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, CHARLES RETTIG, in his individual and official capacity as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF TREASURY; the U.S. INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA, Defendants.	)	Case No. 1:20-cv-02531 SJC

PLAINTIFF'S REPLY IN SUPPORT OF HIS EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND/OR DECLARATORY JUDGMENT

Now comes Plaintiff, John Doe ("Doe" or "Plaintiff"), on behalf of himself and others similarly situated (the "Putative Class"), and submits this reply ("Reply") in support of his motion for a temporary restraining order, preliminary injunction, and/or declaratory judgment (Plaintiff's "Emergency Motion").

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PROCEDURAL HISTORY

On April 24, 2020, Plaintiff filed a class action complaint (the "Complaint") challenging the Coronavirus Aid, Economic Relief, and Security Act (the "CARES Act" or "Act") and alleging violations of his constitutional rights. *See* Dkt. 1. Plaintiff subsequently filed a First Amended Complaint (the "FAC") and his Emergency Motion. *See* Dkts. 11 & 13. On May 2, 2020, Plaintiff filed his Second Amended Complaint (the "SAC"). *See* Dkt. 20.

The CARES Act creates a refundable tax credit for any eligible individual who holds a social security number ("SSN") by adding 26 U.S.C. § 6428 to the Internal Revenue Code ("I.R.C."). Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. No. 116-136, H.R. 748, 116th Cong. (2020). Section 6248 provides an Advance Payment to all eligible individuals on or before December 31, 2020 (the "Advance Payment"). I.R.C. § 6428(f)(3)(A). The Advance Payment should be made "as rapidly as possible," and Congress directed the Secretary of the Treasury to conduct a public awareness campaign regarding "information about availability of the credit and rebate." CARES Act, § 2201(e). However, under the exclusion provision found in § 6428(g)(1)(B) (the "Exclusion Provision"), Plaintiff and the Putative Class are not eligible for Advance Payments under the Act because they filed taxes jointly with their spouses, who do not hold SSNs. I.R.C. § 6428(g).

The "Advance Payment" **must be paid** *before* December 31, 2020, or not at all because. Congress expressly forbid the Commissioner of Internal Revenue from issuing any Advance Payment later: "[n]o refund or credit shall be made or allowed under this subsection after December 31, 2020." I.R.C. § 6428(f)(3)(A).

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 a Senator and Sponsor

of S. 3548 CARES Act; Steven Mnuchin, in his individual and official capacity as the Secretary of the U.S. Department of Treasury; Charles Rettig, in his individual and official capacity as U.S. Commissioner of Internal Revenue; U.S. Department of the Treasury; the U.S. Internal Revenue Service, and the United States of America (collectively "Defendants") filed their memorandum in opposition to Plaintiff's Emergency Motion ("Memo in Opp.") on May 18, 2020. *See* Dkt 22.

Defendants assert that they cannot be sued in their individual or official capacities (*see* Memo in Opp. at 9-14), and instead suggest that the proper procedure for challenging Plaintiff's eligibility for the Advance Payment is to proceed under I.R.C. § 7422(a). *See* Memo in Opp. at 11-13. Defendants do not deny that Plaintiff and the Putative Class have been denied equal access to the Advance Payment. Instead, Defendants argue that Plaintiff has no standing, may proceed only through a refund suit under section 7422 of the I.R.C., and invoke the Anti-Injunction Act (AIA), I.R.C. § 7421, and the Declaratory Judgment Act, 28 U.S.C. § 2201(a), as jurisdictional bars to any suit outside of section 7422. *See* Memo in Opp. at 13 n. 7. Defendants are patently incorrect. An injunction is the only adequate remedy to provide Plaintiff and the Putative Class equal treatment under the law.

As of the date of filing this Reply, Plaintiff and the Putative Class continue to be denied their constitutional right, as citizens of the United States, to the Advance Payment that has already been issued to over one hundred million Americans and – by its own terms – must be issued on or before December 31, 2020, or not at all. I.R.C. § 6428(f)(3)(A). Injunctive relief must issue here to preserve those rights and prevent irreparable harm.

ARGUMENT

The Memo in Opp. barely scratches the surface of the CARES Act's constitutional violations, and instead is almost entirely devoted to several ill-fated arguments as to why

jurisdiction and standing are lacking. This Court's jurisdiction and Plaintiff's standing are both on firm footing, however, and Defendants' arguments to the contrary should be rejected. Furthermore, Plaintiff and the Putative Class's constitutionally protected rights are clearly impacted by the Exclusion Provision. First, marriage is recognized as one of the fundamental personal rights essential to the orderly pursuit of freedom and happiness, with great importance in our society. *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971), *citing Loving v. Virginia*, 388 U.S. 1 (1967); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Meyer v. Nebraska*, 262 U.S. 390 (1923). The fundamental right of marriage evokes the freedoms of association embodied in our First Amendment. USCS Const. Amend. 1. *Roberts v. United States Jaycees*, 468 U.S. 609, 619-20 (1984). Moreover, the Supreme Court has further established a statute may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of power. *Boddie*, *supra*, at 379. ("[T]his Court has often held that a valid statute was unconstitutionally applied in particular circumstances because it interfered with an individual's exercise of [First Amendment] Rights"). Equal Protection and Due Process are implicated when laws discriminate against people for: whom they marry; alienage; for poverty; and for class. *Id.* at 385, *citing Takahashi v. Fish & Game Com.*, 334 U.S. 410 (1948), *Griffin v. Illinois*, 351 U.S. 12 (1956), *Skinner v. Oklahoma*, 316 U.S. 535 (1942). Indeed, the right to equal treatment guaranteed by the Constitution is paramount. As the Supreme Court emphatically held in *Heckler*:

> [W]e have repeatedly emphasized, discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community, can cause serious noneconomic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.

Heckler v. Mathews, 465 U.S. 728, 738-40 (1984) (internal citations omitted). Here, Plaintiff,

because of his marriage to a non-U.S. Citizen, is being stigmatized and treated as inferior. An injunction mandating equal treatment would provide him (and the Putative Class) with redress.

I. This Court Has Jurisdiction Over Plaintiff's Claims.

26 U.S.C. § 1331 ("Section 1331") confers jurisdiction over Plaintiff's claims upon this Court, as they arise under the Constitution of the United States. Defendants' misleading headings, that the "Court does not have subject matter jurisdiction" and that the statutes at issue here do "not confer jurisdiction" defy belief. *See* Memo in Opp. at 9-10. Section 1331 unequivocally confers jurisdiction here, as it plainly states that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Section 1367 similarly allows jurisdiction over any supplemental claims "that are so related to claims in the action within [the court's] original jurisdiction that they form a part of the same case or controversy." 28 U.S.C. § 1367(a). Defendants wisely do not repeat this nonsense – that this Court does not actually have jurisdiction over Constitutional claims – in the Memo in Opp., but instead rest on sovereign immunity. Defendants are wrong.

A. Congress Has Waived Sovereign Immunity in this Case.

Where, as here, a plaintiff raises a valid claim that arises under federal law, the federal government is the defendant, and the suit does not seek money damages, "jurisdiction is secure." *Blagojevich v. Gates*, 519 F.3d 370, 371 (7th Cir. 2008). The Administrative Procedure Act ("APA"), waives sovereign immunity for the kind of relief Plaintiff and the Putative Class seek, so long as the federal statute at issue authorizes review of agency action. *Id*. at 372. The APA provides an express waiver of sovereign immunity where, as here, the plaintiff seeks equitable relief. 5 U.S.C. § 702.[1] The relevant statute provides:

[1] Memo in Opp. at 13. "A reply addressing an argument raised in a response brief does not warrant the filing of a surreply. *See Schaefer-Larose v. Eli Lilly and Co.*, 663 F.Supp.2d 674, 698 (S.D. Ind. 2009) (finding a magistrate

> An action in a court of the United States seeking relief other than money damages and stating a claim that an agency [. . .] acted or failed to act [. . .] shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.

5 U.S.C. § 702.

In *Blagojevich v. Gates*, the then-governor of Illinois sued the Secretary of Defense under 28 U.S.C. §§ 1331 and 1346(a)(2). The District Court for the Central District of Illinois dismissed the suit *sua sponte* because the government had not waived sovereign immunity and thus, the court lacked jurisdiction. *Blagojevich*, 519 F.3d at 370. The Seventh Circuit Court of Appeals reversed and remanded the case, holding Section 702 of the APA is generally applicable, regardless of whether a claim is "under the APA;" and Section 702 governs when "*any* federal statute authorizes review of agency action. *Id.* at 372 (*citing Bowen v. Massachusetts,* 487 U.S. 879 (1988)) (emphasis in original).

According to the Seventh Circuit, provisions such as "5 U.S.C. § 701(a), and § 706(2)(A) allow[] a court to set aside agency action that is 'not in accordance with law,'" and that law is not limited to "another portion of the APA." *Id.* The Court of Appeals for the District of Columbia has reached the same conclusion. In *Trudeau v. Federal Trade Commission*, the Federal Trade Commission sought to dismiss a lawsuit for lack of jurisdiction, arguing that the court had no jurisdiction over the infomercial producer plaintiff's First Amendment claims against the FTC. *Trudeau v. Federal Trade Com'n*, 456 F.3d 178, 184-185 (D.C. Cir. 2006). The Court of Appeals held that Section 1331 provided jurisdiction. *Id*. at 185. The APA's "waiver of sovereign immunity applies to any suit whether under the APA or not." *Id.* at 186.

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judge was well within his discretion in denying leave to file a surreply where there was no new evidence and "the only 'new' arguments raised in the reply were in response to the arguments raised in the response brief.")" .

