district court has general equity powers allowing it to grant temporary or preliminary injunctive relief to a conditional class." *Mays v. Dart*, 2020 U.S. Dist. LEXIS 62326, at **8-9 (N.D. Ill. Apr. 9, 2020). "[T]here is nothing improper about a preliminary injunction preceding a ruling on class certification." *Id.* at *9 (quoting *Gooch v. Life Inv'rs Ins. Co. of Am.*, 672 F.3d 402, 433 (6th Cir. 2012)). Federal Rule of Civil Procedure 23(b)(2) "does not restrict class certification to instances when final injunctive relief issues" and allows for certification of a conditional class to grant preliminary injunctive relief. *Id.*; *see also Howe v. Varity Corp.,* 896 F.2d 1107, 1112 (8th Cir. 1990) (affirming grant of a preliminary injunction to a conditional class).

ARGUMENT

I. <u>Plaintiff Meets His Burden for Certification of the Putative Class and is Entitled to Injunctive Relief on behalf of the Putative Class.</u>

Under Federal Rule of Civil Procedure 23(a), the four prerequisites for class certification are numerosity, commonality, typicality, and adequate representation. *Beaton v. Speedy PC Software*, 907 F.3d 1018, 1025 (7th Cir. 2018). "Once these four prerequisites are satisfied, the potential class must also satisfy at least one provision of Rule 23(b)." *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992).

A. Numerosity

As for numerosity, generally, forty class members suffice to satisfy Rule 23(a). *Mulvania v. Sheriff of Rock Island Cty.*, 850 F.3d 849, 859 (7th Cir. 2017). In this case, statistics show there are 1.2 million U.S. Citizens married to immigrants who do not hold Social Security numbers. Accordingly, of the 1.2 million Americans who are married to immigrants without Social Security numbers, those who file joint tax returns, are not in the military, and whose adjusted gross income is not excess of the requisite amounts meet the definition of the Putative Class. *See* Dkt. 11 at ¶ 28. Specifically, and as provided in the affidavit of Vivian Khalaf, Esq., most of the Americans who are married to spouses with ITIN numbers file jointly. *See* Exhibit B; *see also* Corbin Blackwell, CFP, *Married Filing Separately: Marriage Tax Benefit or Penalty?*, BETTERMENT (January 25, 2019), https://www.betterment.com/resources/married-filing-separately (last visited April 30, 2020); *see also* Andrea Woroch, *Married Couples: Is It Better to File Taxes Jointly or Separately?*, U.S. NEWS MONEY (January 6, 2020), https://money.usnews.com/money/personal-finance/taxes/articles/married-couples-is-it-better-to-file-taxes-jointly-or-separately (last visited April 30, 2020). In fact, most couples she counsels, regardless of whether or not one party has an ITIN, file jointly and not separately; this is, in part, because married filing separately status typically results in application of the highest income tax rate. *See id.* Indeed, most of her clients who have ITINs and are married to U.S. citizens are usually going through the immigration process in order to obtain legal status for the immigrant spouses. *See id.* This legal immigration process requires bona fide proofs of the marriage. *See id.* The filing of joint tax returns are used as bona fide proof of marriage and are weighted heavily in favor of a bona fide marriage. *See* Instructions for Form I-130, Petition for Alien Relative, and Form I-130 A, Supplemental Information for Spouse Beneficiary at pp. 6-7, Section 5, attached hereto and incorporated herein as Exhibit D; *see also* Exhibit B. When a couple files separately, it raises the presumption that the marriage may have been entered into solely for purposes of acquiring an immigration benefit and thus, requiring couples to file individually could harm the immigrant spouse's chances at achieving documented immigrant status. *See id.* In her practice, Attorney Khalaf has personally seen separately filed tax returns result in negative consequences for couples going through the immigration process. *See id.* Moreover, filing separately does not give the filers many benefits and tax credits available for joint filers, and requiring tax returns to be amended to be married filing separately for 2018 and/or 2019 tax years will likely cause additional expenses (and losses of preferred tax rate, credits and deductions) that would eclipse the benefits provided under the CARES Act. *See id.*

Accordingly, the numerosity requirement is met.

B. Commonality

"Commonality requires at least one question common to all the class members, the answer to which is "apt to drive the resolution of the litigation." *Mays*, 2020 U.S. Dist. LEXIS 62326, at *10 (*citing Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011))." In the instant matter Plaintiff's claims are typical of the claims of the Putative Class, as they are based on the same legal theory and arise from the same unlawful conduct. There are common questions of law and fact affecting the Putative Class which predominate over questions that may affect individual members (hereinafter "Class Members"). These common questions include, but are not limited to:

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

b. Whether and to what extent Defendants have deprived Class Members of their property interests;

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.

These six questions are common to all the Class Members, and accordingly are "apt to drive the resolution of the litigation." *Id*.

Thus, the commonality requirement of Rule 23(a) is met.

C. Typicality

"The Seventh Circuit has explained that a named plaintiff's claims are typical if they "arise[ ] from the same event or practice or course of conduct that gives rise to the claims of other class members and [are] based on the same legal theory." *Mays*, 2020 U.S. Dist. LEXIS 62326, at *11 (*citing Lacy v. Cook County*, 897 F.3d 847, 866 (7th Cir. 2018))." The claim of the Plaintiff here is typical of the class, because Plaintiff and the Class Members all contend they have intentionally been excluded from receiving the Stimulus Check -- a benefit conferred upon all other U.S. Citizens -- simply because of whom they chose to marry, which is facially discriminatory, retributive, and unconstitutional. None of the Class Members have any additional claims under these facts that are not or cannot be raised by Plaintiff given his exact same factual posture.

Therefore, the typicality requirement is met.

D. Adequate Representation

"Under this requirement of Rule 23(a), the named plaintiff must be a member of the putative class and must have the same interest and injury as other members." *Mays*, 2020 U.S.

Dist. LEXIS 62326, at **11-12 (*citing Beaton v. SpeedyPC Software*, 907 F.3d 1018, 1027 (7th Cir. 2018)). Plaintiff Doe is a U.S. citizen who earns less than $75,000.00 in adjusted gross income, whose children are also U.S. citizens, and who filed his 2018 Federal Tax Return jointly with his spouse, an immigrant who used an Individual Taxpayer Identification Number. *See* Exhibit A. Accordingly, Plaintiff shares the same interest and injury as the members in the class who would otherwise qualify for the Stimulus Check but for whom they chose to marry. Further, per Rule 23(a), Plaintiff has retained counsel experienced in handling civil rights cases and class actions. *See* Group Exhibit C. Neither Plaintiff nor his counsel have any interests that might cause them not to pursue these claims vigorously. Thus, Plaintiff and his counsel provide adequate representation of the defined Putative Class.

In sum, the class certification requirements of Rule 23(a) have been met; *in the alternative,* they have been provisionally met for purposes of this motion for temporary restraining order, preliminary injunction and/or declaratory relief.

E. Rule 23(b)(2)

Rule 23(b)(2) permits class actions if "the party opposing the class has acted or refused to act on grounds that apply generally to the class," such that injunctive or declaratory relief is appropriate for the class as a whole. Plaintiff satisfies this requirement because he seeks "the same [. . .] injunctive relief for everyone" in the class. *Mays v. Dart*, No. 20 C 2134, 2020 U.S. Dist. LEXIS 62326, at *12 (N.D. Ill. Apr. 9, 2020) (*citing Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi.*, 797 F.3d 426, 442 (7th Cir. 2015)).

Consequently, Plaintiffs respectfully request this Honorable Court certify the Class and appoint the undersigned counsel as Class Counsel or *in the alternative* grant provisional class certification and provisional appointment of Class Counsel for purposes of this Motion; and grant any additional relief this Court deems necessary and just under the circumstances.

