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9 ON BEHALF OF OTHERS SIMILARLY SITUATED

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

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

15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

PLAINTIFF’S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE;
PLAINTIFF’S MOTION AND
MEMORANDUM IN SUPPORT OF
PLAINTIFF’S APPLICATION FOR
HER EMERGENCY MOTION FOR
A TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION AND/OR
DECLARATORY JUDGMENT
AND MEMORANDUM IN
SUPPORT OF CLASS
CERTIFICATION OR *IN THE*
***ALTERNATIVE* PROVISIONAL**
CLASS CERTIFICATION

Action Filed: May 6, 2020

1 Plaintiff, Jane Doe, (hereinafter “Doe” or “Plaintiff”), individually and on
2 behalf of the proposed class, by and through her attorneys, Blaise & Nitschke, P.C.,
3 hereby applies *ex parte* to the Court pursuant to Federal Rule of Civil Procedure 65
4 and Local Rule 65-1 for a Temporary Restraining Order, Preliminary Injunction
5 and/or Declaratory Judgment (“Emergency Motion”) and moves this Court for an
6 Order prohibiting DONALD J. TRUMP, in his individual and official capacity as
7 President of the United States; MITCH MCCONNELL, in his individual and official
8 capacity as United States Senator and the Sponsor of S. 3548 CARES Act; STEVEN
9 MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S.
10 Department of Treasury; CHARLES RETTIG, in his individual and official capacity
11 as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF THE
12 TREASURY; the U.S. INTERNAL REVENUE SERVICE; and the UNITED
13 STATES OF AMERICA (hereinafter collectively referred to as “Defendants”), from
14 enforcement of the S. 3548-Coronavirus Aid, Relief, and Economic Security Act
15 (hereinafter “CARES Act”) as written and as applied to the Plaintiff and the putative
16 class (hereinafter “Putative Class”) in this action. The Emergency Motion further
17 requests a declaratory judgment that the CARES Act provision at issue in this case, as
18 written and as applied to Plaintiff and the Putative Class, violates the First
19 Amendment to the U.S. Constitution; the Due Process Clause of the Fifth
20 Amendment to the U.S. Constitution; Equal Protection and Privileges and Immunities
21 under the Fourteenth Amendment to the U.S. Constitution under the Reverse
22 Incorporation Doctrine; the well-established fundamental right to marry; and denies
23 Plaintiff and the Putative Class rights, privileges, immunities, and/or benefits to
24 which they would otherwise be entitled, and seeks the following relief:
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A. A temporary, preliminary and/or permanent injunction against the Defendants, and all those acting in concert, prohibiting enforcement of the laws as written and instead applying the provision as follows:

i. Issuing a Temporary Restraining Order directing that Section 2101 of the CARES Act be applied as follows:

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

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

“(h) Identification Number Requirement.—

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

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

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

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

“(2) VALID IDENTIFICATION NUMBER.—

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

ii. Issuing a Preliminary and Permanent Injunction amending the CARES Act as identified above and enjoining Defendants from

1 affixing any new terms to the CARES Act, or any future
2 legislation designed to provide economic stimulus to United States
3 citizens that excludes mixed immigration status families.

4 B. A determination that Section 2101 of the CARES Act, enacting Sec.
5 6428(g), is unconstitutional and should not be enforced;

6 C. Issue a declaratory judgment that Section 2101 of the CARES Act,
7 enacting Sec. 6428(g), is subject to strict scrutiny;

8 D. Issue a declaratory judgment that Section 2101 of the CARES Act,
9 enacting Sec. 6428(g), as applied to the Plaintiff, violates the
10 constitutional and statutory rights of Plaintiff;

11 E. Issue a declaratory judgment striking from the CARES Act those
12 provisions that are violative of the protections afforded to Plaintiff and
13 those similarly situated under the United States Constitution, federal
14 statutes, and those cases interpreting the same under which this Court is
15 bound under the principles of *stare decisis*;

16 F. Enter an Order requiring the Defendants to hold in escrow or otherwise
17 earmark sufficient funds for the issuance of Stimulus Checks to
18 members of the Class;

19 G. For an award of attorneys’ fees and costs; and

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

21 Plaintiff submits her Memorandum of Law in Support of Application for
22 Plaintiff’s Emergency Motion for a Temporary Restraining Order, Preliminary
23 Injunction and/or Declaratory. Plaintiff requests that this Court issues a ruling on its
24 Order to Show Cause Why a Preliminary Injunction Should Not Issue.

25 Counsel for Plaintiff has advised counsel for the Defendants of the date of
26 filing and substance of this Application by telephone on May 8, 2020. Counsel for
27

1 Plaintiff spoke to Melissa Briggs, Esq (melissa.briggs2@usdoj.gov) and John Ellis,
2 Esq., (john.ellis3@usdoj.gov) who indicated they were the attorneys assigned to the
3 Case. Defendants’ counsel informed Plaintiff that Defendants oppose this
4 Application.

5 In addition, Plaintiff hereby respectfully request that this Court grant her Class
6 Certification Or *In The Alternative* Provisional Class Certification for the Purposes of
7 Plaintiff’s Application for Her Emergency Motion for a Temporary Restraining
8 Order, Preliminary Injunction and/or Declaratory Judgment Emergency Motion, and
9 appoint her as class Plaintiff in this litigation, and appoint her undersigned attorneys
10 as class counsel pursuant to Federal Rule of Civil Procedure 23.

11 This Motion incorporates by reference Plaintiff’s Motion and Memorandum of
12 Law in Support of Application for Plaintiff’s Emergency Motion for a Temporary
13 Restraining Order, Preliminary Injunction and/or Declaratory Judgment (hereinafter
14 “Emergency Motion”) and Plaintiff’s Motion and Memorandum of Law in Support of
15 Class Certification Or *In The Alternative* Provisional Class Certification for purposes
16 of Plaintiff’s Application for Her Emergency Motion for a Temporary Restraining
17 Order, Preliminary Injunction and/or Declaratory Judgment filed simultaneously
18 herein.