Claims challenging Department of Treasury and Internal Revenue Service action – such as distributing billions of dollars of Advance Payments to United States persons but unconstitutionally excluding U.S. persons who are married to individuals who do not have SSNs – have fared the same. For example, in *Freedom from Religion Foundation, Inc. v. Schulman*, the District Court for the Western District of Wisconsin held that the APA waived sovereign immunity when the Plaintiff challenged IRS policy "pursuant to the Fifth Amendment's equal-protection clause and the Establishment Clause." 961 F.Supp.2d 947, 954 (W.D. Wis. 2013). Despite the plaintiff's lack of identifying final agency action or action that was committed to agency discretion, the court held "the second sentence of § 702 still waives the United States's [*sic*] sovereign immunity … because that sentence is not limited to claims brought under the APA itself but **is generally applicable to any action for prospective relief, including an action involving a constitutional challenge**." *Id*. (emphasis added). *Michigan v. United States Army Corps of Engineers*, cited by Defendants on page 13 of the Memo In Opp., is particularly instructive. 667 F.3d 765 (7th Cir. 2011). In that case, the Seventh Circuit held that the second sentence of § 702 waives sovereign immunity when "any federal statute authorizes review of agency action, as well as in cases involving constitutional law." *Id*. at 775. Section 702 applies here, because the IRS, a federal agency, has issued Advance Payments to over one hundred million Americans pursuant to the CARES Act, but Plaintiff and the Putative class are ineligible to receive the Advance Payment due to the unconstitutional Exclusion Provision.

B. Neither the Anti-Injunction Act Nor the Declaratory Judgement Act Bar Plaintiff's Claims.

Defendants correctly point out that if Plaintiff's claims were to be construed as an attempt to restrain the assessment and collection of ***tax***, it would be barred by both the Anti-Injunction Act ("AIA") and the Declaratory Judgment Act ("DJA"). *See* Memo in Opp. at 13 n.7.

Defendant is also correct that the CARES Act creates a "refundable tax credit." *See* Memo in Opp. at 2. It is precisely for that reason – that the CARES Act created a refundable tax *credit* and not a *tax* – that the AIA and the DJA do not bar this Court's review of Plaintiff and the Putative Class's claims. Both the AIA's text and its prior conclusive judicial interpretation make clear that Plaintiff's claims cannot be construed as an attempt to "restrain[] the assessment and collection of any tax [...]" within the meaning of the statute, thereby removing the predicate that the Government itself concedes is essential for applying the AIA.

1. The CARES Act Creates a "Refundable Tax Credit," not a Tax, and Therefore the Plain Language of the Anti-Injunction Act Permits Plaintiff's Claims.

The AIA does not bar this suit because Plaintiff and the Putative Class do not seek to restrain assessment or collection of tax. The Anti-Injunction Act provides:

> Except as provided […] no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

I.R.C. § 7421(a). The CARES Act creates a refundable tax credit to be distributed as an Advance Payment. Providing equal access to the Advance Payment to Plaintiff and the Putative Class will not restrain assessment or collection of tax. I.R.C. § 6428(f)(3(A). The DJA, 28 U.S.C. § 2201(a), which generally bars federal courts from granting declaratory judgments "with respect to Federal taxes," has been deemed to be "coterminous" with the AIA. *Fla. Bankers Ass'n v. U.S. Dep't of the Treasury*, 799 F.3d 1065, 1067 (D.C. Cir. 2015) (*citing Cohen v. United States*, 650 F.3d 717, 730-31 (D.C. Cir. 2011) (*en banc*)); *see also Bob Jones Univ. v. Simon*, 416 U.S. 725, 733 n.7 (1974). Accordingly, neither the AIA or the DJA inhibit this Court's jurisdiction or the APA's waiver of sovereign immunity.

The Advance Payment is not a tax. Every statutory interpretation "begins with the text[.]" *United States v. All Funds on Deposit with R.J. O'Brien & Assocs.*, 783 F.3d 607, 622 (7th Cir.

2015). The AIA's text denies a court's jurisdiction from maintaining a "suit for the purpose of restraining the assessment or collection of any *tax*." I.R.C. § 7421 (emphasis added). The Supreme Court emphasized the term "tax" in AIA's text in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 543-46 (2012) ("*NFIB"*), as it considered whether the AIA precluded the Court from considering the merits of a constitutional challenge to the Affordable Care Act before payment of the shared responsibility payment. The Court noted that "Congress's decision to label this exaction a 'penalty' rather than a 'tax' is significant." *NFIB*, 567 U.S. at 544. Holding that label to be dispositive for purposes of invoking the AIA, the Court explained that it has "applied the [AIA] to statutorily described 'taxes' even where that label was inaccurate." *Id.* As support, the Court cited *Bailey v. George*, 259 U.S. 16 (1922), in which it applied the AIA to the so-called child labor tax, even though it had struck that tax down as exceeding Congress's taxing power in a companion case released the same day, *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 44 (1922).

It follows that the AIA applies only when the item at issue is an "exaction," i.e., an amount due the Government, when Congress chooses to call that exaction a "tax." The D.C. Circuit took that rationale to its logical conclusion in *Florida Bankers Association v. U.S. Department of the Treasury*, 799 F.3d 1065, 1067 (D.C. Cir. 2015), declining to reach the merits of a challenge to a regulation imposing reporting requirements on banks, a "penalty" codified at 26 U.S.C. § 6721(a). Then-Judge Kavanaugh stated that "any reference in this title to 'tax' imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter." *Id.* at 1068. He explained, "[i]f the penalty here were not itself a tax, the Anti-Injunction Act would not bar this suit." *Id.* at 1069.

By comparison, and as conceded by Defendants (*see* Memo in Opp. at 2), the Advance Payment under section 6428 is a refundable credit—the inverse of an exaction or a tax. To be sure, section 6211(b)(4) states that the refundable portion of the credit under section 6428 "shall be taken into account as negative amounts of tax." But the lead-in to that provision limits that treatment to the "purposes of subsection (a)." That subsection—section 6211(a)—is concerned solely with defining the term "deficiency." In other words, unlike in *Florida Bankers Association*, where section 6671(a) deemed the payment at issue a tax for all "purposes of title 26," section 6211(b)(4) requires that the payment at issue here be considered "negative amounts of tax" only for defining a deficiency. Because a section 6428 refundable credit is the opposite of an exaction, and no provision of the Code deems it a negative amount of tax for all purposes of title 26, or at least for purposes of section 7421, by its terms the latter does not apply. Thus, the Advance Payment is not a tax and there is no bar to Plaintiff's claims being before this Court.

2. Courts Have Held that the Earned Income Tax Credit, Another Refundable Tax Credit, is Subject to Pre-enforcement Review and Not Barred by the Anti-Injunction Act or the Declaratory Judgment Act.

Defendants rightly compare the Earned Income Tax Credit ("EITC") to the CARES Act Advance Payment. The EITC is a "refundable tax credit, just like the CARES Act credit." *See* Memo in Opp. at 5-6. Defendants note that the EITC is unavailable to Plaintiff and the Putative Class for the same reasons that the Advance Payment is not available to them: their marriage to a person who lacks an SSN. *Id.* The EITC was intended "to negate the disincentive to work caused by Social Security taxes." *Sorenson v. Sec'y of Treasury of U.S.*, 475 U.S. 851, 858 (1986). The credit is available to extremely low-income families; the higher a family's adjusted gross income ("AGI"), the lower the credit. I.R.C. § 32(b). Married individuals qualify *only* if they file their federal income tax returns jointly. I.R.C. § 32(d).

It is precisely for that reason – that the EITC is a refundable tax credit ***and not a tax*****,** that courts have unequivocally held that the AIA and the DJA do not apply to bar class action lawsuits based upon refundable tax credits. For example, in *Nelson v. Regan*, 731 F.2d 105 (2d Cir. 1984), a certified class sought declaratory and injunctive relief because refundable portions of the EITC were being intercepted pursuant to section 6402(c) of the I.R.C. to satisfy past due child support obligations. On appeal, the Second Circuit held that neither the AIA or the DJA barred a hearing on the merits, because "the tax intercept program [seizing past due child support] does not apply to refunds or payments of earned income credits." *Id.* at 110-12.

A circuit split developed on the issue when the Ninth Circuit came out the other way in *Sorenson v. Sec'y of Treasury of U.*S., 752 F.2d 1433 (9th Cir. 1985), holding that ETICs *were* subject to being intercepted under section 6402(c). The Ninth's Circuit's holding was premised on the conclusion that the EITC was ***undisputedly owed to petitioner*** and undisputedly not owed to the United States **as taxes**." *Sorenson*, 752 F.2d at 1437 (emphasis added). The district court similarly dismissed an AIA challenge. Eventually, the Supreme Court resolved that circuit split by siding with the Ninth Circuit in *Sorenson v. Sec'y of Treasury of U.S.*, 475 U.S. 851 (1986), holding that the EITC was subject to the past due child support intercept program. Critically, however, the Government raised neither the AIA nor the DJA at the Supreme Court. Thus, every court to hear a challenge to the propriety of including refundable EITCs in tax refunds intercepted and directed toward back child-support obligations was able to proceed to the merits of the challenge, notwithstanding the AIA or DJA.

Refundable tax credits like the EITC – and the Advance Payment – are "undisputedly not owed to the United States *as taxes*" (*Sorenson*, 752 F.2d at 1437) and do not implicate the AIA

or the DJA.[2] Sovereign immunity is unequivocally waived by the APA, and neither the AIA nor the DJA create any additional jurisdictional hurdles.

II. Plaintiff has Standing.

Plaintiff and the Putative Class, all of whom have suffered and continue to suffer an actual injury that is directly traceable to Defendants' conduct and will unequivocally be redressed by a favorable decision here, have standing. Defendants make two arguments in their attempt to support the fatally flawed conclusion that Plaintiff lacks standing. First, that Plaintiff has not been denied the CARES Act Credit (*see* Memo in Opp. at 15-17) and second, that Plaintiff may be, or may become, eligible for the CARES Act Credit. *See* Memo in Opp. at 17. Both arguments misconstrue the facts of this case and applicable law, which plainly put Plaintiff's injuries on solid ground before this Court.