II. <u>Plaintiff and the Putative Class Will Be Irreparably Harmed If Interim Relief Is Not Granted.</u>

"To demonstrate irreparable injury, [a] plaintiff must show that he will suffer immediate harm that cannot be rectified by final judgment after trial." *Harder*, 2005 U.S. Dist. LEXIS 28068, ¶ 5 (*citing Anderson v. U.S.F. Logistics (IMC), Inc.*, 274 F.3d 470, 474 (7th Cir. 2001)). Plaintiff alleges injuries that are irreparable and, therefore, not suitable for resolution in the ordinary course of litigation. *See*, e.g., *Girl Scouts*, 549 U.S. at 1086. A threshold question is whether the Putative Class is entitled to injunctive relief to redress the imminent and currently ongoing harm faced as a result of their exclusion from the CARES Act. The CARES Act is intended to *provide emergency assistance,* which Defendants have categorically deprived the Plaintiffs of. S. 3548, 116th Cong. (2020) (*emphasis added*). The CARES Act expressly acknowledges the grave emergency circumstances that U.S. citizens making under $75,000.00 face as a result of the Pandemic, yet it pointedly carves out Plaintiff and the Putative Class, which consists of up to 1.2 million Americans. If Plaintiff and the Putative Class are denied immediate injunctive relief, their families will continue to struggle to meet their financial obligations for the basic necessities of human life, including but not limited to avoiding starvation for them and their children, homelessness, and other dire consequences affecting their liberty and safety, all of which the CARES Act was designed to address for qualifying Americans as a result of the Pandemic. *See* Exhibit A; *see also* Group Exhibit C.

Arguably, the most troubling part of the Exclusion Provision is the effect on the lawful immigration process. Specifically, the requirement for a couple to provide bona fide proofs of the marriage. This is evidenced by the Department of Homeland's Security's requirement that the couple demonstrate that the marriage is bona fide by, including but not limited to, "Documentation showing that you and your spouse have combined your financial resources…You must submit clear and convincing evidence that you and your spouse entered into the marriage in good faith and not for immigration purposes if you married your spouse while your spouse was the subject of an exclusion, deportation, removal, or rescission proceeding (including during the judicial review of any one of these proceedings)." *See* Exhibit D.

In Matter of Laureano, a BIA precedent case states in pertinent part: (2) In determining whether a marriage is fraudulent for immigration purposes, the conduct of the parties after the marriage is relevant as to their intent at the time of marriage; evidence to establish intent may take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, **income tax forms**, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. *See* 19 I. & N. Dec. 1, 1, 1983 BIA LEXIS 18, *1 (B.I.A. December 12, 1983) [emphasis added].

The irreparable harm of requiring US Citizens to file their 2019 and/or amend their 2018 tax returns to file separately in order to receive the Stimulus Check is diametrically opposed to the immigration policy embodied in the Immigration and Nationality Act that provides U.S. Citizen's a path to obtaining lawful citizenship for their spouses. A dire consequence to the sanctity of marriage, this Exclusion Provision necessitates immediate redress.

Accordingly, Plaintiff and the Putative Class will be irreparably harmed if interim relief is not granted.

III. **Plaintiffs Have a Likelihood of Success on the Merits of Their Claim That the CARES Act Provision at Issue Violates the First, Fifth, and Fourteenth Amendments.**

A plaintiff moving for preliminary injunctive relief need not demonstrate a likelihood of absolute success on the merits; instead, he need only show that his chances to succeed on his claims are "better than negligible." *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999). This is a low threshold. *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ*., 858 F.3d 1034, 1046 (7th Cir. 2017).

There is no question that Plaintiff meets this burden. Defendants, acting under color of law, have violated rights secured to Plaintiff by the First, Fifth, and Fourteenth Amendments to the United States Constitution including the right of association, the right to due process of law, the right to equal protection under the law, and the penumbra of privacy rights created by the First, Third, Fourth, and Fifth Amendments that creates a fundamental right to marriage. *See* Dkt. No. 11 at ¶ 37. Specifically, Defendants have failed, as applied to Plaintiff (and other similarly situated individuals), to treat him as equal to his fellow United States citizens based solely on whom he chose to marry. *See id.* Accordingly, Defendants have discriminated against Plaintiff on the basis of his fundamental right of marriage, a right guaranteed to him under the Constitution of the United States. *See id*. at ¶¶ 49-50. Specifically, the CARES Act provision at issue, on its face and as applied, or threatened to be applied, violates the First Amendment, the Due Process Clause of the Fifth Amendment, and Fourteenth Amendment. *See id.* at ¶ 50. Defendants cannot show a compelling interest justifying their policies of discrimination based on marriage, and they cannot show that these classifications are necessary to serve any legitimate governmental interest. *See id.* at ¶ 52. The CARES Act singles out law-abiding and tax-paying U.S. Citizens by excluding them from a benefit they and their children would otherwise be entitled to with no compelling interest justifying the law and without serving any legitimate governmental interest. *See id.* at ¶ 54. Section 6428 is not narrowly tailored to advance a compelling government interest, nor is it rationally related to any legitimate government interest. *See id*. at ¶ 55.

Furthermore, Defendants discriminate against Plaintiff and the Class Members on the basis of their spouses' alienage. Defendants have no compelling interest justifying their policies of discrimination based on the marriage to a non-U.S. Citizen, and they cannot show that this justification is necessary to serve any legitimate governmental interest. Defendants treat Plaintiff differently from U.S. Citizens who marry other U.S. Citizens, who are otherwise similarly situated. *Graham* v. *Richardson*, 403 U.S. 365, 372 (1971) (footnotes and citations omitted).

Moreover, similarly to the facts at hand, the unfair treatment of minor children relating to Social Security benefits based on their parentage has found the federal government to be in violation of the U.S. Constitution. *Griffin v. Richardson*, 346 F. Supp. 1226 (D. Md. 1972). *Richardson v. Davis*, 409 U.S. 1069 (1972), summarily aff'g 342 F.Supp. 588 (Conn.). The due process clause of the fifth amendment prohibits, as to the federal government, statutes creating arbitrary discriminations which have no rational basis in legitimate governmental purposes. While there is no specific equal protection guarantee applicable to the federal government, equal protection standards of the fourteenth amendment have been imported into the due process clause of the fifth amendment. *Davis v. Richardson*, 342 F. Supp. 588, 591 (D. Conn. 1972), summarily aff'd in *Richardson v. Davis*, 409 U.S. 1069 (1972), *citing Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954) ("The Fifth Amendment [. . .] does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states. But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process."); *Richardson v. Belcher*, 404 U.S. 78, 81, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971); *Flemming v. Nestor*, 363 U.S. 603, 611, 80 S. Ct. 1367, 4 L. Ed. 2d 1435 (1960); *Bolton v. Harris*, 130 U.S. App. D.C. 1, 395 F.2d 642 (1968).

In finding an immediate need to provide Social Security payments to an illegitimate child based on her impoverished needs, the *Griffin* Court determined that any "delay in determining the constitutionality of the law under which plaintiff has been denied benefits would serve no useful purpose. A deferred recovery of a lump sum amount by this plaintiff would do nothing to alleviate her immediate need, especially in view of the fact that plaintiff here […] [and] the class as a whole" would likely suffer from impoverished conditions, a "common observation teaches that illegitimacy and indigency are often handmaidens." *Griffin* 346 F. Supp. 1226, 1232 (D. Md. 1972. The same is true in the case at hand as it relates to mixed-status families, and the severity of impoverishment is readily apparent per the Department of Labor's statistics. *See Foreign-Born Workers: Labor Force Characteristics – 2018*, BUREAU OF LABOR STATISTICS (May 16, 2019), https://www.bls.gov/news.release/pdf/forbrn.pdf (last visited April 30, 2020). Accordingly, the emergency need of the CARES Act relief cannot be overstated. Thus, the equities of this case, similarly to *Griffin*, do not favor a delay.

In applying the standard of review, the *Griffin* Court explained:

> A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is 'rationally based and free from invidious discrimination.' *Dandridge v. Williams*, 397 U.S. 471, 487 [90 S. Ct. 1153, 1162, 25 L. Ed. 2d 491]. While the present case, involving as it does a federal statute, does not directly implicate the Fourteenth Amendment's Equal Protection Clause, a classification which meets the test articulated in Dandridge is

> perforce consistent with the due process requirement of the Fifth Amendment. Cf. *Bolling v. Sharpe*, 347 U.S. 497, 499 [74 S. Ct. 693, 694, 98 L. Ed. 884].