19 This application is made on the grounds set forth in the accompanying
20 Memorandums in Support; and exhibits attached thereto; all pleadings and papers
21 filed in this action; the argument of counsel; and further evidence as the Court may
22 consider at or before a hearing regarding this Application or the hearing regarding the
23 Order to Show Cause and preliminary injunction requested herein.

24
25 DATED: May 8, 2020

Respectfully submitted,

26 JANE DOE, individually and on behalf of
27 others similarly situated.

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/s/ Heather L. Blaise
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12 **SOUTHERN DIVISION**

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15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

**MEMORANDUM OF LAW IN
SUPPORT OF APPLICATION FOR
PLAINTIFF’S EMERGENCY
MOTION FOR A TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION
AND/OR DECLARATORY
JUDGMENT**

Action Filed: May 6, 2020

24 NOW COMES Plaintiff, Jane Doe, (hereinafter “Doe” or “Plaintiff”),
25 individually and on behalf of the proposed class, by and through her attorneys, Blaise
26 & Nitschke, P.C., and pursuant to Federal Rule of Civil Procedure 65 and Local Rule
27 65-1 and submits her Memorandum of Law in Support of Application for Plaintiff’s
28

1 Emergency Motion for a Temporary Restraining Order, Preliminary Injunction and/or
2 Declaratory Judgment (“Emergency Motion”) against DONALD J. TRUMP, in his
3 individual and official capacity as President of the United States; MITCH
4 MCCONNELL, in his individual and official capacity as United States Senator and
5 the Sponsor of S. 3548 CARES Act; STEVEN MNUCHIN, in his individual and
6 official capacity as the Acting Secretary of the U.S. Department of Treasury;
7 CHARLES RETTIG, in his individual and official capacity as U.S. Commissioner of
8 Internal Revenue; U.S. DEPARTMENT OF THE TREASURY; the U.S. INTERNAL
9 REVENUE SERVICE; and the UNITED STATES OF AMERICA (hereinafter
10 collectively referred to as “Defendants”).

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 C. The Balance of Equities and the Public Interest Favors the Relief Plaintiff and the Putative Class Are Requesting.22

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 2 896 F.2d 1107, 1112 (8th Cir. 1990) 13
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 4 341 F. Supp. 3d 1048, 1070 (N.D. Cal. 2018) 13
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 6 584 F.3d 1196, 1208 (9th Cir. 2009) 18
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 10 695 F.3d 990, 1002 (9th Cir. 2012) 18, 20, 22
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 12 404 U.S. 78, 81, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971)..... 16, 17
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 14 409 U.S. 1069 (1972)..... 15, 16
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 16 709 F.3d 1281, 1291 (9th Cir. 2013) 12
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 27 S. 3548, 116th Cong. (2020)..... 3, 4, 5, 20
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PROCEDURAL HISTORY

1. On May 6, 2020, Plaintiff filed a class action complaint against Defendants (the “Complaint”). *See* Dkt No. 1.

2. Pursuant to the U.S. Attorney General’s Office in the Central District of California, as a temporary emergency measure necessitated by circumstances related to the spread of COVID-19, Plaintiff placed in the mail a copy of the Complaint by certified mail on or about May 8, 2020. *Service of Process on the United States Attorney*, THE UNITED STATES ATTORNEY’S OFFICE CENTRAL DISTRICT OF CALIFORNIA, <https://www.justice.gov/usao-cdca> (last visited May 7, 2020).

THE EXIGENT FACTS THAT NECESSITATE THIS MOTION

3. On March 11, 2020, the World Health Organization’s Director General categorized the current coronavirus (hereinafter “COVID-19”) outbreak as a pandemic (hereinafter the “Pandemic”). *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020*, WORLD HEALTH ORGANIZATION (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited May 6, 2020).

4. On March 13, 2020, President Donald J. Trump, proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, WHITEHOUSE.GOV (March 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>(last visited May 6, 2020).

5. As of May 7, 2020, the Center for Disease Control and Prevention reported 1,219,066 COVID-19 Cases in the United States and 73,297 COVID-19 deaths. *Coronavirus Disease 2019 (COVID-19): Cases in the US*, CDC.GOV (May 7,

1 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>
2 (last visited May 7, 2020).

3 6. According to the U.S. Department of Labor, as of March 2020, the
4 unemployment rate increased by 0.9 percentage point to 4.4 percent – the largest
5 over-the-month increase in the rate since January 1975. *News Release: The*
6 *Employment Situation – March 2020*, BUREAU OF LABOR STATISTICS (April 3, 2020),
7 <https://www.bls.gov/news.release/pdf/empsit.pdf> (last visited May 6, 2020).

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

11 8. According to the U.S. Department of Labor, as of Thursday April 30,
12 2020, the insured unemployment rate was 12.4% for the week ending April 18, 2020,
13 which is the highest seasonally adjusted insured unemployment rate in the history of
14 the seasonally adjusted series. *See Unemployment Insurance Weekly Claims*,
15 DEPARTMENT OF LABOR (April 30, 2020), <https://www.dol.gov/ui/data.pdf> (last
16 visited May 6, 2020).

17 9. 33 million Americans have applied for unemployment since the
18 beginning of the Pandemic, a number that exceeds all jobs created since the Great
19 Recession by more than 12 million. Even the predictions that unemployment will
20 probably be at the “highest point since the Great Depression” will not reflect the full
21 picture, as the unprecedented response to the Pandemic upends the traditional
22 measures used to count those who are out of work. Charisse Jones, *Jobless Claims*
23 *May Reach 33 Million as COVID-19 Layoffs Lead to a Historic Jobless Rate*, USA
24 TODAY (May 6, 2020), [https://www.usatoday.com/story/money/2020/05/06/
25 coronavirus-likely-lead-over-3-m-more-americans-file-jobless-claims/3084345001/
26 \(last visited May 6, 2020\).27](https://www.usatoday.com/story/money/2020/05/06/coronavirus-likely-lead-over-3-m-more-americans-file-jobless-claims/3084345001/)

1 10. Jobless claims have reached 22 million, and the Federal Reserve
2 estimates that up to 47 million jobs could be lost. Alexander Kalev, *Research: U.S.*
3 *Unemployment Rising Faster for Women and People of Color*, HARVARD BUSINESS
4 REVIEW (April 20, 2020) [https://hbr.org/2020/04/research-u-s-unemployment-rising-](https://hbr.org/2020/04/research-u-s-unemployment-rising-faster-for-women-and-people-of-color)
5 [faster-for-women-and-people-of-color](https://hbr.org/2020/04/research-u-s-unemployment-rising-faster-for-women-and-people-of-color) (last visited May 6, 2020).