> To satisfy the "case" or "controversy" requirement of Article III, which is the "irreducible constitutional minimum" of standing, a plaintiff must, generally speaking, demonstrate that he has suffered "injury in fact," that the injury is "fairly traceable" to the actions of the defendant, and that the injury will likely be redressed by a favorable decision.

Bennett v. Spear, 520 U.S. 154, 162 (1997) (*citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471-472 (1982)).

A. Plaintiff Has Suffered, and Continues to Suffer, an Injury in Fact.

Plaintiff's injury in fact is easily and readily discernible. The CARES Act, enacted in response to a global pandemic the likes of which this generation has never seen,[3] created a

[2] On May 4, 2020, the Supreme Court granted certiorari to *CIC Services, LLC v. Internal Revenue Service,* Docket No. 19-930 (Sup. Ct. 2020) to resolve an apparent Circuit Split between the Sixth, Seventh and Tenth Circuits on the question of whether the Anti-Injunction Act bars challenges to unlawful regulatory mandates issued by administrative agencies when those mandates are not taxes.

[3] *Statement by Secretary Steven T. Mnuchin on the Passage of the CARES Act*, U.S. Department of the Treasury (March 27, 2020), https://home.treasury.gov/index.php/news/press-releases/sm959 (last visited May 29, 2020).

refundable tax credit. I.R.C. § 6428. The Secretary of the Treasury is directed to issue the credit as an Advance Payment, I.R.C. § 6248(f)(3)(A), "as rapidly as possible," and to conduct a public awareness campaign to provide the public "information about availability of the credit and rebate." CARES Act, § 2201(e). Plaintiff has not and will not ever receive the emergency Advance Payment absent this Court's intervention. According to the Treasury Department, the Internal Revenue Service has issued Advance Payments to 152,167,600 Americans, including almost 750,000 Americans residing outside of the United States, totaling over $257,954,545,196.00. *See*, IR-2020-101, May 22, 2020, attached hereto and incorporated herein as Exhibit A. It is true that Plaintiff and the Putative Class are permitted to (though not required to) someday file a claim for refund and dispute the constitutionality of the Exclusionary Provision. *See* discussion *infra* Part II.B. Doing so will not obviate the immediate need for this Court's intervention or redress Plaintiff's ongoing injury, denying him eligibility to receive the Advance Payment unlike the 152,167,600 Americans who have already received such a payment. None of the cases cited by Defendants for the mistaken proposition that Plaintiff must apply and be denied for benefits before his claim is ripe apply to the situation here. Plaintiff's harm is not speculative, it is not conjectural, and it is not hypothetical. Plaintiff's harm is real, it is now, and it is continuing so long as he remains ineligible for the Advance Payment by virtue of the Exclusionary Provision. I.R.C. § 6428(g)(1)(B).

One case cited by Defendants actually touches on the I.R.C., and is worthy of closer inspection. In *Freedom From Religion Foundation, Inc. v. Lew*, an atheist organization sued the Secretary of the Treasury and IRS Commissioner. 773 F.3d 815 (7th Cir. 2017). The Foundation argued that the so-called "parsonage exemption" codified at I.R.C. § 107, which provides certain

tax deductions to "ministers of the gospel," but ostensibly not atheists, violated the establishment clause of the First Amendment and the equal protection requirement in the Fifth Amendment. *Id*. at 818-19. The "parsonage exemption" is not – like the CARES Act or the EITC – a refundable tax credit. It provides for certain benefits such as housing to be exempt from gross income. *Id*. n.1; I.R.C. § 107. It is well-established that tax *deductions*, unlike *credits*, granted legislative grace[4] and the Seventh Circuit's holding that the Foundation had no standing to Plaintiff or this Case. Second, the parsonage exemption does not – like the CARES Act does – provide for any form of "Advance Payment" or advance credit. *Sorenson*, 752 F.2d at 1437

Defendants incorrectly assert Plaintiff lacks an "injury in fact." This ensures plaintiffs have a "personal stake in the outcome of the controversy." *Warth* v. *Seldin*, 422 U. S. 490, 498 (1975) (internal quotation marks omitted). An injury sufficient to satisfy Article III must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan*, *supra*, at 560 (some internal quotation marks omitted). An allegation of future injury may suffice if the threatened injury is "certainly impending," or there is a "'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (*citing Clapper v. Amnesty Int'l USA*, 568 U. S. 398, 409, 414, n.5 (2013)). Plaintiff undoubtedly has a personal stake because he has been denied the Advance Payment during this Pandemic. Defendants' assertion that Plaintiff's claims are premature because he has not yet applied for and been denied the benefit at issue is belied by the IRS Commissioner's contrary statements that the payments are being distributed "automatically" and there is "no action required for most people" to receive the Advance Payment. *See* IR 2020-61, March 30, 2020, attached hereto and incorporated herein as Exhibit B. The Advance Payment is not akin to a

[4] *See*, *e.g.*, *Northern California Small Business Assistance, Inc. v. Commissioner*, 153 T.C. 65, 70 (2019).

parsonage exemption that – like all tax deductions – is a matter of legislative grace. It has been and will continue to be automatically distributed to eligible taxpayers. Defendants have launched an unprecedented public awareness campaign regarding the Advance Payment, and even issued prepaid debit cards to those eligible individuals for whom the IRS does not have bank account information.[5]

Plaintiff's exclusion from eligibility for the Advance Payment is ongoing, the injury is more than actual and imminent, as the Plaintiff is being deprived of equal treatment **right now**.[6] This injury is directly traceable to the actions of the Defendants. Only an injunction prohibiting the Defendants from continuing this policy of unequal treatment will prevent any further injury. *Freedom from Religion Found., Inc. v. Shulman*, 961 F. Supp. 2d 947, 951 (W.D. Wis. 2013). Accordingly, the far-fetched argument that Plaintiff's harm is anything but actual should be rejected.

Even if this Court were to engage in the mental gymnastics required to ignore the actual, ongoing injury at issue, the Supreme Court has permitted pre-enforcement review under circumstances that render the threatened enforcement sufficiently imminent. *Susan B. Anthony*

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[5] Defendant Mnuchin stated, "Treasury and the IRS have been working with unprecedented speed to issue Economic Impact Payments to American families. Prepaid debit cards […]allow us to deliver Americans their money quickly." *See Treasury is Delivering Millions of Economic Impact Payments by Prepaid Debit Card*, May 18, 2020 attached hereto and incorporated herein as Exhibit C.

[6] Plaintiff has already suffered an injury in fact. *See Heckler v. Mathews*, 465 U.S. 728, 738–40 (1984) (victim of unequal treatment has standing to seek equal treatment); *see also Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931) (cause of action for equal protection accrues as soon as the plaintiff is deprived of equal treatment). The Exclusion Provision deprives Plaintiff and the Putative Class of the right to equal protection and procedural due process, which are "absolute" rights "in the sense that they do not depend upon the merits of Plaintiff's substantive assertions." *Carey v. Piphus*, 435 U.S. 247, 266 (1978), (citing *Boddie v. Connecticut*, 401 U.S. 371, 375 (1971)); *Anti-Fascist Committee v. McGrath*, 341 U.S., at 171-172 (Frankfurter, J., concurring)). The Fifth Amendment provides, in pertinent part, that no person shall "be deprived of life, liberty, or property, without due process of law." USCS Const. Amend. 5. *See also Boddie v. Connecticut*, 401 U.S. 371, 375 (1971). Although the Fifth Amendment contains no Equal Protection Clause as does the Fourteenth Amendment, the Fifth Amendment's Due Process Clause prohibits the Federal Government from engaging in discrimination that is "so unjustifiable as to be violative of due process." *Schlesinger v. Ballard*, 419 U.S. 498, 500 n.3 (1975), *quoting Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). *See also, Schneider v. Rusk*, 377 U.S. 163, 168 (1964).

List v. Driehaus, 573 U.S. 149, 159 (2014). Accordingly, the harm will occur with absolute certainty, absent this Court's intervention. *Id* at 158. In *Heckler v. Matthews*, the Supreme Court articulated the requirements for evaluating standing for purposes of the constitutional "case or controversy requirement." 465 U.S. 728 (1984). A "plaintiff 'must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant' [ ] and that the injury 'is likely to be redressed by a favorable decision." *Id*. at 738 (internal citations omitted). In *Heckler*, the plaintiff alleged an injury the court has "long recognized as judicially cognizable" – claims he is "subject[] to unequal treatment …solely because of his gender." *Id*. When, as here, "the right invoked is that of equal treatment, the appropriate remedy is a mandate of equal treatment." *Id*. at 740, (*quoting Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931)).

While the CARES Act does create a refundable tax credit operating as an Advance Payment from eligible individuals' 2020 tax returns. Defendants misconstrue the statute in arguing that it does not provide the "right to immediate payment of an advance refund." *See* Memo in Opp. at 16. The CARES Act *expressly provides* for an Advance Payment, provides that the payment should be made "as rapidly as possible," and Congress directed the Secretary of the Treasury to conduct a public awareness campaign to provide the public "information about availability of the credit and rebate." CARES Act, § 2201(e). Congress wanted this Advance Payment pushed into the hands of Americans, at once, as evidenced by the statute's directive that the Advance Payment **must be made before the end of the year**. No future action on the part of Plaintiff will change eligibility to receive the Advance Payment, which must be issued before the end of 2020 or not at all. Plaintiff and the Putative Class have already been denied the benefit afforded to over one hundred million Americans who are not married to individuals who do not

have an SSN. Here, because Defendants have issued over one hundred million Advance Payments to other United States citizens, Plaintiff and the Putative Class have not received an Advance Payment, and they **will not receive one** under the current law, they have already personally "been denied equal treatment." *C.f.*, *Freedom from Religion Foundation v. Lew*, 773, F.3d 815 (7th Cir. 2014) (cited in Memo in Opp. at 16). Finally, while section 6248(e) requires a "truing up" of the Advance Payment with the actual amount of the 2020 credit (computed based on 2020 status and liability), it does not require repayment. Section 6248(e) provides, "The amount of credit which would (but for this paragraph) be allowable under this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (f)." I.R.C. § 6428(e) (emphasis added). In other words, the Advance Payment is a gift conferred on United States citizens who meet certain income eligibility requirements, ***unless*** they happen to be married to someone who does not have an SSN.