Griffin v. Richardson, 346 F. Supp. 1226, 1232 (D. Md. 1972), *quoting Richardson v. Belcher*, 404 U.S. 78, 81 (1971).

As the Supreme Court of the United States instructs, though the latitude given to lawmakers to economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court must exercise strict scrutiny. *Richardson*, 406 U.S. at 172-73, *citing Brown v. Board of Education*, 347 U.S. 483 [74 S. Ct. 686, 98 L. Ed. 873] (1954); *Harper v. Virginia [State] Board of Elections*, 383 U.S. 663 [86 S. Ct. 1079, 16 L. Ed. 2d 169] (1966). There can be no doubt that the allegations complained of by Plaintiff and the Putative Class affect their fundamental rights and are subject to strict scrutiny. *Levy v. Louisiana*, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968) (The rights asserted involved "the intimate, familial relationship between a child and his own mother" and noting that it has "been extremely sensitive when it comes to basic civil rights [citations omitted] and [has] not hesitated to strike down an invidious classification.").

In this case, both the fundamental right of U.S. Citizens and the invidious classification based on the alienage status of their spouse leaves no doubt that the Exclusion Provision CARES Act is subject to strict scrutiny and thus is unconstitutional as written and as applied.

Accordingly, the CARES Act provision at issue violates the First Amendment to the United States Constitution; the Due Process Clause of the Fifth Amendment to the United States Constitution; the rights of Plaintiff and the Putative Class to Equal Protection and Privileges and Immunities under the Fourteenth Amendment to the United States Constitution under the Reverse Incorporation Doctrine; and the well-established fundamental right to marry.

IV. **Traditional Legal Remedies Are Inadequate.**

The moving party must demonstrate that he has no adequate remedy at law should the preliminary injunction not issue. *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1046 (7th Cir. 2017) (*citing Protamek Indus., Ltd. v. Equitrac Corp*., 300 F.3d 808, 813 (7th Cir. 2002)). He need not demonstrate that the remedy is wholly ineffectual. *Whitaker*, 858 F.3d at 1046 (*citing Foodcomm Int'l v. Barry*, 328 F.3d 300, 304 (7th Cir. 2003)). Instead, he must show that any award would be "seriously deficient as compared to the harm suffered." *Id.*

Plaintiff does not have an adequate remedy at law to protect and re-establish the rights which currently have been, and continue to be, violated by Defendants' actions. Plaintiff's rights cannot be obtained without this Court's grant of injunctive relief. Specifically, Plaintiff and the Putative Class requests a temporary and/or preliminary injunction against the Defendants and all those acting in concert with them, prohibiting enforcement of the laws, as applied, at issue in this action, specifically requesting the CARES Act to be applied as follows:

> "(h) Identification Number Requirement.—
>
> "(1) IN GENERAL.—No credit shall be allowed under subsection (a) to an eligible individual who does not include on the return of tax for the taxable year—
>
> "(A) such individual's valid identification number,
>
> "(B) in the case of a joint return, the valid identification number ~~of such individual's spouse~~ <u>for at least one of the filing spouses</u>, and
>
> "(C) in the case of any qualifying child taken into account under subsection (b)(1)(B), the valid identification number of such qualifying child.

Such change conforms with the law, and treats all U.S. Citizens similarly, a right to which they are Constitutionally entitled.

In sum, Plaintiff has met his burden of establishing the threshold requirements for a temporary restraining order, as well as for a preliminary injunction.

V. The Balance of Relative Harms and the Public Interest Favors the Relief Plaintiffs Are Requesting.

"Once a moving party has met its burden of establishing the threshold requirements for a preliminary injunction, the court must balance the harms faced by both parties and the public as a whole." *Mays*, 2020 U.S. Dist. LEXIS 62326, at *12 (*quoting Whitaker*, 858 F.3d at 1054). The nature of the balancing depends on the moving party's likelihood of success: the higher the likelihood, the more the balance tips in favor of granting injunctive relief. *Id*.

Courts apply a sliding scale approach in determining whether to issue a temporary restraining order -- the more likely the plaintiff will succeed on the merits, the less the balance of irreparable harms needs to be to favor the plaintiff's position. *See TY, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001). Finally, the court must consider the public interest (non-parties) in denying or granting the injunction. *See id*. (*citing Storck USA, LP v. Farley Candy Co*., 14 F.3d 311, 314 (7th Cir. 1994)).

As shown above, Plaintiff's likelihood of success is high, as Defendants have intentionally excluded otherwise eligible U.S. Citizens from receiving the Stimulus Check and more damaging, excluding them from a benefit conferred upon all other U.S. Citizens simply because of whom they chose to marry, which is facially discriminatory and retributive. There is no harm to the Defendants by this Court granting an injunction prohibiting enforcement of the challenged CARES Act provision.

Meanwhile, the harm to Plaintiff and the Putative Class is severe. Defendants may argue that Plaintiff and the Putative Class could qualify for the Stimulus Check if they were to amend or file their 2018 and/or 2019 returns to married filing separately. However, requiring Plaintiff and those similarly situated to be forced to amend and re-file tax returns will cause additional expenses and delays that would likely eclipse and exceed the benefit of the Stimulus Check. *See* Exhibit B. Namely, the spouses will be required to file two separate tax returns for each applicable tax year and to pay the preparation expenses of those returns. Next, married filing jointly enjoys the lowest tax rate, while married filing separately has the most dis-favored treatment. *See* Blackwell, *supra*; *see also* Woroch, *supra.* Thus, for Plaintiff and the Putative Class, filing separately and/or amending their returns to file separately will likely result in additional taxes being due. In addition, when one files married filing separately, the filer is unable to claim: Education benefits; Earned Income Credit (EIC); Child and Dependent Care Credit (usually); Adoption Credit (usually); and the personal exemptions, itemized deductions, the Child Tax Credit, and capital losses are all reduced by half. *Id.* Plus, both spouses cannot do itemized deductions and thus one spouse will be limited to taking only standard deductions. *Id.* On top of that, those that live in the community property states of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin, have to deal with community property allocations and adjustments, which adds extra work and complexity to tax preparation. *See Publication 555 (03/2020), Community Property*, INTERNAL REVENUE SERVICE (March 2020), https://www.irs.gov/publications/p555 (last visited April 30, 2020). However, potentially the gravest harm faced by Plaintiff and those similarly situated is the fact that in the legal immigration context, tax returns with the married filing jointly status are considered indicia of a bona fide marriage, entitling the immigrant spouse a legal path of immigration, while married filing separately creates a presumption of a marriage only for the purposes of immigration status. *See* Exhibit D and Exhibit B. Thus, the Defendants' encouragement of Plaintiff and those similarly situated to file tax returns separately, which can then detrimentally affect lawful immigration pathways for immigrant spouses, is nothing short of an appalling assault on legal immigration and the constitutional rights of U.S. citizens to marry whom they love, regardless of immigration status. Justice cannot stand for such a result-period.

The public interest is clearly served by this Court acting to order recognition of U.S. Citizens and their children consistent with the manner in which the Federal Government treats similarly situated U.S. Citizens, without regard to their marital status. Only prompt action by this federal Court ordering declaratory and injunctive relief will serve the public interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff JOHN DOE, individually and on behalf of the Putative Class, by and through his attorneys, Blaise & Nitschke, P.C. and Khalaf & Abuzir, LLC, prays for relief as follows:

a. An Order granting class certification, or *in the alternative* provisional class certification for purposes of this Motion;

b. An Order granting Blaise & Nitschke, P.C. and Khalaf & Abuzir, LLC as class counsel, or *in the alternative* provisional class counsel for purposes of this Motion;

c. A temporary and/or preliminary injunction against the Defendants and all those acting in concert with them prohibiting enforcement of the laws, as applied, at issue in this action, as follows:

   i. Issuing a Temporary Restraining Order to CARES Act Section 2101 to be applied as follows:

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

SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS

[. . .]