6 11. More troubling is that women and minorities are overrepresented in
7 industries at high risk of layoffs, such as retail, hospitality, recreation, and
8 manufacturing. *Id.*; see also *Foreign-Born Workers: Labor Force Characteristics –*
9 *2018*, BUREAU OF LABOR STATISTICS (May 16, 2019), [https://www.bls.gov/news.](https://www.bls.gov/news.release/pdf/forbrn.pdf)
10 [release/pdf/forbrn.pdf](https://www.bls.gov/news.release/pdf/forbrn.pdf) (last visited May 6, 2020).

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

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

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

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

1 16. The CARES Act was signed into law by President Donald J. Trump on
2 March 27, 2020. *See* Dkt No. 1.

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

6 18. During the House of Representatives debate on the CARES Act,
7 Representative TJ Cox highlighted what he called “this bill's glaring shortcomings”
8 which included the fact that the bill “punishes mixed-status households and denies
9 some American citizens benefits they deserve.” 166 Cong. Rec. H1841 (daily ed.
10 Mar. 27, 2020) (statement of Rep. Cox of CA).

11 19. Section 2101 of the CARES Act amends Subchapter B of chapter 65 of
12 subtitle F of the Internal Revenue Code of 1986 by inserting a new section relating to
13 the Pandemic, entitled SEC. 6428. 2020 RECOVERY REBATES FOR
14 INDIVIDUALS (“Section 6428”). Section 6428 (a) provides stimulus payments
15 (hereinafter “Stimulus Check”) to individuals. Under section 6428 (a) each “eligible
16 individual” receives \$1,200, and “eligible individuals filing a joint return” receive
17 \$2,400. Section 6428 (a)(2) provides each eligible individual an additional \$500 for
18 each of the individual’s “qualifying children.” Section 6428 (c) lessens these amounts
19 for individuals making more than \$75,000 and married couples filing jointly who
20 make more than \$150,000.

21 20. Pursuant to 26 U.S.C. § 6428 (g)(1)(B), enacted as part of the CARES
22 Act, Number Requirements for eligibility for the Stimulus Check are defined as
23 follows:

24 g) Identification Number Requirement.—

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

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

1 “(B) in the case of a joint return, the valid identification
2 number of such individual’s spouse, and [(hereinafter the
3 “Exclusion Provision”)]

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

7 “(2) VALID IDENTIFICATION NUMBER.—

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

11 “(B) ADOPTION TAXPAYER IDENTIFICATION
12 NUMBER.—For purposes of paragraph (1)(C), in the case of a
13 qualifying child who is adopted, the term ‘valid identification
14 number’ shall include the adoption taxpayer identification
15 number of such child.

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

17 21. As written, 26 U.S.C. § 6428 (g)(1)(B) only permits a joint filing
18 married citizen to receive a Stimulus Check if both parties to the marriage possess
19 Social Security numbers – an unlawful exclusion of Plaintiff and the Putative Class.

20 22. The CARES Act was enacted explicitly to provide emergency assistance
21 to American citizens, and Plaintiff and the Putative Class have intentionally been
22 excluded from the group of citizens entitled to such assistance because they filed tax
23 returns with their spouses, who lack Social Security numbers. *See Michelle*
24 *Singletary, If You’re Still Waiting on Your \$1,200 Stimulus Check, Here are Key*
25 *Dates for the Next Set of Payments, THE WASHINGTON POST (April 27, 2020),*
26 *[https://www.washingtonpost.com/business/2020/04/27/more-1200-stimulus-checks-](https://www.washingtonpost.com/business/2020/04/27/more-1200-stimulus-checks-are-way-here-are-key-dates-next-set-payments/)*
27 *are-way-here-are-key-dates-next-set-payments/* (last visited April 30, 2020).

28 23. Sec. 6428 authorizes the Internal Revenue Service to disburse \$1,200.00
to each "eligible individual" earning up to \$75,000.00 in adjusted gross income who
have a Social Security number, and an additional \$500.00 for each child under the
age of 17 (hereinafter "the Stimulus Check"). 26 U.S.C. § 6428.

1 24. Sec. 6428 authorizes the Internal Revenue Service to disburse \$2,400.00
2 to "eligible individuals filing a joint return" when earning up to \$150,000.00 in
3 adjusted gross income. 26 U.S.C. § 6428.

4 25. Sec. 6428(c) lessens these amounts for individuals making more than
5 \$75,000.00 and married couples filing jointly who make more than \$150,000.00. 26
6 U.S.C. § 6428(c).

7 26. Sec. 6428, through a combination of provisions, excludes otherwise
8 qualified individuals from receiving the CARES Act Stimulus Checks solely because
9 their spouses lack social security numbers.

10 27. The Stimulus Checks include Defendant Trump's name. Defendant
11 Mnuchin admits that the inclusion of Defendant Trump's name on the Stimulus
12 Checks was Defendant Mnuchin's idea. Devan Cole, *Mnuchin Says Putting Trump's*
13 *Name on Coronavirus Stimulus Checks Was His Idea*, CNN (April 20, 2020),
14 [https://www.cnn.com/2020/04/19/politics/steven-mnuchin-trump-name-stimulus-](https://www.cnn.com/2020/04/19/politics/steven-mnuchin-trump-name-stimulus-checks-cnntv/index.html)
15 [checks-cnntv/index.html](https://www.cnn.com/2020/04/19/politics/steven-mnuchin-trump-name-stimulus-checks-cnntv/index.html) (last visited May 6, 2020).