B. Neither Amending Filing Status nor Filing a Claim for Refund Would Provide Plaintiff a Remedy, Let Alone an Adequate Remedy.

Throughout the Memo in Opp., Defendants suggest alternative forms of relief Plaintiff may seek and ways Plaintiff may eventually qualify for the CARES Credit. *See* Memo in Opp. at 11 (file a claim for refund under § 7422), 17 (file a 2019 tax return under married filing separately status), 17 (join the Armed Forces or have his spouse join the Armed Forces). None of these "suggestions" address Plaintiff's actual, realized injury: deprivation of the Advance Payment that has already been issued to over one hundred million Americans and must be issued by December 31, 2020 or not at all. I.R.C. § 6428(f)(3)(A). There is no action Plaintiff can take that will provide him with equal protection under the CARES Act as it is written.

If Plaintiff is not provided with the Advance Payment, to claim the CARES Credit, Plaintiff must file an income tax return sometime after filing season opens on or about February

1, 2021. Plaintiff would either need to (A) file a tax return claiming the credit and file a statement explaining he is not entitled to the credit but is claiming it and contesting the unconstitutional aspects of the law, or (B) file a tax return that does not claim the credit, pay his tax in full, and months later file an amended return claiming the credit as a claim for refund following the procedures in I.R.C. § 7422. If Plaintiff selects option A, he opens himself up to potential civil and criminal liability, s*ee*, I.R.C. §§ 6662, 7201, and must litigate his right to the credit in United States Tax Court. I.R.C. § 6212. If Plaintiff selects option B, he will have to wait until at least November of 2021 before he can even file suit against the United States. No matter what avenue Plaintiff chooses, he will ***never receive the Advance Payment***, which must be issued by December of 2020, and the earliest judicial intervention is years away. As the last date for any taxpayer to receive the Advance Payment is unequivocally set for December 31, 2020, Defendants' contention that a refund suit under § 7422 provides Plaintiff an adequate – and sole – remedy would be laughable if Plaintiff and the Putative Class's health, safety, and welfare were not so dire and the facial discriminatory intent and impact not so blatant.

Defendants' suggestion that Plaintiff file his 2019 tax return as "married filing separately" (*see* Memo in Opp. at 17) is equally unhelpful, but it does help illustrate the patent unfairness and unequal treatment accorded Plaintiff and the Putative Class by the CARES Act. Plaintiff has already filed his tax return for 2019 as "married filing jointly" ("MFJ") and in general taxpayers may amend federal income tax returns from "married filing separately" ("MFS") to MFJ but the reverse is not true. Treas. Regs. 1.6013-1(a)(1); *Haigh v. Comm'r*, 97 T.C.M. (CCH) 1794 (T.C. 2009). Even if Plaintiff had not filed his tax return for tax year 2019 already, had he filed with MFS status ***his federal income tax liability would have increased by over 12%.*** *See* Affidavit of Harold Katz, CPA, attached hereto and incorporated herein as Exhibit

D. Taxpayers who file MFS instead of MFJ almost always owe more in tax. *Id*. Defendants cannot seriously contend that in order to receive equal treatment under the CARES Act, Plaintiff and the Putative Class should self-select a more onerous tax treatment. Regardless of the availability of some future *possible* avenue to the CARES Act credit, Plaintiff and the Putative Class have already been denied their emergency Advance Payments to the detriment of their health, safety, and welfare as a result of the discriminatory actions, and absent judicial intervention they will succumb to the very harm the CARES Act intended to prevent. Accordingly, there is no adequate remedy at law.

III. Plaintiff's Constitutional Claims are Ripe for Adjudication Now.

Plaintiff is likely to succeed on the merits of his underlying claims that the CARES Act is unconstitutional. The Exclusion Provision of the CARES Act violates the First, Fifth, and Fourteenth Amendments to the U.S. Constitution. Defendants cite numerous cases to argue that if a challenged action does not violate the Constitution, it must be sustained. *See* Memo in Opp. at 18. Plaintiff agrees. However, here, Plaintiff alleges that the Section 6428(g)(1) does violate the Constitution, and therefore cannot be sustained. The fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution. *Ins v. Chadha*, 462 U.S. 919, 944 (1983).

Statutory classifications will be strictly scrutinized when they include and impingement on a fundamental right and/or a "suspect class," including classifications based on race, *Loving v. Virginia*, 388 U.S. 1 (1967), alienage, *Graham v. Richardson*, 403 U.S. 365 (1971), ancestry or nationality, *Oyama v. California*, 323 U.S. 633 (1948), and sex, *Frontiero v. Richardson*, 411 U.S. 677 (1973). Plaintiff will be denied the Advance Payment they would otherwise qualify for, but for the constitutionally protected association with a person who does not have an SSN.

Oyama, supra, at 640 (applying strict scrutiny: "there is absent the compelling justification which would be needed to sustain discrimination of that nature"). This deprivation is subject to strict scrutiny, and even if it wasn't, there is no rational basis for denying them the Advance Payment. To the extent Defendants seek to argue that all tax statutes are unilaterally subject to strict scrutiny review, this is precisely the kind of "tax exceptionalism" rejected by the Supreme Court in *Mayo Foundation for Medical Education and Research v. United States*, 562 U.S. 44 (2001) and at issue before the Supreme Court now in *CIC Services, LLC v. Internal Revenue Service,* Docket No. 19-930 (Sup. Ct. 2020).

Defendants mischaracterizes the holding in *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981), claiming that the equal protection obligation imposed by the Due Process Clause only requires rational basis review. *See* Memo in Opp. at 18. Here is what the Court actually held:

> **Unless a statute employs a classification that is inherently invidious or that impinges on fundamental rights**, areas in which the judiciary then has a duty to intervene in the democratic process…. this Court consistently has required that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives.

Schweiker v. Wilson, 450 U.S. 221, 230 (1981) (emphasis added). In this Case, the treatment of Plaintiff both impinges on the fundamental right to marry and is based upon an inherently invidious classification, subject to strict scrutiny. *Sugarman v. Dougall*, 413 U.S. 634, 642, (1973).

None of the cases cited by Defendants for the proposition that rational basis applies are applicable here. *See, e.g..*, *City of Chi. (Alvarez) v. Shalala*, 189 F.3d 598, 605 (7th Cir. 1999) (cited in Memo in Opp. at 18) (concerning welfare benefits, construed by the Seventh Circuit as a decision "in the area of immigration and naturalization" not the fundamental right to marriage), *Griffin v. Richardson*, 344 F.Supp. 1226 (D.Md. 1972) (cited in Memo in Opp. at 18) (finding no

rational basis for distinguishing between categories of illegitimate children in conferring Social Security benefits); *Dandridge v. Williams*, 397 U.S. 471 (1970) (cited Memo in Opp. at 18) (finding classification based on size of family impacting welfare benefits unconstitutional); *Mueller v. Allen*, 463 U.S. 388 (1983) (cited in Memo in Opp. at 19) (not applying rational basis analysis); *Regan v. Taxation With Representation*, 461 U.S. 540 (1983) (holding that "[i]t is not irrational for Congress to decide that tax-exempt charities . . . should not further benefit at the expense of taxpayers at large by obtaining a further subsidy for lobbying."). None of these cases analyze a statute denying a citizen benefits in contravention of the fundamental right of marriage based upon an inherently invidious classification of the spouse and the mixed-status of the parents of U.S. citizen children.

As Plaintiff alleged in the Emergency Motion, 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 (1968). *See* Emergency Motion at 23. 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 is subject to strict scrutiny and thus is unconstitutional as written and as applied. *Id.*

Defendants' Memo in Opp. glaringly omits any rational basis for the Exclusion Provision. Defendants refer to a "policy goal of providing the CARES Act credit only to citizens, nationals, and noncitizens authorized to work in the United States," but fail to provide any support for such an assertion. *See* Memo in Opp. at 29. Moreover, Defendants fail to explain how denying the Advance Payment to Plaintiff and the Putative Class would frustrate such a policy goal, if it indeed exists. It is simply untrue that a CARES Act credit could be or would be "jointly" claimed by non-citizens who file jointly with citizens, because the non-citizens would not be entitled to

the credit as well. A joint tax return would not result in the benefit being afforded to the ITIN holder or other non-SSN holder, and Defendants do not say that it would. Perhaps the policy goal was to keep all funds out of the hands of non-citizens at any cost, even if that cost was to deny the benefit to tax-paying U.S. Citizens who are otherwise entitled to them. If the policy goal is to discourage U.S. Citizens from marrying non-U.S. Citizens and/or to make paths to legal citizenship, then the constitutionality of such a policy is ripe for inquiry.