"(h) Identification Number Requirement.—

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

"(A) such individual's valid identification number,

"(B) in the case of a joint return, the valid identification number ~~of such individual's spouse~~ for at least one of the filing spouses, and

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

"(2) VALID IDENTIFICATION NUMBER.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'valid identification number' means a social security number (as such term is defined in section 24(h)(7)).

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

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

e. Issue a declaratory judgment that the CARES Act provision at issue in this case is subject to strict scrutiny;

f. Issue a declaratory judgment that the CARES Act provision at issue in this case, as applied to the Plaintiff and the Putative Class, violates the constitutional and statutory rights of Plaintiff and the Putative Class;

g. Issue a declaratory judgment striking from the CARES Act those provisions that are violative of the protections afforded to Plaintiff and the Putative Class under the United States Constitution, federal statutes, and those cases interpreting the same under which this Court is bound under the principles of *stare decisis*;

h. Enter an Order requiring the Defendants to hold in escrow or otherwise earmark sufficient funds for the immediate issuance of Stimulus Checks to Plaintiffs and the Putative Class;

i. For an award of attorneys' fees and costs; and/or

j. Such other and further relief as this court may deem just and proper.

Dated: April 30, 2020

Respectfully submitted,
JOHN DOE, individually and on behalf of others similarly situated (collectively "Their").

By: Lana Nc

Lana B. Nassar
One of Their attorneys

Blaise & Nitschke, P.C.
123 N. Wacker Drive, Suite 250
Chicago, Illinois 60606
T: (312) 448-6602

F: (312) 803-1940
lnassar@blaisenitschkelaw.com

Khalaf & Abuzir, LLC
20 N. Clark, Suite 720
Chicago, IL 60602
T: (708)-233-1122
F: (708)-233-1161
vkhalaf@immigrationjd.com

CERTIFICATE OF SERVICE

I, Lana B. Nassar, an attorney, hereby certify that on April 30, 2020, I caused a copy of the foregoing to be filed using the Court's CM/ECF system. I further certify that I, or another one of Plaintiffs' attorneys, will promptly serve a copy of the same on the United States Attorney's Office in the Northern District of Illinois via email.

Lana B. Nassar

Blaise & Nitschke, P.C.
123 N. Wacker Drive, Suite 250
Chicago, Illinois 60606
T: (312) 448-6602
F: (312) 803-1940
lnassar@blaisenitschkelaw.com
ARDC No. 6319396

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, individually and on behalf of others similarly situated,	)	
Plaintiff,	)	Case No. 1:20-cv-02531 SJC
v.	)	JURY DEMANDED
DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as a Senator and Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury,	)	
Defendants.	)	

AFFIDAVIT OF [redacted]

Affiant, [redacted], first duly sworn upon oath and in support of Plaintiff's, individually and on behalf of others similarly situated, Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment, states:

1. I am a citizen of the United States.

2. I am a father of two (2) United States citizen minor children.

3. I am married to a [redacted] national who is currently in the process of obtaining a permanent residency in the United States.

4. I filed my taxes jointly with my spouse who used her Individual Taxpayer Identification Number in 2018 .

EXHIBIT A

5. Due to the COVID-19 pandemic, my wife and I's monthly income has been reduced to the point that it is extremely difficult to make ends meet.

6. With my minor child's school closure as a result of the COVID-19 pandemic and the requirements of e-learning, my wife has been forced to remain at home with our two (2) minor children and is unable to work from home.

7. While it has always been difficult to provide a decent life for my family with the income I earn, it is now nearly impossible to meet our financial obligations for the minimum necessities of life, including the ability to put food on my family's table. Our family food expenses have significantly increased as a result of the minor child being home from school.

8. I am on the verge of being unable to pay my mortgage, insurance, and health insurance deductibles.

9. The CARES Act Stimulus Check would make it possible to meet some of my family's basic necessities during the pandemic.

FURTHER AFFIANT SAYETH NAUGHT.

[redacted]

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to 28 U.S. Code § 1746, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated this 30h day of April, 2020.

[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, individually and on behalf of others similarly situated,	)	
Plaintiff,	)	Case No. 1:20-cv-02531 SJC
v.	)	JURY DEMANDED
DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as a Senator and Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury,	)	
Defendants.	)	

AFFIDAVIT OF VIVIAN KHALAF

Affiant, VIVIAN KHALAF, of Khalaf & Abuzir, LLC, being first duly sworn upon oath and in support of Plaintiff's, individually and on behalf of others similarly situated, Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment, states:

1. Affiant is attorney for Plaintiff JOHN DOE individually and on behalf of others similarly situated, as it relates to the above-captioned case.

2. Affiant certifies that she has practiced Immigration Law for 28 years and has been licensed to practice law in Illinois since 1993.

EXHIBIT B

3. Affiant certifies that the following individuals may receive an Individual Taxpayer Identification Number ("ITIN"):

a. A non-resident foreign national who owns or invests in a U.S. business and receives taxable income from that U.S. business, but lives in another country;

b. A foreign national student who qualifies as a resident of the United States (based on days present in the United States);

c. A dependent or spouse of a U.S. citizen or lawful permanent resident; and

d. A dependent or spouse of a foreign national on a temporary visa such as a H-4 and J-2.

4. Affiant further certifies that based on her 28 years of immigration practice the following is true:

a. Most couples I counsel, regardless of whether or not one party has an ITIN file jointly and not separately;

b. This is, in part, because married filing separately status presents the highest income tax rate;

c. Most of my clients who have ITINs and are married to U.S. citizens are usually going through the immigration process in order to obtain legal status for the immigrant spouses;

d. This process requires bona fide proofs of the marriage;

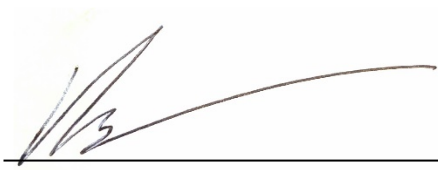
e. The filing of joint tax returns are used as bona fide proof of marriage and are weighted heavily in favor of a bona fide marriage;

f. When a couple files separately it raises the presumption that the marriage may be entered into solely for purposes of acquiring an immigration benefit and thus, requiring couples to file individually could harm the immigrant spouse's chances at achieving documented immigrant status. In my practice, I have personally seen separately filed tax returns result in negative consequences for immigration process;

g. Filing separately does not give the filers the benefits and tax credits available for joint filers; and

h. Requiring tax returns to be amended to be married filing separately for 2018 and 2019 tax years will likely cause additional expenses that would eclipse the benefits provided under the CARES Act.

FURTHER AFFIANT SAYETH NAUGHT.



VIVIAN KHALAF

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to 28 U.S. Code § 1746, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated this 30th day of April, 2020

VIVIAN KHALAF

Khalaf & Abuzir, LLC
20 N. Clark, Suite 720
Chicago, IL 60602
T: (708)-233-1122
F: (708)-233-1161
vkhalaf@immigrationjd.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, individually and on behalf of others similarly situated, Plaintiff, v. DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as a Senator and Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury, Defendants.	)	Case No. 1:20-cv-02531 SJC JURY DEMANDED

<u>AFFIDAVIT OF THOMAS J. NITSCHKE</u>

Affiant, THOMAS J. NITSCHKE, of Blaise & Nitschke, P.C., being first duly sworn upon oath and in support of Plaintiff's, individually and on behalf of others similarly situated, Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment, states:

1. I am an attorney for Plaintiff JOHN DOE individually and on behalf of others similarly situated, as it relates to the above-captioned case.

2. I certify that at the time of execution of this Affidavit on the 30th day of April 2020, Affiant's Law Firm, Blaise & Nitschke, P.C. has received not less than 2,000 inquiries of eligibility for the putative class since the date of filing the Complaint on April 24, 2020.

GROUP EXHIBIT C

3. I certify that many, if not all, of the putative class members are fraught with worry and despair that they will be unable to sustain the basic necessities of life for themselves and their children if they are denied the benefits available to other similarly situated Americans who are not married to immigrants filing jointly with ITIN numbers in light of the COVID-19 pandemic which the CARES Act sought to provide emergency response.