16 28. Under Sec. 6428 (d), Plaintiffs are defined as "eligible individual[s]"
17 because they are neither "nonresident alien individual[s]" nor dependent children.

18 29. Plaintiff Jane Doe's children are also defined as "qualifying" for the
19 Stimulus Checks under Sec. 6428 (a)(2) because her children are under the age of 17
20 and live in the United States. 26 U.S.C. § 6428 (c) (2020).

21 30. Plaintiff Doe also provided her children's social security numbers, which
22 is required by Sec. 6428 (g)(1)(C) in order for payments for qualifying children to be
23 included to receive a Stimulus Check.

24 31. The first Stimulus Checks were delivered via direct deposit on April 15,
25 2020 to 50 to 70 million Americans. Michael Collins and Christal Hayes, *Treasury*
26 *Says First Coronavirus Stimulus Checks Have Gone Out, and Many Will Get*
27 *Payments by April 15*, USA TODAY (April 14, 2020), <https://www.msn.com/en->
28

1 us/money/personalfinance/treasury-says-first-coronavirus-stimulus-checks-have-
2 gone-out-and-many-will-get-payments-by-april-15/ar-BB12zIQ7 (last visited May 6,
3 2020).

4 32. The remaining qualifying Americans (other than Plaintiff and the
5 Putative Class) received the Stimulus Checks on or about April 29, 2020 and May 5,
6 2020. *See* Michelle Singletary, *If You're Still Waiting on Your \$1,200 Stimulus*
7 *Check, Here are Key Dates for the Next Set of Payments*, THE WASHINGTON POST
8 (April 27, 2020) [https://www.washingtonpost.com/business/2020/04/27/more-1200-](https://www.washingtonpost.com/business/2020/04/27/more-1200-stimulus-checks-are-way-here-are-key-dates-next-set-payments/)
9 [stimulus-checks-are-way-here-are-key-dates-next-set-payments/](https://www.washingtonpost.com/business/2020/04/27/more-1200-stimulus-checks-are-way-here-are-key-dates-next-set-payments/) (last visited May 6,
10 2020).

11 33. As of the date of this filing, Plaintiff and the Putative Class have not and
12 will not receive their Stimulus Checks.

13 34. As the supporting declarations attached to this Motion make clear,
14 Plaintiff and other similarly situated individuals are suffering grave economic
15 hardships that will be ameliorated by treating them similarly to their fellow U.S.
16 Citizens. *See* Exhibit A and Affidavit of Heather L. Blaise, Esq. attached hereto and
17 incorporated herein as Exhibit B.

18 35. Specifically, due to the Pandemic, Plaintiff's monthly family income has
19 been reduced to the point that it is extremely difficult to make ends meet; with her
20 minor children's school closure as a result of the Pandemic and the requirements of e-
21 learning, her husband has been forced to remain at home with their five (5) minor
22 child, who are also U.S. citizens, and is unable to work outside the home. *See* Exhibit
23 A. While it has always been difficult to provide a decent life for her family with the
24 income she earns, it is now nearly impossible to meet her financial obligations for the
25 minimum necessities of life, including the ability to put food on her family's table.
26 *See id.* Indeed, Plaintiff's food expenses have significantly increased as a result of her
27 minor children being home from school. *See id.* Plaintiff is on the verge of being
28

1 unable to pay her rent, and her insurance premiums, and health insurance deductibles.
2 *See id.* The CARES Act stimulus check would make it possible to meet some of her
3 family’s basic necessities during the Pandemic. *See id.*

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

- 5 • must be a U.S. citizen, permanent resident or qualifying resident alien;
- 6 • cannot be claimed as a dependent on someone else’s return;
- 7 • must have a Social Security number (“SSN”) that is valid for employment (“valid SSN”)
- 8 • Exception: If either spouse is a member of the U.S. Armed Forces at any
9 time during the taxable year, then only one spouse needs to have a valid
10 SSN; and
- 11 • must have an adjusted gross income below an amount based on his or her
12 filing status and the number of his or her qualifying children.

12 *See* Dkt No. 1.

13 37. Any family that files a joint tax return where one of the spouses has a
14 Social Security number and one has an Individual Taxpayer Identification Number,
15 which the Internal Revenue Service issues to workers who lack Social Security
16 numbers, cannot receive a Stimulus Check — unless one spouse is a member of the
17 U.S. Armed Forces. *See* Dkt No. 1.

18 38. An Individual Taxpayer Identification Number (“ITIN”) is a tax
19 processing number issued by the Internal Revenue Service. The IRS issues ITINs to
20 individuals who are required to have a U.S. taxpayer identification number but who
21 do not have, and are not eligible to obtain, a Social Security number from the Social
22 Security Administration. I.R.C. § 6109; Treas. Reg. § 301.6109-1(a)(1)(ii)(B).
23 Individuals who are present in the United States without formally completing the
24 immigration process may nevertheless be issued an ITIN for the purpose of paying
25 their taxes. An ITIN does not confer any immigration status or provide work
26 authorization or eligibility for social services programs. *Instructions for Form W-7,*
27 *Internal Revenue Service*, INTERNAL REVENUE SERVICE (September 2019),
28

1 <https://www.irs.gov/pub/irs-pdf/iw7.pdf> (last visited May 6, 2020). Federal law
2 generally requires all wage earners to file tax returns and use an identification
3 number. I.R.C. § 1. Individuals apply for an ITIN by submitting a W-7 form and a
4 completed tax return to the IRS. I.R.C. § 6109.