Defendants would have this Court believe that review of laws under Title 26 of the United States Code is beyond the reach of the federal courts because they "lack expertise in the 'complex area' of fiscal policy," (*see* Memo in Opp. at 18) and the "power of Congress in levying taxes is very wide." *See* Memo in Opp. at 19-20. Setting aside the absurdity of the notion that the judiciary is not capable of reviewing "complex" tax laws, or that Plaintiff's challenge to the CARES Act exceeds this Court's capacity, Defendants omitted a key case regarding federal courts' ability to adjudicate constitutionality of tax provisions. In *United States v. Windsor*, the Supreme Court held that the Defense of Marriage Act, which denied same sex couples the right to marry, "violated the basic due process and equal protection principles applicable to the Federal Government" under the Fifth Amendment. 570 U.S. 744, 769-70 (2013). *Windsor* was a tax case in which a widow was ineligible for the same benefit that would have been afforded her if she were married to a man instead of a woman. *Id*. at 749. The Supreme Court did not consider the provisions complexity. Instead, it held that by paying the tax in full and filing a claim for refund[7], she established standing and jurisdiction to challenge her unequal treatment under the tax code and the Defense of Marriage Act. *Id.*

[7] The plaintiff in *Windsor*, which dealt with estate tax, did not have the benefit of a tax credit allowing her to get into court without paying the tax in full and filing a claim for refund, and so she followed the procedures under I.R.C. § 7422. 570 U.S. at 753.

The right to marry confers "a dignity and status of immense import." *Windsor*, *supra*, at 768. Marriage is "more than a routine classification for purposes of certain statutory benefits," and is "subject to constitutional guarantees." *Id*. The Court held that the Defense of Marriage Act's ("DOMA") "principle effect is to identify a subset of state-sanctioned marriages and make them unequal. The principal purpose is not to impose inequality[.]" *Id*. at 772. The same is true of the Exclusion Provision, which identifies a subset of state-sanctioned marriages and makes them unequal by – as in *Windsor* – "den[ying] or reduces benefits allowed to families." *Id*. at 773. Here, as in *Windsor*, this Court can only conclude that while "Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by […] Fifth Amendment." *Id*. at 774. The right to marry is directly implicated by Section 6428(g)(1), and the principal effect of that Section, just like DOMA, is to identify a subset of state-sanctioned marriages and make them unequal. *See also Zablocki v. Redhail*, 434 U.S. 374 (1978) ("When a statutory classification significantly interferes with the exercise of a fundamental right [like the right to marriage] it cannot be upheld unless it is supported by sufficiently important […] interests and is closely tailored to effectuate only those interests.").

None of the cases cited by Defendants relating to alleged unconstitutional classifications in the I.R.C. based solely on marital status govern here. *Drucker v. Commissioner* acknowledges that statutes that interfere with the right to marry are subject to "rigorous scrutiny," but holds that where Congress has imposed a potentially higher rate of tax on *all married individuals*, the different treatment is permissible. *Drucker v. Comm'r*, 697 F.2d 46 (2d Cir. 1982). *Mapes v. United States* similarly held that the higher rate of tax imposed on *all* married couples survives review. *Mapes v. United States*, 576 F.2d 896 (Ct. Cl. 1978). *Johnson v. United States*, 422 F.Supp. 958 (N.D. Ind. 1976) (upheld different tax rates imposed on individuals based on marital

and filing status). None of these cases have any bearing, where an Advance Payment has been issued to individuals who meet certain income qualifications, but not individuals who are otherwise eligible but for their spouse's lack of an SSN. Defendants may not deprive Plaintiffs of the Advance Payment that has been paid to hundreds of millions of Americans – married, single, head of household – but not to individuals whose spouses lack an SSN.

Schinasi v. Commissioner, 53 T.C. 382 (1969), cited at Memo in Opp. at 21, 24, and 28 bears further discussion. The taxpayer in *Schinasi* argued he should be permitted to file a joint income tax return with his spouse, but was prohibited from doing so based on her nonresident status. *Schinasi*, 53 T.C. at 383. The Tax Court rightly pointed to the vastly different taxation scheme non-resident aliens adhere to in rejecting a challenge to the different tax treatment afforded the petitioner in that case. *Id*. at 383. United States persons are taxed on worldwide income. I.R.C. § 61. Nonresident aliens, conversely, are generally taxed on United States income. I.R.C. § 871. Nonresident aliens do not file IRS Form 1040, U.S. Individual Income Tax return, they file IRS Form 1040NR. Treas. Reg. § 1.6012-1(b)(1); *see also Abdel–Fattah v. Commissioner*, 134 T.C. 190, 192 n.3, (2010) (noting that because nonresident aliens are ineligible for certain credits available on Form 1040, they are required to file Form 1040NR). It is neither surprising nor relevant to this case that the Tax Court rejected a challenge to the petitioner's inability to file married filing jointly with a nonresident alien spouse. However, the *Schinasi* court itself forecasted the problem directly at issue here: "[i]t seems clear that the different tax treatment of nonresident aliens would raise problems if one of them filed a joint return with a citizen or resident." *Schinasi,* 53 T.C. at 383.

Section 6428(g)(1) interferes with the right to marry because it precludes the Putative Class members from claiming the CARES Act credit or receiving the advance refund of that

credit. First, Defendants' argument that "Section 6428(g)(1) is a reasonable restriction, rationally related to Congress's intent to benefit United States citizens and those nationals and resident aliens eligible for lawful employment," is untrue on its face. The Putative Class are United States citizens and but for the unconstitutional carve out included in the CARES Act codified as Section 6428(g)(1), would have likely already received the Advance Payment. The second claim made by the Defendants is also false. They claim that "SSN-holders married to non-SSN holders can claim the CARES Act credit by filing a separate return from their spouse." *Id*. Even if Plaintiff and the Putative Class could file MFS, doing so does not provide a remedy at all but instead imposes a significant additional tax burden. While some members of the Putative Class may be able to file MFS, Plaintiff has already filed his 2019 IRS Form 1040, U.S. Federal Income tax Return, and may not amend his filing status now.[8]

Schinasi provides Defendants no more support here than it did for the false proposition that the distinction section 6428(g) makes it permissible. Defendants seem to be arguing that Plaintiff and the Putative Class have a choice: either file MFS and obtain the Advance Payment, or file MFJ and forego the Advance Payment, and that this choice removes the harm from Plaintiff's claims. If that were true, it would be no more than a "Sophie's Choice," requiring Plaintiff to choose between paying over a 12% tax increase and receiving the Advance Payment all of his neighbors have already received. But instead it is a false choice, because Plaintiff has

[8] *See* Treas. Regs. 1.6013-1(a)(1). *See Haigh v. Comm'r*, 97 T.C.M. (CCH) 1794 (T.C. 2009); *see also* Exhibit D. Plaintiff's prior statement that he could amend his tax return was mistaken. *See id*., *see also* Dkt. 13 at 26. The deadline for tax return filing has been extended through July 15, 2020 by IRS Notice 2020-23, and Plaintiff could still technically supersede his originally filed MFJ return with an MFS return, but once a filing deadline passes, a tax return cannot be amended from MFJ to MFS. Treas. Regs. 1.6013-1(a)(1). Moreover, taxpayers do not have the ability to amend tax returns as a matter of right, and there is no provision in the Internal Revenue Code requiring the Commissioner to accept or process amended returns. *Badaracco v. Comm'r*, 464 U.S. 386, 397 (1984) (Noting no provision of the Internal Revenue Code "requires the filing of [an amended] return."). Indeed, the IRS announced on May 28, 2020 for the ***first time in history*** it now can accept electronically filed amended returns. *See* IR-2020-107 attached hereto and incorporated herein as Exhibit E.

filed his tax return as MFJ. *Commissioner v. Kowalski*, 434 U.S. 77 (1977), a case about tax deductions, is similarly inapplicable. *See* discussion *supra* Part II.A.

Section 6428(g)(1) does impinge the fundamental right to marry whom a citizen chooses because it contains restrictions that disproportionately impact a taxpayer who chooses to marry someone who does not have an SSN, spouses who are among a marginalized class. Importantly, MFJ and MFS filing status can have a significant effect on persons who have recently immigrated to the U.S. through marriage to a U.S. citizen or permanent resident. Individuals who are in the U.S. and applying to adjust their status to a permanent resident through their U.S. citizen spouse (and for those arriving to the U.S. as a K-1 fiancé or spouse) must submit evidence proving the existence of a bona fide marriage when filing Form I-485. *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002). In *Wen Yuan Chan v. Lynch*, the Court of Appeals for the First Circuit held that the petitioner "lacked proof" of intention to make a life together, when she only filed jointly with her husband for one of the several years prior to the petition. *Wen Yuan Chan v. Lynch*, 843 F.3d 539, 546 (2016); *see also Agyeman v. INS,* 296 F.3d 871, 882–83 (9th Cir.2002) "Evidence of the marriage's bona fides may include: jointly-filed tax return […]"); *Brown v. Napolitano*, 391 Fed. Appx. 346, 347 (5th Cir. 2010) (holding United States Citizenship and Immigration Services ("USCIS") correctly considered taxes in denying immigration status) (unpublished opinion). The regulations expressly provide that joint tax returns are evidence of bona-finde marriage. 8 C.F.R. § 204.2(a)(1)(3)(iii)(B). USCIS has a long history of carefully reviewing tax returns for all relevant years to confirm that they were filed jointly. *See* Instructions for Form I-130, Petition for Alien Relative, and Form I-130 A, Supplemental Information for Spouse Beneficiary at 6-7, Section 5, attached hereto and incorporated herein as Group Exhibit F; Dkt. 20 Exhibit D; *see also* Dkt. 20 Exhibit B. Filing separate returns (or failure to file) raises the

presumption that the marriage may not be in good faith, resulting in extensive delay and difficulties in the adjudication of the application, by USCIS, creating instability and hardship. *Id.*

Many applications for permanent residency (that are submitted by couples married for less than two years at the time they are granted) are granted conditionally for a period of two years. After two years, an alien must file Form I-751, Petition to Remove Conditions on Residence, attached hereto and incorporated herein as Exhibit G. Again, applicants must establish bona fide marriage with their spouse. Submitting jointly filed tax returns is essential evidence to be included with the I-751 petition. 8 USCS § 1186a(b).