4. I certify that I am experienced in handling civil rights cases and class actions.

FURTHER AFFIANT SAYETH NAUGHT.

THOMAS J. NITSCHKE

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to 28 U.S. Code § 1746, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated this 30th day of April, 2020.

THOMAS J. NITSCHKE

Blaise & Nitschke, P.C.
123 N. Wacker Drive, Suite 250
Chicago, Illinois 60606
T: (312) 448-6602
F: (312) 803-1940
tjnitschke@blaisenitschkelaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, individually and on behalf of others similarly situated,	)	
Plaintiff,	)	Case No. 1:20-cv-02531 SJC
v.	)	JURY DEMANDED
DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as a Senator and Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury,	)	
Defendants.	)	

AFFIDAVIT OF LANA B. NASSAR

Affiant, LANA B. NASSAR, of Blaise & Nitschke, P.C., being first duly sworn upon oath and in support of Plaintiff's, individually and on behalf of others similarly situated, Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment, states:

1. I am an attorney for Plaintiff JOHN DOE individually and on behalf of others similarly situated, as it relates to the above-captioned case.

2. I certify that at the time of execution of this Affidavit on the 30th day of April 2020, Affiant's Law Firm, Blaise & Nitschke, P.C. has received not less than 2,000 inquiries of eligibility for the putative class since the date of filing the Complaint on April 24, 2020.

3. I certify that I am experienced in handling civil rights cases and a class action.

FURTHER AFFIANT SAYETH NAUGHT.

Lana Nc

LANA B. NASSAR

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to 28 U.S. Code § 1746, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated this 30th day of April, 2020.

Lana Nc

LANA B. NASSAR

Blaise & Nitschke, P.C.
123 N. Wacker Drive, Suite 250
Chicago, Illinois 60606
T: (312) 448-6602
F: (312) 803-1940
lnassar@blaisenitschkelaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN DOE, individually and on behalf of others similarly situated,	)	
Plaintiff,	)	Case No. 1:20-cv-02531 SJC
v.	)	JURY DEMANDED
DONALD J. TRUMP, in his individual and official capacity as President of the United States; MITCH MCCONNELL, in his individual and official capacity as a Senator and Sponsor of S. 3548 CARES Act; and STEVEN MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S. Department of Treasury,	)	
Defendants.	)	

AFFIDAVIT OF HEATHER L. BLAISE

Affiant, HEATHER L. BLAISE, of Blaise & Nitschke, P.C., being first duly sworn upon oath and in support of Plaintiff's, individually and on behalf of others similarly situated, Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment, states:

1. I am an attorney for Plaintiff JOHN DOE individually and on behalf of others similarly situated, as it relates to the above-captioned case.

2. I certify that at the time of execution of this Affidavit on the 30th day of April 2020, Affiant's Law Firm, Blaise & Nitschke, P.C. has received not less than 2,000 inquiries of eligibility for the putative class since the date of filing the Complaint on April 24, 2020.

3. I certify that I am experienced in handling civil rights cases and a class action.

FURTHER AFFIANT SAYETH NAUGHT.

HEATHER L. BLAISE

VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to 28 U.S. Code § 1746, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Dated this 30th day of April, 2020.

HBlaise

HEATHER L. BLAISE

Blaise & Nitschke, P.C.
123 N. Wacker Drive, Suite 250
Chicago, Illinois 60606
T: (312) 448-6602
F: (312) 803-1940
hblaise@blaisenitschkelaw.com

Instructions for Form I-130, Petition for Alien Relative, and Form I-130A, Supplemental Information for Spouse Beneficiary

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-130/I-130A
OMB No. 1615-0012
Expires 02/28/2021

What Is the Purpose of Form I-130?

A citizen or lawful permanent resident of the United States may file Form I-130, Petition for Alien Relative, with U.S. Citizenship and Immigration Services (USCIS) to establish the existence of a relationship to certain alien relatives who wish to immigrate to the United States.

Who May File Form I-130?

1. If you are a U.S. citizen, you must file a separate Form I-130 for each eligible relative. You may file Form I-130 for:

- **A.** Your spouse;
- **B.** Your unmarried children under 21 years of age;
- **C.** Your unmarried sons or daughters 21 years of age or older;
- **D.** Your married sons or daughters of any age;
- **E.** Your brothers or sisters (you must be 21 years of age or older); and
- **F.** Your mother or father (you must be 21 years of age or older).

2. If you are a lawful permanent resident of the United States, you must file a separate Form I-130 for each eligible relative. You may file Form I-130 for:

- **A.** Your spouse;
- **B.** Your unmarried child under 21 years of age; and
- **C.** Your unmarried son or daughter 21 years of age or older.

NOTE:

1. If you are filing for your spouse, he or she must complete and sign Form I-130A, Supplemental Information for Spouse Beneficiary. If your spouse is overseas, Form I-130A must still be completed, but your spouse does not have to sign Form I-130A. Form I-130A must be submitted with Form I-130.

2. There is no visa category for married children of lawful permanent residents. If you are a lawful permanent resident and you filed Form I-130 for your unmarried son or daughter, but your son or daughter marries before immigrating to the United States or adjusting status to lawful permanent resident, we will deny or automatically revoke your petition.

3. Non-citizen U.S. nationals (as defined in the Immigration and Nationality Act (INA) section 308) have the same rights as lawful permanent residents to petition for family members. If you are a U.S. national born in American Samoa or Swains Island (or who otherwise qualifies as a non-citizen U.S. national, as described in INA section 308), you should indicate in **Part 2.**, **Item Number 36.** of the petition that you are a lawful permanent resident. You do not need to list an Alien Registration Number (A-Number) in **Part 2.**, **Item Number 1.** of the petition.

4. If the beneficiary qualifies under **Items 1.C.**, **1.D.**, or **1.E.** above, you are not required to file separate petitions for the beneficiary's spouse or unmarried children under 21 years of age. They are considered derivative beneficiaries and you should list them in **Part 4.** of this petition.

EXHIBIT D

5. If you are the lawful permanent resident petitioner and the beneficiary qualifies under **Items 2.A.**, **2.B.**, or **2.C.** above, you are not required to file separate petitions for the beneficiary's unmarried children under 21 years of age. They are considered derivative beneficiaries and you should list them in **Part 4.** of this petition.

6. The derivative beneficiaries described in **Items 4.** and **5.** above may apply for an immigrant visa along with the beneficiary.

Who May Not File Form I-130?

You may **NOT** file Form I-130 for a person in the following categories:

1. An adoptive parent or adopted child, if the adoption took place after the child turned 16 years of age, or if the child has not been in the legal custody and has not lived with the parents for at least 2 years before filing the petition;

2. A natural parent, if you gained lawful permanent resident status or U.S. citizenship through adoption or as a special immigrant juvenile;

3. A stepparent or stepchild, if the marriage that created the relationship took place after the child turned 18 years of age;

4. A spouse, if you and your spouse were not both physically present at the marriage ceremony, unless the marriage was consummated;

5. A spouse, if you gained lawful permanent resident status through a prior marriage to a U.S. citizen or lawful permanent resident, unless:

   A. You are now a naturalized U.S. citizen;

   B. You have been a lawful permanent resident for at least five years;

   C. You can establish by clear and convincing evidence that you did not enter the prior marriage (through which you gained your lawful permanent resident status) in order to evade any U.S. immigration law; or

   D. Your prior marriage through which you gained your immigrant status was terminated by the death of your former spouse;

6. A spouse, if you married your spouse while he or she was the subject of an exclusion, deportation, removal, or rescission proceeding regarding his or her right to be admitted into or to remain in the United States, or while a decision in any of these proceedings was before any court on judicial review. However, you may be eligible for the bona fide marriage exemption under INA section 245(e)(3) if:

   A. You request in writing a bona fide marriage exemption and prove by clear and convincing evidence that the marriage is legally valid where it took place and that you and your spouse married in good faith and not for the purpose of obtaining lawful permanent resident status for your spouse and that no fee or any other consideration (other than appropriate attorney fees) was given to you for your filing of this petition. The request must be submitted with Form I-130; or

   B. Your spouse has lived outside the United States, after the marriage, for a period of at least two years;

7. Any person, if USCIS determines that he or she entered into or attempted or conspired to enter into a marriage in order to evade U.S. immigration laws; and

8. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or parent-in-law.