5 39. The ITIN application process is not an immigration enforcement tool,
6 and the IRS is prohibited by law from sharing any taxpayer information with any
7 other governmental agencies. I.R.C. § 6103(a). An estimated 4.3 million adults file
8 taxes using an ITIN. *How the Tax Rebate in the Senate's Bill Compares to Other*
9 *Proposals*, INSTITUTE ON TAXATION AND ECONOMIC POLICY (March 25, 2020),
10 <https://itep.org/how-the-tax-rebate-in-the-senates-bill-compares-to-other-proposals/>
11 (last visited May 6, 2020).

12 40. The IRS estimates ITIN tax filers pay over \$9 billion in annual payroll
13 taxes. *IRS Nationwide Tax Forum: Immigration and Taxation*, INTERNAL REVENUE
14 SERVICE (2014), [https://www.irs.gov/pub/irs-utl/20-Immigration%20and%20](https://www.irs.gov/pub/irs-utl/20-Immigration%20and%20Taxation.pdf)
15 [Taxation.pdf](https://www.irs.gov/pub/irs-utl/20-Immigration%20and%20Taxation.pdf) (last visited May 6, 2020).

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

- 19 a. A non-resident foreign national who owns or invests in a U.S.
20 business and receives taxable income from that U.S. business, but
21 lives in another country;
- 22 b. A foreign national student who qualifies as a resident of the United
23 States (based on days present in the United States);
- 24 c. A dependent or spouse of a U.S. citizen or lawful permanent resident;
25 and
- 26 d. A dependent or spouse of a foreign national on a temporary visa such
27 as a H-4 and J-2.

28 *Individual Taxpayer Identification Number*, INTERNAL REVENUE SERVICE (April 16,
2020), <https://www.irs.gov/individuals/individual-taxpayer-identification-number>

1 (last visited May 6, 2020). *See also* Affidavit of Attorney Vivian Khalaf, Esq.,
2 attached hereto and incorporated herein as Exhibit C.

3 42. There are 1.2 million Americans married to immigrants who do not hold
4 Social Security numbers. *See* Dkt No. 1 at ¶ 35.

5 43. Of the 1.2 million Americans, those who file joint tax returns and are not
6 in the military are ineligible for a Stimulus Check and deprived of the rights,
7 privileges, immunities, and/or benefits conferred upon all other U.S. citizens who
8 otherwise qualify. *See* Dkt No. 1 at ¶ 36.

9 44. The Migration Policy Institute reported that 4.1 million U.S. Citizen
10 children live with at least one undocumented immigrant parent. *See* Dkt No. 1 at ¶ 61.

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

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

26 47. Plaintiff and the Putative Class have suffered, and will continue to
27 suffer, immediate and irreparable harm by reason of the conduct described above.

1 *Winter v. NRDC, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008)
2 (citation omitted).

3 “[I]f a plaintiff can only show that there are ‘serious questions going to the
4 merits’—a lesser showing than likelihood of success on the merits—then a
5 preliminary injunction may still issue if the ‘balance of hardships tips sharply in the
6 plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc.*
7 *v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the*
8 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (emphasis by *Shell*
9 *Offshore*)). *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1134 (D. Haw. 2017).

10 In other words, even where a plaintiff is unable to show a likelihood of success
11 on the merits, but can at least demonstrate there are serious questions going to the
12 merits, and the balance of hardships strongly favors the plaintiff, a court may grant
13 preliminary injunctive relief so long as there is still a showing on the last two
14 elements. *See id.* at 1131, 1134-35 (“a stronger showing of one element may offset a
15 weaker showing of another. For example, a stronger showing of irreparable harm to
16 plaintiff might offset a lesser showing of likelihood of success on the merits.”).
17 *Anhing Corp. v. Thuan Phong Co.*, No. 13-cv-05167-BRO-MANx, 2013 U.S. Dist.
18 LEXIS 190829, at *8 (C.D. Cal. Dec. 26, 2013).

19 For the reasons stated below, Plaintiff and the Putative Class easily meet the
20 elements of a prima facie case for injunctive relief and the balance of harm weighs
21 heavily in their favor.

22 Where circumstances are such that even the time needed to hear a request for a
23 preliminary injunction is too long to prevent irreparable harm, a temporary restraining
24 order (T.R.O.) may issue while a court considers a request for a preliminary
25 injunction. *See* 11A Charles Alan Wright, et al., *Federal Practice and Procedure* §
26 2951 (3d ed. 2019).

1 Further, the fact that this Plaintiff seeks relief applicable to the entire Putative
 2 Class in the form of a temporary restraining order prior to a ruling on class
 3 certification does not bar relief for Plaintiff and the Putative Class. When a plaintiff
 4 requests preliminary injunctive relief before class certification has been decided, a
 5 court may consider the harm to the putative class and grant classwide appropriate
 6 preliminary injunctive relief, particularly when, as in this case, there is alleged
 7 classwide harm and conduct aimed at a class of persons. *See J.L. v. Cissna*, 341 F.
 8 Supp. 3d 1048, 1070 (N.D. Cal. 2018); *Chhoeun v. Marin*, 306 F. Supp. 3d 1147,
 9 1164 (C.D. Cal. 2018) (granting a classwide injunction before certification when “an
 10 injunction is necessary to forestall harm to putative class members that is likely to
 11 transpire before the parties can litigate a motion for class certification.” *Doe v.*
 12 *Trump*, 418 F. Supp. 3d 573, 603 (D. Or. 2019).

13 Federal Rule of Civil Procedure 23(b)(2) “does not restrict class certification to
 14 instances when final injunctive relief issues” and allows for certification of a
 15 conditional class to grant preliminary injunctive relief. *Id.*; *see also Howe v. Varsity*
 16 *Corp.*, 896 F.2d 1107, 1112 (8th Cir. 1990) (affirming grant of a preliminary
 17 injunction to a conditional class).

18 In addition, “there is no bar against class-wide, and nationwide relief in federal
 19 district or circuit court when it is appropriate,” *Bresgal v. Brock*, 843 F.2d 1163, 1170
 20 (9th Cir. 1987), and here the class-wide, nationwide relief is necessary to afford
 21 the class members the relief to which they are entitled. *Doe v. Trump*, No. 19-36020,
 22 2020 U.S. App. LEXIS 14169, at *46 (9th Cir. May 4, 2020).