Permanent residents who obtained their status through marriage to a U.S. citizen are eligible to apply for naturalization three years after obtaining permanent residency (as opposed to five years). In order to take advantage of this shortened period of eligibility, one must prove that they have been living in marital union with the U.S. citizen spouse for the entire three year period. This proof again entails the filing of joint tax returns in order to meet USCIS requirements. *See* Application for Naturalization N-400 and N-405 attached hereto and incorporated herein as Group Exhibit H; *see also Ayesh v. United States Immigration & Customs Enf't,* No. 08 C 542, 2009 U.S. Dist. LEXIS 117092, at *4 (N.D. Ill. Dec. 14, 2009).

The injury to Plaintiff is not just the unfair denial of the Advance Payment, but the harm to the legal immigration process. 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. *See* Emergency Motion at 27.

Section 2101 of the CARES Act, in creating Section 6428 of the Internal Revenue Code, violates the Equal Protection Clause. Defendants argue that eligibility for an Advance Payment is based on whether an individual has an SSN, and not on alienage. *See* Memo in Opp. at 25. They fail to support this argument with any authority because they cannot. *See id; see also* CARES Act, § 2101(a) ("[N]o credit shall be allowed under [26 U.S.C. 6428(a)] to an eligible individual who does not include on the return of tax for the taxable year [. . .](B) in the case of a joint return, the valid identification number of such individual's spouse [.]" where "valid identification number" is defined by the Act and, correspondingly in Section 6428, to mean an SSN). In fact, no individuals who lack an SSN have received an Advance Payment, nor could they. CARES Act, § 2101(a). To receive an Advance Payment, one must personally have a SSN. Id. Despite this fact, Defendants have denied and continue to deny Plaintiff the right to receive an Advance Payment based upon whether his spouse - not Plaintiff - possesses an SSN. *Id.*

Defendants argue that Section 6428(g) "is a reasonable restriction that assists with the efficient and accurate implementation of the CARES Act." *See* Memo in Opp. at 25. Defendants reliance on Lewis is interesting considering it bolsters Plaintiff's position, as it clarifies the distinction Defendants seem determined to misunderstand: "Responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches." *Lewis v. Thompson*, 252 F.3d 567, 582 (2d Cir. 2001). "Congress can therefore validly enact laws for aliens that 'would be unacceptable if applied to citizens.'" *Id.* (internal citations omitted). The *Lewis* Court recognized that a "highly deferential" standard is appropriate in matters of immigration. *Id*. (*citing Lake v. Reno*, 226 F.3d 141, 148 (2d Cir. 2000)). The instant matter is not an immigration matter unless the Defendants are taking the position that the federal government can enforce its immigration policy by undermining the fundamental rights of

U.S. Citizens under the Constitution. Plaintiff's injury is based on whom he chose to marry, and the Constitution entitles him to marry whomever he chooses -- immigrant or not. Denying him the benefit of an Advance Payment on that basis is subject to strict scrutiny.

Defendants cite several cases in support of their arguments that the CARES Act does not contain any alienage classification and if it did, it would be constitutional. *McElrath v. Califano* is distinguishable as in that case, the Seventh Circuit held that the government had shown the relevant classification to be "neither irrational nor invidious." *McElrath v. Califano*, 615 F.2d 434, 441 (7th Cir. 1980) (internal citations omitted). No such showing has been, or can be made, in this case. The classification of SSN-holder married citizens with ITIN-holder spouses creates an invidious classification singling them out as distinct from SSN-holder married citizens with SSN-holder spouses has no rational basis; Defendants cannot seriously argue that SSN holders are not entitled to emergency relief simply because they are married to ITIN holders. *See Plyler v. Doe*, 457 U.S. 202 (1982) (finding that singling out children because of their illegal immigrant status did not withstand even a rational basis scrutiny of review). Such a conclusion would fly in the face of decades of First Amendment jurisprudence, as articulated above, not to mention the express purpose of the CARES Act: "[T]o provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic." Plaintiff respectfully urges this Court to note that the title of the Act does not suggest that Congress intended to provide "emergency assistance" to impacted individuals only if they are not married to an ITIN holder. Such a conclusion would be patently absurd.

Defendants' suggestion that alienage is not implicated here, and that the Act merely discriminates based on a SSN holder's spouse's lack of work authorization (*see* Memo in Opp. at 25-27) similarly fails to hold water. There is no exclusion for U.S. Citizens who have spouses

who do not work, what possible motive could Congress have had for providing emergency relief only to those U.S. citizens who have spouses who are authorized to work? Defendants offer none. Once again, the hypothetical basis for Exclusion Provision offered by Defendants shocks the conscience and offends our established notions of justice and equality.

The other cases cited by Defendants in support of their argument that the Exclusion Provision does not violate the Constitution are all inapposite to the case at bar: the Advance Payment is not a tax or deduction. *See Weinberger v. Salfi*, 422 U.S. 749 (1975) (holding that a duration-of-relationship test applicable to a claim for social security benefits was constitutional); *Hofstetter v. Commissioner*, 98 T.C. 695 (1992) (wherein the Tax Court found that a law preventing taxpayers married to nonresident aliens from filing taxes jointly was constitutional); *Barr v. Commissioner*, 51 T.C. 693 (1969) (involving a restriction on claiming a non-resident, non-citizen child as a dependent on a parent's tax return).

While Defendants generally recite the law relating to rational basis review, they fail to cite to any authority supporting the proposition that the challenged provision of CARES Act, as written and as applied, is even rationally related to any legitimate government interest, much less narrowly tailored to advance any compelling government interest. *See* Memo in Opp. at 25-29.

As with their other points, Defendants' argument here is circular and seeks to distract this Court's attention from the threat of immediate harm to Plaintiff and those similarly situated. Advance Payments are, in fact, provided only to citizens, nationals, and noncitizens authorized to work in the United States. I.R.C. § 6428 ("[. . .] The term 'eligible individual' means any individual other than . . .(A) any nonresident alien individual[. . .]"). Thus, the rational basis Defendants point to is effectuated by enforcement of the Act itself. It is only by virtue of Section 6428(e)(2) - which provides that "[i]n the case of a refund or credit made or allowed under

subsection (f) with respect to a joint return, *half of such refund or credit shall be **treated** as having been made or allowed to each individual filing such return*" - that nonresident alien individuals are "treated" as having received or been allowed half of their spouses' credit or a refund under the Act. I.R.C. § 6428(e)(2). The Act itself forces the discriminatory impact inherent in its ostensible purpose creating a legal fiction as if a nonresident alien spouse has received half a partner's Advanced Payment, while making a nonresident alien ineligible under the Act. In consequence, and in violation of the constitutional guarantees afforded to them, punishes U.S. citizens like Plaintiff for their choice of spouse and denies them any "emergency assistance" under the Act, unless they undermine their spouses' pathways to lawful immigration status. This argument is both circular and begs the question, could there be *any* permissible rationale behind the Exclusion Provision?

The facts of the instant case are even more compelling than those at issue in *Plyler*. Here, Plaintiff and the Putative Class (and in many cases, their children) are already U.S. citizens. It is the alien status of their spouses that, due to the discriminatory purpose and impact of the CARES Act, results in the denial of their constitutional rights. While the constitutional rights of Plaintiff's spouse, and the spouses of other Class members, are not at issue here, surely the Supreme Court's reasoning in *Plyler* can be applied: denying Plaintiff and the Class their right to an Advance Payment based on the immigration status of their spouses offends such "fundamental conceptions of justice" as the *Plyler* Court's opinion and our Constitution seek to protect.

The CARES Act does not, as Defendants assert, "permissibly distinguish between individuals with and without SSNs" (*see* Memo in Opp. at 29) - it impermissibly distinguishes

between individuals with SSNs who are married to other individuals with SSNs and individuals with SSNs who are married to other individuals without SSNs. CARES Act, § 2101(a).

Defendants cite *Brushaber v. Union P. R. Co.* and *Nat'l Fed'n of Indep. Bus. v. Sebelius* for the propositions that a court may not invalidate a law despite Congress's power to select a **different** mechanism to achieve the same result, and that a court is not at liberty to evaluate the wisdom of the policy behind a law. *See* Memo in Opp. at 29 (citing *Brushaber v. Union P. R. Co.*, 240 U.S. 1, 26 (1916); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 563 (2012)). *Brushaber* stands for the unsurprising proposition that because the Sixteenth Amendment was duly ratified, collection of tax by the Internal Revenue Service does not amount to a taking in violation of the Fifth Amendment. 240 U.S. 1, 17-18 (1916). The "mechanism" at issue there was – quite literally – the Internal Revenue Service. *Id*.

The Exclusion Provision of the CARES Act directly violates the First Amendment of the United States Constitution. In *Griswold v. Connecticut*, the Court stressed the sanctity of marriage lying within the zone of privacy created by several fundamental constitutional guarantees. *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). The Exclusion Provision discriminates against Plaintiff on the basis of his protected sanctity of marriage--a fundamental right. As a result of the disparate treatment, Plaintiff is denied an Advance Payment. I.R.C. § 6428(g)(1)(B) also infringes on Plaintiff's right to enjoy all the benefits of marriage afforded to other married persons. *See* Dkt. 20 ¶ 66.

Defendants argue that requiring both spouses to provide a SSN on a joint tax return does not impact intimate or expressive association. *See* Memo in Opp. at 30. However, they fail to acknowledge the fundamental right to marry whomever one chooses. *Id.* The Constitution undoubtedly imposes constraints on the State's power to control the selection of one's spouse.

Roberts v. United States Jaycees, 468 U.S. 609, 620 (1984). The Exclusion Provision does just that. The fundamental right to marriage is the freedom of intimate association and must be secured against undue intrusion by the State. *Id* at 618. In this respect, freedom of association receives protection as a fundamental element of personal liberty. *Id.* Accordingly, denying a privilege to Plaintiff based solely on his selection of spouse unduly intrudes on the intimate association of marriage and should be struck down as unconstitutional.