General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which can be downloaded for free at **http://get.adobe.com/reader/**. If you do not have Internet access, you may call the USCIS National Customer Service Center at **1-800-375-5283** and ask that we mail a form to you. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Signature. Each petition must be properly signed and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature. A legal guardian may also sign for a mentally incompetent person.

Filing Fee. Each petition must be accompanied by the appropriate filing fee. (See the **What Is the Filing Fee** section of these Instructions.)

Biometric Services Fee. If you file this petition with USCIS, you do not need to include a biometric services fee at the time you submit your petition. If you are later notified that you must submit biometrics, you will receive a biometric services appointment notice with instructions on how to submit the additional biometric services fee. If you file this petition with an agency other than USCIS, please check with that agency to determine if and when you must submit a biometric services fee.

Evidence. At the time of filing, you must submit all evidence and supporting documentation listed in the **General Requirements** section of these Instructions. USCIS may issue a Notice of Intent to Deny (NOID) or a Denial Notice for petitions filed without the required supporting evidence.

Biometric Services Appointment. USCIS may require that you appear for an interview or provide fingerprints, photograph, and/or signature at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your application, petition, or request. After USCIS receives your petition and ensures it is complete, we will inform you in writing, if you need to attend a biometric services appointment. If an appointment is necessary, the notice will provide you the location of your local or designated USCIS Application Support Center (ASC) and the date and time of your appointment or, if you are currently overseas, instruct you to contact a U.S. Embassy, U.S. Consulate, or USCIS office outside the United States to set up an appointment.

If you are required to provide biometrics, at your appointment you must sign an oath reaffirming that:

1. You provided or authorized all information in the petition;

2. You reviewed and understood all of the information contained in, and submitted with, your petition; and

3. All of this information was complete, true, and correct at the time of filing.

If you fail to attend your biometric services appointment, USCIS may deny your petition.

Copies. You may submit legible photocopies of documents requested, unless the Instructions specifically state that you must submit an original document. USCIS may request an original document at the time of filing or at any time during processing of an application, petition, or request. If you submit original documents when not required, the documents may remain a part of the record, and USCIS will not automatically return them to you.

Translations. If you submit a document with information in a foreign language, you must also submit a full English translation. The translator must sign a certification that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. The certification should also include the date, the translator's signature and printed name, and may contain the translator's contact information.

How To Fill Out Form I-130

1. Type or print legibly in black ink.

2. If you need extra space to complete any item within this petition, use the space provided in **Part 9. Additional Information** or attach a separate sheet of paper; type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

3. Answer all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print "N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None," unless otherwise directed.

4. Enter dates in mm/dd/yyyy format. If you cannot provide an exact date, provide an approximate date in the same format and include an explanation in **Part 9. Additional Information.**

5. **USCIS Online Account Number** (if any)**.** If you have previously filed an application, petition, or request using the USCIS online filing system (previously called USCIS Electronic Immigration System (USCIS ELIS)), provide the USCIS Online Account Number you were issued by the system. You can find your USCIS Online Account Number by logging in to your account and going to the profile page. If you previously filed certain applications, petitions, or requests on a paper form via a USCIS Lockbox facility, you may have received a USCIS Online Account Access Notice issuing you a USCIS Online Account Number. If you received such a notice, your USCIS Online Account Number can be found at the top of the notice. If you were issued a USCIS Online Account Number, enter it in the space provided at **Part 2.**, **Item Number 2.** The USCIS Online Account Number is not the same as an A-Number.

6. **Part 3. Biographic Information.** Provide the biographic information requested in **Part 3.**, **Item Numbers 1. - 6.** Providing this information as part of your petition may reduce the time you spend at your USCIS ASC appointment as described in the **Biometric Services Appointment** section of these Instructions.

   A. Ethnicity and Race. Select the boxes that best describe your ethnicity and race.

   Categories and Definitions for Ethnicity and Race

   (1) Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. (**NOTE:** This category is only included under Ethnicity in **Part 3.**, **Item Number 1.**)

   (2) White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

   (3) Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

   (4) Black or African American. A person having origins in any of the black racial groups of Africa.

   (5) American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

   (6) Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

   B. Height. Select the values that best match your height in feet and inches. For example, if you are five feet and nine inches, select "5" for feet and "09" for inches. Do not enter your height in meters or centimeters.

   C. Weight. Enter your weight in pounds. If you do not know your weight, or need to enter a weight under 30 pounds or over 699 pounds, enter "000." Do not enter your weight in kilograms.

   D. Eye Color. Select the box that best describes the color of your eyes.

   E. Hair Color. Select the box that best describes the color of your hair.

7. **Form I-94 Arrival-Departure Record.** Complete **Part 4.**, **Item Numbers 46.b. - 50.**, of the petition regarding the admission or travel document for the beneficiary.

   If U.S. Customs and Border Protection (CBP) or USCIS issued the beneficiary a Form I-94, Arrival-Departure Record, provide the beneficiary's Form I-94 number and date that his or her authorized period of stay expires or expired (as shown on Form I-94). The Form I-94 number also is known as the Departure Number on some versions of Form I-94.

   NOTE: If the beneficiary was admitted to the United States by CBP at an airport or seaport after April 30, 2013, he or she may have been issued an electronic Form I-94 by CBP, instead of a paper Form I-94. The beneficiary may visit the CBP website at **www.cbp.gov/i94** to obtain a paper version of his or her electronic Form I-94. CBP **does not** charge a fee for this service. Some travelers admitted to the United States at a land border, airport, or seaport, after April 30, 2013 with a passport or travel document, who were issued a paper Form I-94 by CBP, may also be able to obtain a replacement Form I-94 from the CBP website without charge. If his or her Form I-94 cannot be obtained from the CBP website, it may be obtained by filing Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Record, with USCIS. USCIS **does** charge a fee for this service.

   Passport and Travel Document Numbers. Complete **Part 4.**, **Item Numbers 45. - 50.**, as applicable, if the beneficiary relative used a passport or travel document to travel to the United States, enter either the passport or travel document information in the appropriate space on the petition, even if the passport or travel document is currently expired.

8. **Part 6. Petitioner's Statement, Contact Information, Declaration, and Signature.** Select the appropriate box to indicate whether you read this petition yourself or whether you had an interpreter assist you. If someone assisted you in completing the petition, select the box indicating that you used a preparer. Further, you must sign and date your petition and provide your daytime telephone number, mobile telephone number (if any), and email address (if any). Every petition **MUST** contain the signature of the petitioner (or parent or legal guardian, if applicable). A stamped or typewritten name in place of a signature is not acceptable.

9. **Part 7. Interpreter's Contact Information, Certification, and Signature.** If you used anyone as an interpreter to read the Instructions and questions on this petition to you in a language in which you are fluent, the interpreter must fill out this section, provide his or her name, the name and address of his or her business or organization (if any), his or her daytime telephone number, his or her mobile telephone number (if any), and his or her email address (if any). The interpreter must sign and date the petition.

10. **Part 8. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Petitioner.** This section must contain the signature of the person who completed your petition, if other than you, the petitioner. If the same individual acted as your interpreter **and** your preparer, that person should complete both **Part 7.** and **Part 8.** If the person who completed this petition is associated with a business or organization, that person should complete the business or organization name and address information. Anyone who helped you complete this petition **MUST** sign and date the petition. A stamped or typewritten name in place of a signature is not acceptable. If the person who helped you prepare your petition is an attorney or accredited representative whose representation extends beyond preparation of this petition, he or she may be obliged to also submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with your petition.

We recommend that you print or save a copy of your completed petition to review in the future and for your records. We recommend that you review your copy of your completed petition before you come to your biometric services appointment at a USCIS ASC. At your appointment, USCIS will permit you to complete the petition process only if you are able to confirm, under penalty of perjury, that all of the information in your petition is complete, true, and correct. If you are not able to make that attestation in good faith at that time, USCIS will require you to return for another appointment.