23 ARGUMENT

24 **I. Plaintiff and the Putative Class Easily Meets the Elements of a Prima** 25 **Facie Case for Injunctive Relief and the Balance of Harm Weighs Heavily** 26 **in Their Favor.**

27 Plaintiff Doe meets the standard for injunctive relief and the balance of harms
 28 weighs heavily in her favor. First, she has a substantial likelihood of success on the

1 merits because the Exclusion Provision is unlawful several times over: Among other
2 things, it violates the First Amendment to the United States Constitution by infringing
3 on Plaintiff's right to privacy as it relates to her fundamental right to marriage; and it
4 violates rights secured to Plaintiff by the Fifth and Fourteenth Amendments to the
5 United States Constitution including the right to due process of law, the right to equal
6 protection under the law, and the penumbra of privacy rights created by the First,
7 Third, Fourth, and Fifth Amendments that creates a fundamental right to marriage.

8 Second, Plaintiff and the putative class will suffer irreparable harm if relief is
9 not granted: the Exclusion Provision imposes direct economic harm during an
10 ongoing Pandemic to U.S. Citizens and their U.S. Citizen children. Third, the balance
11 of equities tips in Plaintiff's favor. The Defendants will suffer no hardship if the
12 Exclusion Provision is enjoined because the Government has intentionally excluded
13 otherwise eligible U.S. Citizens from receiving the Stimulus Check and more
14 damaging, excluding them from a benefit conferred upon all other U.S. Citizens
15 simply because of whom they chose to marry with no justification. Finally,
16 remedying constitutional and statutory violations is in the public interest.

17 **A. Plaintiff and the Putative Class Have a Likelihood of Success on the**
18 **Merits of Their Claim That the Exclusion Provision of the CARES**
19 **Act Violates the First, Fifth, and Fourteenth Amendments.**

20 Defendants, acting under color of law, have violated rights secured to Plaintiff
21 by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution including the
22 right of association, the right to due process of law, the right to equal protection under
23 the law, and the penumbra of privacy rights created by the First, Third, Fourth, and
24 Fifth Amendments that creates a fundamental right to marriage. *See* Dkt. 1 at ¶ 70.
25 Specifically, Defendants have failed, as applied to Plaintiff (and other similarly
26 situated individuals), to treat her as equal to her fellow United States citizens based
27 solely on whom she chose to marry. *See id.* Accordingly, Defendants have
28 discriminated against Plaintiff on the basis of her fundamental right of marriage, a

1 right guaranteed to her under the Constitution of the United States. *See id.* at ¶¶ 72-
2 73. Specifically, the CARES Act provision at issue, on its face and as applied, or
3 threatened to be applied, violates the First Amendment, the Due Process Clause of the
4 Fifth Amendment, and Fourteenth Amendment. *See id.* at ¶ 75. Defendants cannot
5 show a compelling interest justifying their policies of discrimination based on
6 marriage, and they cannot show that these classifications are necessary to serve any
7 legitimate governmental interest. *See id.* at ¶ 98. The CARES Act singles out law-
8 abiding and tax-paying U.S. Citizens by excluding them from a benefit they and their
9 children would otherwise be entitled to with no compelling interest justifying the law
10 and without serving any legitimate governmental interest. *See id.* at ¶ 116. Section
11 6428 is not narrowly tailored to advance a compelling government interest, nor is it
12 rationally related to any legitimate government interest. *See id.* at ¶ 117.

13 Furthermore, Defendants discriminate against Plaintiff and the Putative Class
14 on the basis of their spouses' alienage. Defendants have no compelling interest
15 justifying their policies of discrimination based on the marriage to a non-U.S. Citizen,
16 and they cannot show that this justification is necessary to serve any legitimate
17 governmental interest. Defendants treat Plaintiff differently from U.S. Citizens who
18 marry other U.S. Citizens, who are otherwise similarly situated. *Graham v.*
19 *Richardson*, 403 U.S. 365, 372 (1971) (footnotes and citations omitted).
20 Moreover, similarly to the facts at hand, the unfair treatment of minor children
21 relating to Social Security benefits based on their parentage has found the federal
22 government to be in violation of the U.S. Constitution. *Griffin v. Richardson*, 346 F.
23 Supp. 1226 (D. Md. 1972). *Richardson v. Davis*, 409 U.S. 1069 (1972), summarily
24 aff'g 342 F.Supp. 588 (Conn.).

25 Further, the Due Process Clause of the Fifth Amendment prohibits, as to the
26 federal government, statutes creating arbitrary discriminations which have no rational
27 basis in legitimate governmental purposes. While there is no specific equal protection
28

1 guarantee applicable to the federal government, Equal Protection standards of the
2 Fourteenth Amendment have been imported into the Due Process Clause of the Fifth
3 Amendment. *Davis v. Richardson*, 342 F. Supp. 588, 591 (D. Conn. 1972),
4 summarily aff'd in *Richardson v. Davis*, 409 U.S. 1069 (1972) , citing *Bolling v.*
5 *Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954) (“The Fifth Amendment [.
6 . .] does not contain an equal protection clause as does the Fourteenth Amendment
7 which applies only to the states. But the concepts of equal protection and due process,
8 both stemming from our American ideal of fairness, are not mutually exclusive. The
9 ‘equal protection of the laws’ is a more explicit safeguard of prohibited unfairness
10 than ‘due process of law,’ and, therefore, we do not imply that the two are always
11 interchangeable phrases. But, as this Court has recognized, discrimination may be so
12 unjustifiable as to be violative of due process.”); *Richardson v. Belcher*, 404 U.S. 78,
13 81, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971); *Flemming v. Nestor*, 363 U.S. 603, 611,
14 80 S. Ct. 1367, 4 L. Ed. 2d 1435 (1960); *Bolton v. Harris*, 130 U.S. App. D.C. 1, 395
15 F.2d 642 (1968). That is the case here.