In the alternative, if the Court somehow does not see the Exclusion Provision as infringing on the right to intimate association, it certainly infringes on expressive association. When the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms [intimate association and expressive association] may be implicated. *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). Freedom of expressive association may only be overridden if the regulations adopted to serve compelling state interests "cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 623. Of course, here least restrictive means could be achieved--mainly providing the U.S. citizen with their advance payment.

IV. Plaintiff Will Suffer Irreparable Harm Absent a Preliminary Injunction.

Plaintiff will suffer irreparable harm in the absence of a preliminary injunction in two ways. First, he will be unable to meet his family's financial obligations for the minimum necessities of life, including the ability to put food on his family's table, and pay his mortgage, insurance, and health insurance deductibles. *See* Dkt. 13 at Exhibit A ¶¶ 7-8. Second, the CARES Act has an irreparable harmful effect on the lawful immigration process, because families seeking a path to obtaining lawful citizenship for their spouses are encouraged during the

desperation of the pandemic to use the filing status of Married Filing Separately and are, as a result, denied the equal treatment, as all other married individuals.

Plaintiffs' injury is irreparable because "the threatened harm would impair the court's ability to grant an effective remedy." *EnVerve, Inc. v. Unger Meat Co.*, 779 F. Supp. 2d 840, 844 (N.D. Ill. 2011). Here the injury is not the failure to receive the Advance Payment, it is the emergency nature of the distribution which would be prevented if this Court does not grant the relief the Plaintiffs seek. Congress expressed the immediacy of the need for the payment stating it should be made "as rapidly as possible." I.R.C. § 6428(f)(3). Plaintiff has asserted that "[i]f 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* Dkt. No. 1 at Exhibit A and Group Exhibit C. Defendants completely ignore these injuries. Instead, they repeat that if the Plaintiff is eventually successful, he will receive a credit. *See* Memo in Opp. at 32. However, by that time Plaintiff will have succumbed to dire consequences affecting his liberty and safety, the very consequences the CARES Act was designed to avoid. *See Ciechon v. City of Chicago*, 634 F.2d 1055, 1058 (7th Cir. 1980); *Frerck v. John Wiley & Sons, Inc.*, 850 F. Supp. 2d 889, 894 (N.D. Ill. 2012).

While "income tax forms" are but one consideration in evaluating whether a marriage is valid for immigration purposes, the failure to file a joint return with your immigrant spouse is a reason often used to deny immigrant spouses citizenship. *In Matter of Laureano*, 19 I & N. Dec. 1, 1 (B.I.A. Dec. 12, 1983)). *See* Dkt. No. 13 at Exhibit B ¶ 4(d-f). The intentional carve out of

the Putative Class in the CARES Act is effectively a bar to a U.S. Citizen's path to obtaining lawful citizenship for their spouse, as envisioned in the Immigration and Nationality Act. *See* 66 Stat. 163 at Sec. 319(a).

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

For all these reasons Plaintiff and the Putative Class have no adequate remedy at law.

V. The Equities and Public Interest Favor Granting Injunctive Relief.

As established above, Plaintiff has met the threshold eligibility for an injunction. The balance of the equities and public interest factors tip decidedly in favor of Plaintiff. The harms the Exclusion Provision inflicts are immediate and severe and 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 statuses. Only prompt action by ordering declaratory and injunctive relief will serve the public interest.

Indeed, the right to equal treatment guaranteed by the Constitution is paramount. As the Supreme Court emphatically held in *Heckler*:

> [W]e have repeatedly emphasized, discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community, can cause serious noneconomic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.

Heckler v. Mathews, 465 U.S. 728, 738-40 (1984) (internal citations omitted). Here, Plaintiff, due to his marriage to a non-US citizen, is being stigmatized and treated as inferior under the CARES Act and an injunction mandating equal treatment would provide him (and the Putative Class) with redress.

VI. Class Certification Should Be Granted Now.

Defendant argues that "[i]t is premature to grant class certification." *See* Memo in Opp. at 34. Importantly, Defendants cite no authority for this conclusion, nor do they contemplate Plaintiff's alternative request for conditional class certification. In fact, this Court recently affirmed that right in *Mays v. Dart*, holding that Federal Rule of Civil Procedure 23(b)(2) "does not restrict class certification to instances when final injunctive relief issues" and permits certification of a conditional class for the purpose of granting preliminary injunctive relief. *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012); *see also Howe v. Varity Corp,* 896 F.2d 1107, 1112 (8th Cir. 1990) (affirming grant of a preliminary injunction to a conditional class). *Mays v. Dart*, No. 20 C 2134, 2020 U.S. Dist. LEXIS 62326, at *9 (N.D. Ill. Apr. 9, 2020).

Defendant's arguments are baseless and simply untrue. For example, "no evidence has yet been presented capable of identifying class members" is a blatant misstatement as this Honorable Court itself recognized the identifying factors of the Putative Class in its May 1, 2020 Order, as follows **"Given that the CARES Act is fixed at this time (though always subject to amendment by Congress, of course) and that the proposed class is clearly defined in the complaint and opening brief.."** *See Dkt. 17.*

Finally, there is ultimately one single question that is at issue here: does the Exclusion Provision of the CARES Act infringe on the Constitutional Rights of Plaintiff and the Putative Class? *Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi.,* 797 F.3d 426, 445 (7th Cir. 2015). This Court has found the single question rule to satisfy class certification. *Id.*

Accordingly, Class Certification should be granted, or *in the alternative* conditional class certification for purposes of the Emergency Motion.

Dated: May 29, 2020

Respectfully submitted,

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

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IRS News Release

Internal Revenue Service
Media Relations Office
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www.irs.gov/newsroom

Treasury, IRS release latest state-by-state Economic Impact Payment figures

IR-2020-101, May 22, 2020

WASHINGTON –The Treasury Department and the Internal Revenue Service today released updated state-by-state figures for Economic Impact Payments reflecting the opening weeks of the program.

“Economic Impact Payments have continued going out at a rapid rate to Americans across the country,” said IRS Commissioner Chuck Rettig. “We remind people to visit IRS.gov for the latest information, including answers to the most common questions we see surrounding the payments. We also continue to urge those who don’t normally have a filing requirement, including those with little or no income, that they can quickly register for the payments on IRS.gov.”

Millions of people who do not typically file a tax return are eligible to receive these payments. Payments are automatic for people who filed a tax return in 2018 or 2019, receive Social Security retirement, survivor or disability benefits (SSDI), Railroad Retirement benefits, as well as Supplemental Security Income (SSI) and Veterans Affairs beneficiaries who didn’t file a tax return in the last two years.

For those who don’t receive federal benefits and didn’t have a filing obligation in 2018 or 2019, the IRS continues to encourage them to visit the Non-Filer tool at IRS.gov so they can quickly register for Economic Impact Payments. People can continue to receive their payment throughout the year.

Economic Impact Payments, totals by State.

State	State postal code	Total Number of EIP Payments	Total Amount of EIP Payments
Alabama	AL	2,332,771	$ 3,988,469,624
Alaska	AK	333,429	$ 580,774,111
Arizona	AZ	3,242,043	$ 5,573,167,261
Arkansas	AR	1,428,624	$ 2,496,524,966
California	CA	16,869,636	$ 27,897,283,972
Colorado	CO	2,605,089	$ 4,407,408,401
Connecticut	CT	1,601,397	$ 2,609,644,445
Delaware	DE	463,653	$ 778,262,906
District of Columbia	DC	308,306	$ 421,734,460
Florida	FL	10,618,792	$ 17,546,164,251
Georgia	GA	4,763,109	$ 8,081,253,826
Hawaii	HI	691,424	$ 1,179,264,436
Iowa	IA	1,477,214	$ 2,660,402,672
Idaho	ID	808,118	$ 1,512,453,150

EXHIBIT A

IRS News Release

Internal Revenue Service
Media Relations Office
Washington, D.C.
Media Contact: 202.317.4000
Public Contact: 800.829.1040
www.irs.gov/newsroom

Illinois	IL	5,729,351	$ 9,630,495,809
Indiana	IN	3,174,698	$ 5,613,824,661
Kansas	KS	1,310,151	$ 2,359,448,490
Kentucky	KY	2,199,370	$ 3,824,826,391
Louisiana	LA	2,186,332	$ 3,680,836,165
Maine	ME	714,941	$ 1,215,239,330
Maryland	MD	2,692,062	$ 4,380,831,484
Massachusetts	MA	3,136,787	$ 5,028,963,151
Michigan	MI	4,813,156	$ 8,286,614,929
Minnesota	MN	2,613,771	$ 4,577,086,990
Mississippi	MS	1,427,440	$ 2,422,655,854
Missouri	MO	*2,933,973*	*$ 5,118,911,639*
Montana	MT	527,902	$ 932,003,084
Nebraska	NE	887,877	$ 1,611,581,538
Nevada	NV	1,496,510	$ 2,484,078,422
New Hampshire	NH	676,004	$ 1,139,776,925
New Jersey	NJ	3,955,396	$ 6,507,621,505
New Mexico	NM	997,072	$ 1,684,917,178
New York	NY	9,341,632	$ 15,034,060,259
North Carolina	NC	4,820,974	$ 8,264,415,092
North Dakota	ND	354,768	$ 632,983,746
Ohio	OH	5,828,477	$ 9,833,041,489
Oklahoma	OK	1,799,803	$ 3,190,860,867
Oregon	OR	2,031,861	$ 3,425,278,483
Pennsylvania	PA	6,258,107	$ 10,596,406,088
Rhode Island	RI	536,218	$ 869,615,684
South Carolina	SC	2,443,864	$ 4,174,979,940
South Dakota	SD	416,962	$ 759,483,658
Tennessee	TN	3,305,606	$ 5,693,071,645
Texas	TX	12,396,590	$ 21,635,810,592
Utah	UT	1,287,162	$ 2,494,199,291
Vermont	VT	327,867	$ 555,841,287
Virginia	VA	3,796,975	$ 6,447,589,217
Washington	WA	3,453,810	$ 5,876,091,642
West Virginia	WV	913,264	$ 1,578,210,674
Wisconsin	WI	2,817,912	$ 4,948,382,340
Wyoming	WY	270,626	$ 488,905,666
Foreign Addresses		748,724	$ 1,222,795,510

IRS News Release

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Economic Impact Payment help available on IRS.gov

IRS.gov has a variety of tools and resources available to help individuals and businesses navigate Economic Impact Payments and get the information they need about EIP and other CARES Act provisions.