General Requirements

1. Does approval of this petition mean that my family member is automatically a lawful permanent resident or they can immediately immigrate to the United States?

No. An approved petition does not give the beneficiary automatic lawful permanent resident status or permission to immediately immigrate to the United States.

2. When will a visa become available?

When a petition is approved for the spouse, unmarried children under 21 years of age, or parents of a U.S. citizen, these persons are classified as immediate relatives, which means visas are immediately available to them.

When a petition is approved for a U.S. citizen's sibling or married or adult son or daughter, or for a lawful permanent resident's spouse, child, or unmarried son or daughter, it is assigned to the appropriate visa preference category. Each year, a limited number of immigrant visas are available for each preference category. The visas are processed in the order in which the petitions are properly filed and accepted by us. To be considered properly filed, a petition must be fully completed and signed, and the filing fee must be paid.

For a monthly report on the dates when immigrant visas are available, call the U.S. Department of State at **1-202-663-1541**, or visit their website at **www.travel.state.gov**.

3. What documents do you need to show that you are a U.S. citizen?

A. A copy of your birth certificate, issued by a civil registrar, vital statistics office, or other civil authority showing that you were born in the United States;

B. A copy of your naturalization certificate or certificate of citizenship issued by USCIS or the former Immigration and Naturalization Service (INS);

C. A copy of Form FS-240, Consular Report of Birth Abroad (CRBA), issued by a U.S. Embassy or U.S. Consulate;

D. A copy of your unexpired U.S. passport; or

E. An original statement from a U.S. consular officer verifying that you are a U.S. citizen with a valid passport.

If you do not have any of the above documents and you were born in the United States, see the **What if an official document is not available** section of these Instructions.

4. What documents do you need to show that you are a lawful permanent resident?

If you are a lawful permanent resident, you must file your petition with a copy of the front and back of your Permanent Resident Card (Form I-551). If you have not yet received your card, submit copies of your passport biographic page and the page showing admission as a lawful permanent resident, or other evidence of permanent resident status issued by USCIS or the former INS.

5. What documents do you need to prove family relationship?

You have to prove that there is a family relationship between you and the beneficiary. If you are filing for a relative listed below, submit the following documentation to prove the family relationship.

A. A spouse:

(1) A copy of your marriage certificate;

(2) If either you were or your spouse was previously married, submit copies of documents showing that each of the prior marriages was legally terminated; and

(3) You **must** submit two identical color passport-style photographs of yourself and your spouse (if he or she is in the United States) taken within 30 days of filing this petition. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched.

The two identical color passport-style photos must be 2 by 2 inches. The photos must be in color with full face, frontal view on a white to off-white background. Head height should measure 1 to 1 3/8 inches from top of hair to bottom of chin, and eye height is between 1 1/8 to 1 3/8 inches from bottom of photo. Your head must be bare unless you are wearing headwear as required by a religious denomination of which you are a member. Using a pencil or felt pen, lightly print your name and A-Number (if any) on the back of the photo.

NOTE: In addition to the required documentation listed above, you should submit one or more of the following types of documentation that may prove you have a bona fide marriage:

(1) Documentation showing joint ownership of property;

(2) A lease showing joint tenancy of a common residence, meaning you both live at the same address together;

(3) Documentation showing that you and your spouse have combined your financial resources;

(4) Birth certificates of children born to you and your spouse together;

(5) Affidavits sworn to or affirmed by third parties having personal knowledge of the bona fides of the marital relationship. Each affidavit must contain the full name and address of the person making the affidavit; date and place of birth of the person making the affidavit; and complete information and details explaining how the person acquired his or her knowledge of your marriage; or

(6) Any other relevant documentation to establish that there is an ongoing marital union.

NOTE: You must submit clear and convincing evidence that you and your spouse entered into the marriage in good faith and not for immigration purposes if you married your spouse while your spouse was the subject of an exclusion, deportation, removal, or rescission proceeding (including during the judicial review of any one of these proceedings); or you are a lawful permanent resident that obtained your permanent residence through a prior marriage that was not determined by the death of your spouse and you are filing your petition for your spouse that you were married within five years of obtaining your permanent residence.

B. A child and you are the mother: Submit a copy of the child's birth certificate showing your name and the name of your child.

C. A child and you are the father: Submit a copy of the child's birth certificate showing both parents' names, your marriage certificate to the child's mother, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities.

D. A child born out of wedlock and you are the father: Submit evidence that you and the mother were married while the child was under 18 years of age, or submit evidence that the child was legitimated under the law of the child's residence or domicile, or under the law of your residence or domicile, before the child reached 18 years of age. If your child was not legitimated before reaching 18 years of age, you must file your petition with copies of evidence that a bona fide parent-child relationship existed between you and the child before the child reached 21 years of age. This may include evidence that you lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.

E. A brother or sister: Submit a copy of your birth certificate and a copy of your brother's or sister's birth certificate showing that you have at least one common parent. If you and your brother or sister have a common father but different mothers, submit copies of the marriage certificates showing that your father was married to each mother, as well as copies of documents showing that any prior marriages of either your father or mothers were legally terminated. If you and your brother or sister are related through adoption or a stepparent, or if you have a common father and either of you were not legitimated before you turned 18 years of age, see **Items D.**, **H.**, and **I.** in these Instructions for additional information on proving your family relationship.

F. A mother: Submit a copy of your birth certificate showing your name and your mother's name.

G. A father: Submit a copy of your birth certificate showing the names of both parents. Also submit a copy of your parents' marriage certificate establishing that your father was married to your mother. If either your mother or father were previously married, submit copies of documents showing that each of the prior marriages was legally terminated. If you are filing for a stepparent or adoptive parent, or if you are filing for your father and you were born out of wedlock, see **Items D.**, **H.**, and **I.** in these Instructions for additional information on proving your family relationship.

H. Stepparent/Stepchild: If your petition is based on a stepparent-stepchild relationship, you must file your petition with a copy of the marriage certificate of the stepparent to the child's natural parent showing that the marriage occurred before the child turned 18 years of age, copies of documents showing that any prior marriages were legally terminated (if applicable), and a copy of the stepchild's birth certificate.

I. Adoptive parent or adopted child: If you and the person you are filing for are related by adoption, you must submit a copy of the adoption decree showing that the adoption took place before the child turned 16 years of age.

If you adopted a child under 16 years of age, and you also adopted the older sibling of that child, you may file a petition for the older child if the adoption occurred before the older child turned 18 years of age. You must submit a copy of the adoption decree showing that the adoption of the sibling occurred before the sibling turned 18 years of age.

In either case, you must also submit copies of evidence that each child was in the legal custody of and resided with the parents who adopted him or her for at least two years before or after adoption. Only a court or recognized government entity may grant legal custody, and it is usually granted at the time the adoption is finalized. However, if legal custody is granted by a court or recognized government entity prior to the adoption, that time may count toward fulfilling the 2-year legal custody requirement.

6. Notice to persons filing for spouses, if you have been married less than two years.

If you have been married less than two years on the date your spouse has obtained permanent resident status, USCIS will grant your spouse conditional permanent resident status for two years under INA section 216. USCIS then requires both you and your spouse to file Form I-751, Petition to Remove Conditions on Residence, during the **90-day period immediately before your spouse's conditional permanent resident status expires**.

Conditional permanent residents have the same rights, privileges, responsibilities, and duties as all other lawful permanent residents. A conditional permanent resident is not limited in his or her right to apply for naturalization, file petitions on behalf of qualifying relatives, or reside permanently in the United States as an immigrant in accordance with U.S. immigration laws.

NOTE: If your spouse fails to timely file Form I-751 to remove the conditional basis of his or her spouse's permanent resident status, USCIS will terminate his or her permanent resident status and begin removal proceedings.

7. What if a name has changed?

If either you or the person you are filing for is using a name that is not the same name shown on the relevant documents, you must file your petition with copies of the legal documents reflecting the name change, such as a marriage certificate, adoption decree, or court order.