16 In finding an immediate need to provide Social Security payments to an
17 illegitimate child based on her impoverished needs, the *Griffin* Court determined that
18 any “delay in determining the constitutionality of the law under which plaintiff has
19 been denied benefits would serve no useful purpose. A deferred recovery of a lump
20 sum amount by this plaintiff would do nothing to alleviate her immediate need,
21 especially in view of the fact that plaintiff here [...] [and] the class as a whole” would
22 likely suffer from impoverished conditions, a “common observation teaches that
23 illegitimacy and indigency are often handmaidens.” *Griffin* 346 F. Supp. 1226, 1232
24 (D. Md. 1972). The same is true in the case at hand as it relates to mixed-status
25 families, and the severity of impoverishment is readily apparent per the Department
26 of Labor’s statistics. *See Foreign-Born Workers: Labor Force Characteristics –*
27 *2018*, BUREAU OF LABOR STATISTICS (May 16, 2019), <https://www.bls.gov/news>.

28

1 release/pdf/forbrn.pdf (last visited May 6, 2020). Delaying the payment to U.S.
2 Citizen children, including Plaintiff’s children, would do nothing to alleviate her
3 immediate need during this Pandemic. Accordingly, the emergency need of the
4 CARES Act relief cannot be overstated. Thus, the equities of this case, similarly to
5 *Griffin*, do not favor a delay.

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

7 A statutory classification in the area of social welfare is
8 consistent with the Equal Protection Clause of the Fourteenth
9 Amendment if it is ‘rationally based and free from invidious
10 discrimination.’ *Dandridge v. Williams*, 397 U.S. 471, 487 [90
11 S. Ct. 1153, 1162, 25 L. Ed. 2d 491]. While the present case,
12 involving as it does a federal statute, does not directly implicate
13 the Fourteenth Amendment’s Equal Protection Clause, a
14 classification which meets the test articulated in *Dandridge* is
perforce consistent with the due process requirement of the
Fifth Amendment. Cf. *Bolling v. Sharpe*, 347 U.S. 497, 499 [74
S. Ct. 693, 694, 98 L. Ed. 884].

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

17 As the Supreme Court of the United States instructs, though the latitude given
18 to lawmakers to economic and social regulation is necessarily broad, when state
19 statutory classifications approach sensitive and fundamental personal rights, this
20 Court must exercise strict scrutiny. *Griffin v. Richardson*, 346 F. Supp. 1226, 1233
21 (D. Md. 1972) at 172-73, citing *Brown v. Board of Education*, 347 U.S. 483 [74 S.
22 Ct. 686, 98 L. Ed. 873] (1954); *Harper v. Virginia [State] Board of Elections*, 383
23 U.S. 663 [86 S. Ct. 1079, 16 L. Ed. 2d 169] (1966). There can be no doubt that the
24 allegations complained of by Plaintiff and the Putative Class affect their fundamental
25 rights and are subject to strict scrutiny. *Levy v. Louisiana*, 391 U.S. 68, 88 S. Ct.
26 1509, 20 L. Ed. 2d 436 (1968) (The rights asserted involved “the intimate, familial
27 relationship between a child and his own mother” and noting that it has “been
28

1 extremely sensitive when it comes to basic civil rights [citations omitted] and [has]
2 not hesitated to strike down an invidious classification.”).

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

7 Accordingly, the CARES Act violates the First Amendment to the U.S.
8 Constitution; the Due Process Clause of the Fifth Amendment to the U.S.
9 Constitution; the rights of Plaintiff and the Putative Class to Equal Protection and
10 Privileges and Immunities under the Fourteenth Amendment to the U.S. Constitution
11 under the Reverse Incorporation Doctrine; and the well-established fundamental right
12 to marry.

13 **B. Plaintiff and the Putative Class Will Suffer Irreparable Hard If**
14 **Relief Is Not Granted.**

15 Irreparable harm may be presumed with the finding of a violation of the First
16 Amendment. *See Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009)
17 (“The loss of First Amendment freedoms, for even minimal periods of time,
18 unquestionably constitutes irreparable injury”) (*quoting Elrod v. Burns*, 427 U.S. 347,
19 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)); *see also Washington v. Trump*, 847
20 F.3d 1151, 1169 (9th Cir. 2017)(*citing Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
21 Cir. 2012) (“It is well established that the deprivation of constitutional rights
22 ‘unquestionably constitutes irreparable injury.’”)) (additional citations omitted).
23 *Hawai’i v. Trump*, 241 F. Supp. 3d 1119, 1139 (D. Haw. 2017).

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

1 peaceably to assemble, and to petition the Government for a redress of grievances.”
2 U.S. Const. amend. I. *See* Dkt. 1 at ¶105.

3 Specific guarantees in the Bill of Rights have penumbras, formed by
4 emanations from those guarantees that help give them life and substance. Various
5 guarantees create zones of privacy. The right of association contained in the
6 penumbra of the First Amendment is one of those fundamentally protected zones of
7 privacy. *Griswold v. Connecticut*, 381 U.S. 479, 480, 85 S. Ct. 1678, 1679 (1965);
8 *See* Dkt. 1 at ¶ 106. The right of privacy first achieved constitutional stature in
9 *Griswold v. Connecticut*, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965),
10 wherein the *Griswold* Court began by noting that “specific guarantees in the Bill of
11 Rights have penumbras, formed by emanations from those guarantees that help give
12 them life and substance.” 381 U.S. at 484. *See* Dkt. 1 at ¶ 107. The *Griswold* opinion
13 stressed the sanctity of marriage lying within the zone of privacy created by several
14 fundamental constitutional guarantees. *Griswold v. Connecticut*, 381 U.S. 479, 485,
15 85 S. Ct. 1678, 1682 (1965); *See* Dkt. 1 at ¶ 108.