Economic Impact Payment FAQs: The IRS is seeing a variety of questions about Economic Impact Payments, ranging from eligibility to timing. These FAQs provide an overview and are updated frequently. Taxpayers should check the FAQs often for the latest additions; many common questions are answered on IRS.gov already, and more are being developed.

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IRS

Economic impact payments: What you need to know

Updated with new information for seniors, retirees on April 1, 2020. Also see Treasury news release.

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

IR-2020-61, March 30, 2020

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

Who is eligible for the economic impact payment?

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

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

How will the IRS know where to send my payment?

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

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

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

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

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

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

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

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

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

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

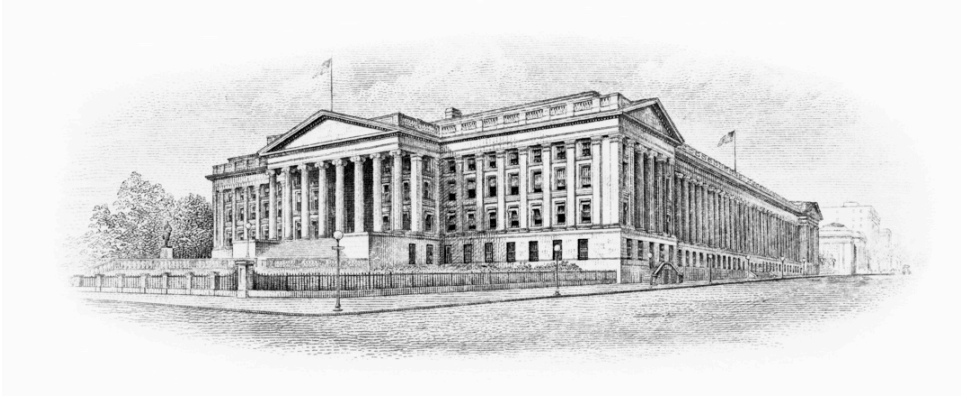
For those concerned about visiting a tax professional or local community organization in person to get help with a tax return, these economic impact payments will be available throughout the rest of 2020.

Where can I get more information?

The IRS will post all key information on IRS.gov/coronavirus as soon as it becomes available.

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

Page Last Reviewed or Updated: 16-Apr-2020



U.S. Department of the Treasury
Office of Public Affairs

Press Release: May 18, 2020
Contact: Treasury Public Affairs, (202) 622-2960

Treasury is Delivering Millions of Economic Impact Payments by Prepaid Debit Card

WASHINGTON— This week, Treasury and the IRS are starting to send nearly 4 million Economic Impact Payments (EIPs) by prepaid debit card, instead of by paper check. EIP Card recipients can make purchases, get cash from in-network ATMs, and transfer funds to their personal bank account without incurring any fees. They can also check their card balance online, by mobile app, or by phone without incurring fees. The EIP Card can be used online, at ATMs, or at any retail location where Visa is accepted. This free, prepaid card also provides consumer protections available to traditional bank account owners, including protections against fraud, loss, and other errors.

"Treasury and the IRS have been working with unprecedented speed to issue Economic Impact Payments to American families. Prepaid debit cards are secure, easy to use, and allow us to

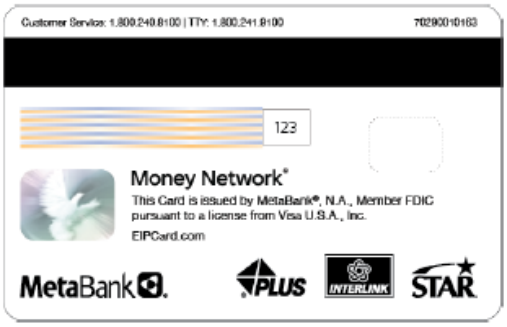


EXHIBIT C

deliver Americans their money quickly," said Secretary Steven T. Mnuchin. "Recipients can immediately activate and use the cards safely."

Treasury has already delivered more than 140 million Economic Impact Payments worth $239 billion to Americans by direct deposit to accounts at financial institutions, Direct Express card accounts, and by check. The Treasury-sponsored EIP Card is another method to provide money efficiently and securely to eligible recipients and their families. EIP Cards are being distributed to qualified individuals without bank information on file with the IRS, and whose tax return was processed by either the Andover or Austin IRS Service Center.

Treasury's financial agent, MetaBank, will mail EIP Cards to eligible recipients beginning this week. Each mailing will include instructions on how to activate and use the card.

The EIP Card is part of Treasury's U.S. Debit Card program, which provides prepaid debit card services to federal agencies for the electronic delivery of non-benefit payments. MetaBank was selected as Treasury's financial agent for the U.S. Debit Card program in 2016, following a competitive selection process conducted by the Treasury's Bureau of the Fiscal Service.

To learn more about Economic Impact Payments, click here.

To learn more about the Economic Impact Payment Card, click here.

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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.	)	
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, CHARLES RETTIG, in his individual and official capacity as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF TREASURY; the U.S. INTERNAL REVENUE SERVICE; and the UNITED STATES OF AMERICA,	)	
Defendants.	)	

AFFIDAVIT OF HAROLD D. KATZ, CPA

Affiant, HAROLD D. KATZ, CPA, being first duly sworn upon oath and in support of Plaintiff's, individually and on behalf of others similarly situated, Reply in Support of his Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory Judgment, states:

1. I am over the age of eighteen and am a resident of the State of Illinois.

2. I am a Certified Public Accountant ("CPA"), licensed in the State of Illinois.

3. I have been a licensed CPA for over 40 years.

EXHIBIT D

4. I am a TEP (Trust and Estate Practitioner), a member of the AICPA (American Institute of CPAs) and a member of the IL CPA Society.
5. I typically prepare over 500 tax returns for individuals on an annual basis.
6. On Wednesday, May 27, 2020 I reviewed Plaintiff John Doe's 2019 IRS Form 1040, U.S. Individual Income Tax Return.
7. Plaintiff's 2019 IRS Form 1040 was filed as "Married Filing Jointly," ("MFJ").
8. I calculated the difference in Federal tax that the Plaintiff would have paid if he filed "Married Filing Separately" ("MFS") instead of MFJ.
9. If Plaintiff were to have filed MFJ, his net Federal tax liability would have increased by 12.147%.
10. In my experience as a CPA, filing MFS almost always results in a greater Federal tax liability than filing MFJ. This confirms why in the IRS SOI (Statistics of Income) Tax Stats-Individual Statistical Table by Filing Status for tax year 2017, the IRS reported that 54,774,397 returns of MFJ (including returns of surviving spouses) were filed and only 3,212,807 MFS were filed.

FURTHER AFFIANT SAYETH NAUGHT.

Harold D Katz

HAROLD D. KATZ, CPA

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 29th day of May, 2020.

HAROLD D. KATZ, CPA

IRS News Release

Internal Revenue Service
Media Relations Office
Washington, D.C.
Media Contact: 202.317.4000
Public Contact: 800.829.1040
www.irs.gov/newsroom

IRS announces Form 1040-X electronic filing options coming this summer; major milestone reached for electronic returns

IR-2020-107, May 28, 2020

WASHINGTON- The Internal Revenue Service announced today that later this summer taxpayers will for the first time be able to file their Form 1040-X, Amended U.S Individual Income Tax Return, electronically using available tax software products.

Making the 1040-X an electronically filed form has been a goal of the IRS for a number of years. It's also been an ongoing request from the nation's tax professional community and has been a continuing recommendation from the Internal Revenue Service Advisory Council (IRSAC) and Electronic Tax Administration Advisory Committee (ETAAC).

Currently, taxpayers must mail a completed Form 1040-X to the IRS for processing. The new electronic option allows the IRS to receive amended returns faster while minimizing errors normally associated with manually completing the form.

"This new process is a major milestone for the IRS, and it follows hard work by people across the agency," said IRS Commissioner Chuck Rettig. "E-filing has been one of the great success stories of the IRS, and more than 90 percent of taxpayers use it routinely. But the big hurdle that's been remaining for years is to convert amended returns into this electronic process. Our teams have worked diligently to overcome the unique challenges related to the 1040-X, and we look forward to offering this new service this summer."

About 3 million Forms 1040-X are filed by taxpayers each year.

The new electronic filing option will provide the IRS with more complete and accurate data in an easily readable format to enable customer service representatives to answer taxpayers' questions. Taxpayers can still use the "Where's My Amended Return?" online tool to check the status of their electronically-filed 1040-X.

When the electronic filing option becomes available, only tax year 2019 Forms 1040 and 1040-SR returns can be amended electronically. In general, taxpayers will still have the option to submit a paper version of the Form 1040-X and should follow the instructions for preparing and submitting the paper form. Additional enhancements are planned for the future.

"Adding amended returns to the electronic family also complements our partnership with the tax software industry, which continues to work with us to provide better ways to help taxpayers," said Ken Corbin, Commissioner of the IRS Wage and Investment division.

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EXHIBIT E