8. What if an official document is not available?

In this situation, submit a statement from the appropriate civil authority certifying that the document or documents are not available. You must also submit secondary evidence, which may include one or more of the following records listed below.

A. Religious record: A copy of a document bearing the seal of the religious organization showing that the baptism, dedication, or comparable rite occurred within two months after birth, and showing the date and place of the child's birth, date of the religious ceremony, and the names of the child's parents.

B. School record: A letter from the authority (preferably the first school attended) showing the date of admission to the school, the child's date of birth or age at that time, place of birth, and names of the parents.

C. Census record: State or Federal census records showing the names, place of birth, date of birth, or the age of the person listed.

D. If records like those described above are not available, then you may submit two or more written statements from individuals who were living at the time and who have personal knowledge of the event you are trying to prove, such as the date and place of birth, marriage, or death. The individuals making the written statements do not have to be U.S. citizens. Each written statement must contain the following information regarding the individual making the written statement: his or her full name, address, date and place of birth, full information concerning the event, and complete details explaining how the individual acquired personal knowledge of the event.

Finally, each individual's written statement must include the following declaration, "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date], [signature]."

E. For parent-child relationships only: If other forms of evidence have proven inconclusive, the petitioner may submit on a voluntary basis other evidence of a birth parent and birth child relationship to include deoxyribonucleic acid (DNA) testing. DNA test results will only be accepted by USCIS from parentage-testing laboratories accredited by the American Association of Blood Banks (AABB). A list of laboratories can be viewed at **www.aabb.org/sa/facilities/Pages/RTestAccrFac.aspx**.

What Is the Filing Fee?

The filing fee for Form I-130 is **$535**. The filing fee for this petition cannot be waived.

NOTE: The filing fee is not refundable, regardless of any action USCIS takes on this petition. **DO NOT MAIL CASH.** You must submit all fees in the exact amounts.

Use the following guidelines when you prepare your check or money order for the Form I-130:

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; **and**
2. Make the check or money order payable to **U.S. Department of Homeland Security**.

   NOTE: Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."
3. If you live outside the United States, contact the nearest U.S. Embassy or U.S. Consulate for instructions on the method of payment.

Notice to Those Making Payment by Check. If you send us a check, USCIS will convert it into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement.

You will not receive your original check back. We will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize us to process the copy in place of your original check. If your check is returned as unpayable, USCIS will re-submit the payment to the financial institution one time. If the check is returned as unpayable a second time, we will reject your petition and charge you a returned check fee.

How To Check If the Fees Are Correct

Form I-130's filing fee is current as of the edition date in the lower left corner of this page. However, because USCIS fees change periodically, you can verify that the fees are correct by following one of the steps below.

1. Visit the USCIS website at **www.uscis.gov**, select "FORMS," and check the appropriate fee; or
2. Call the USCIS National Customer Service Center at **1-800-375-5283** and ask for the fee information. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Where To File?

Please see our website at **www.uscis.gov/i-130** or call our National Customer Service Center at **1-800-375-5283** for the most current information about where to file this petition. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Address Change

A petitioner who is not a U.S. citizen must notify USCIS of his or her new address within 10 days of moving from his or her previous residence. For information on filing a change of address, go to the USCIS website at **www.uscis.gov/addresschange** or contact the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

NOTE: Do not submit a change of address request to USCIS Lockbox facilities because the Lockbox does not process change of address requests.

Processing Information

Initial Processing. Once USCIS accepts your petition we will check it for completeness. If you do not completely fill out this petition, you will not establish a basis for your eligibility and USCIS may reject or deny your petition.

Requests for More Information. We may request that you provide more information or evidence to support your petition. We may also request that you provide the originals of any copies you submit. USCIS will return any requested originals when they are no longer needed.

Requests for Interview. We may request that you appear at a USCIS office for an interview based on your petition. At the time of any interview or other appearance at a USCIS office, we may require that you provide your fingerprints, photograph, and/or signature to verify your identity and/or update background and security checks.

Decision. The decision on Form I-130 involves a determination of whether you have established eligibility for the immigration benefit you are seeking. USCIS will notify you of the decision in writing.

USCIS Forms and Information

To ensure you are using the latest version of this petition, visit the USCIS website at **www.uscis.gov** where you can obtain the latest USCIS forms and immigration-related information. If you do not have internet access, you may order USCIS forms by calling the USCIS Contact Center at **1-800-375-5283**. The USCIS Contact Center provides information in English and Spanish. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Instead of waiting in line for assistance at your local USCIS office, you can schedule an appointment online at **www.uscis.gov**. Select "Schedule an appointment online" and follow the screen prompts to set up your appointment. Once you finish scheduling an appointment, the system will generate an appointment notice for you.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-130, we will deny your Form I-130 and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

USCIS Compliance Review and Monitoring

By signing this petition, you have stated under penalty of perjury (28 U.S.C. section 1746) that all information and documentation submitted with this petition are complete, true, and correct. You also authorize the release of any information from your records that USCIS may need to determine your eligibility for the immigration benefit you are seeking and consent to USCIS verifying such information.

The Department of Homeland Security (DHS) has the authority to verify any information you submit to establish eligibility for the immigration benefit you are seeking at any time. USCIS' legal authority to verify this information is in 8 U.S.C. sections 1103, 1155, and 1184, and 8 CFR Parts 103, 204, 205, and 214. To ensure compliance with applicable laws and authorities, USCIS may verify information before or after your case is decided.

Agency verification methods may include, but are not limited to: review of public records and information; contact via written correspondence, the Internet, facsimile, other electronic transmission, or telephone; unannounced physical site inspections of residences and locations of employment; and interviews. USCIS will use information obtained through verification to assess your compliance with the laws and to determine your eligibility for an immigration benefit.

Subject to the restrictions under 8 CFR 103.2(b)(16), USCIS will provide you with an opportunity to address any adverse or derogatory information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on your case or after the agency has initiated an adverse action which may result in revocation or termination of an approval.

DHS Privacy Notice

AUTHORITIES: The information requested on this petition, and the associated evidence, is collected under the Immigration and Nationality Act (INA) section 204.

PURPOSE: The primary purpose for providing the requested information on this petition is to determine if you have established eligibility for the immigration benefit for which you are filing. DHS will use the information you provide to grant or deny the immigration benefit you are seeking.

DISCLOSURE: The information you provide is voluntary. However failure to provide the requested information, including your Social Security number, and the requested evidence, may delay a final decision in your case or result in denial of your petition.

ROUTINE USES: DHS may share the information you provide on this form with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records forms [DHS/USCIS–001 – Alien File, Index, and National File Tracking System and DHS/USCIS–007 – Benefits Information System] and the published privacy impact assessments [DHS/USCIS/PIA-003 Integrated Digitization Document Management Program (IDDMP), DHS/USCIS/PIA-016(a) Computer Linked Application Information Management System and Associated Systems, and DHS/USCIS/PIA-051 Case and Activity Management for International Operations], which you can find at **www.dhs.gov/privacy**. DHS may also share the information, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The public reporting burden for Form I-130 is estimated at 2 hours per response and Form I-130A is estimated at 50 minutes per response, including the time for reviewing instructions, gathering the required documentation and information, completing the forms, preparing statements, attaching necessary documentation, and submitting the forms. The collection of biometrics is estimated to require 1 hour and 10 minutes. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0012. **Do not mail your completed Form I-130 or Form I-130A to this address.**

Checklist

For all Form I-130 petitioners:

☐ Did you answer each question on Form I-130?

☐ Did you sign and date the petition?

☐ Did you enclose the correct filing fee for each petition?

☐ Did you submit proof of your U.S. citizenship or lawful permanent resident status?

☐ Did you submit other required supporting evidence?

☐ If you have an attorney or accredited representative, did you include a completed Form G-28?

For Form I-130 spouse petitioners:

☐ Did you include two photographs of your spouse beneficiary?

☐ Did you include a completed and signed Form I-130A?

☐ Did you include two photographs of you (spouse petitioner)?