16 Defendants discriminate against Plaintiff and the Class on the basis of their
17 protected sanctity of marriage--a fundamental right. *See* Dkt. 1 at ¶ 109. As a direct
18 and proximate result of 26 U.S.C. § 6428 (g)(1)(B), the federal government treats
19 Plaintiff, who is legally married, differently than other married couples simply
20 because their spouses lack a social security number. As a result of the disparate
21 treatment, Plaintiff is excluded from receiving a Stimulus Check. 26 U.S.C. § 6428
22 (g)(1)(B) also infringes on Plaintiff’s right to enjoy all the benefits of marriage
23 afforded to other married couples. *See* Dkt. 1 at ¶ 111. The Exclusion Provision of the
24 CARES, on its face and as applied, or threatened to be applied, violates the First
25 Amendment of the U.S. Constitution. *See* Dkt. 1 at ¶ 120. Accordingly, Plaintiff and
26 the putative class have lost their First Amendment rights to freedom of privacy, and
27 have been discriminated against based on whom they chose to marry, which
28

1 unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373, 96
2 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)); *see also Washington*, 847 F.3d at 1169 (*citing*
3 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

4 A threshold question is whether the Plaintiff and the Putative Class is entitled
5 to injunctive relief to redress the imminent and currently ongoing harm faced as a
6 result of their exclusion from the CARES Act. The CARES Act is intended to
7 provide *emergency assistance*, which Defendants have categorically deprived the
8 Plaintiffs of. S. 3548, 116th Cong. (2020) (emphasis added). The CARES Act
9 expressly acknowledges the grave emergency circumstances that U.S. citizens
10 making under \$75,000.00 face as a result of the Pandemic, yet it pointedly carves out
11 Plaintiff and the Putative Class, which consists of up to 1.2 million Americans. If
12 Plaintiff and the Putative Class are denied immediate injunctive relief, their families
13 will continue to struggle to meet their financial obligations for the basic necessities of
14 human life, including but not limited to avoiding starvation for them and their
15 children, homelessness, and other dire consequences affecting their liberty and safety,
16 all of which the CARES Act was designed to address for qualifying Americans as a
17 result of the Pandemic. *See Exhibit A; see also Exhibit B.*

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

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

10 The Exclusion Provision unjustly and unfairly deprives mixed status families
11 of the stimulus rebate for filing joint tax returns, the same joint tax returns that the
12 United States Citizenship and Immigration Services (hereinafter the “USCIS”) views
13 as indicia of a real marriage. In fact, couples in this situation are doubly penalized.
14 Not only are they precluded from receiving a stimulus rebate, but USCIS is currently
15 closed, meaning mixed-status couples who have a marriage-based petition pending
16 with USCIS are stuck in administrative limbo, as the undocumented spouse cannot
17 complete the process to become a lawful permanent resident. *See* Schiffman-Shilo,
18 *supra*. This CARES Act turns Plaintiff and the Putative class “into second-class
19 citizens” for marrying immigrants. *See id.*

20 The irreparable harm of requiring U.S. Citizens to file their 2019 and/or amend
21 their 2018 tax returns to file separately in order to receive the Stimulus Check is
22 diametrically opposed to the immigration policy embodied in the Immigration and
23 Nationality Act that provides U.S. Citizen’s a path to obtaining lawful citizenship for
24 their spouses. A dire consequence to the sanctity of marriage, this Exclusion
25 Provision necessitates immediate redress. Accordingly, Plaintiff and the Putative
26 Class will be irreparably harmed if relief is not granted.

1 **C. The Balance of Equities and the Public Interest Favors the Relief**
2 **Plaintiff and the Putative Class Are Requesting.**

3 The final step in determining whether to grant the Plaintiff and the Putative
4 Class’s Emergency Motion is to assess the balance of equities and examine the
5 general public interests that will be affected. *Hawai’i v. Trump*, 241 F. Supp. 3d 1119,
6 1139 (D. Haw. 2017).

7 The balance of the equities and public interest factors tip decidedly in favor of
8 Plaintiff. The harms the Exclusion Provision inflicts are immediate and severe, and
9 “it is always in the public interest to prevent the violation of a party’s constitutional
10 rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

11 Plaintiff’s likelihood of success is high, as Defendants have intentionally
12 excluded otherwise eligible U.S. Citizens from receiving the Stimulus Check and
13 more damaging, excluding them from a benefit conferred upon all other U.S. Citizens
14 simply because of whom they chose to marry, which is facially discriminatory and
15 retributive. There is no harm to the Defendants by this Court granting an injunction
16 prohibiting enforcement of the Exclusion Provision.

17 Meanwhile, the harm to Plaintiff and the Putative Class is severe. Defendants
18 may and have argued that Plaintiff and the Putative Class could qualify for the
19 Stimulus Check if they were to amend or file their 2018 and/or 2019 returns to
20 married filing separately. However, requiring Plaintiff and those similarly situated to
21 be forced to amend and re-file tax returns will cause additional expenses and delays
22 that would likely eclipse and exceed the benefit of the Stimulus Check. *See Exhibit C.*
23 Namely, the spouses will be required to file two separate tax returns for each
24 applicable tax year and to pay the preparation expenses of those returns. Next,
25 married filing jointly enjoys the lowest tax rate, while married filing separately has
26 the most dis-favored treatment. *See Blackwell, supra; see also Woroch, supra.* Thus,
27 for Plaintiff and the Putative Class, filing separately and/or amending their returns to
28

1 file separately will likely result in additional taxes being due. In addition, when one
2 files married filing separately, the filer is unable to claim: Education benefits; Earned
3 Income Credit (EIC); Child and Dependent Care Credit (usually); Adoption Credit
4 (usually); and the personal exemptions, itemized deductions, the Child Tax Credit,
5 and capital losses are all reduced by half. *Id.* Plus, both spouses cannot do itemized
6 deductions and thus one spouse will be limited to taking only standard deductions. *Id.*
7 On top of that, those that live in the community property states, like Plaintiff here, of
8 Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or
9 Wisconsin, have to deal with community property allocations and adjustments, which
10 adds extra work and complexity to tax preparation. *See Publication 555 (03/2020),*
11 *Community Property*, INTERNAL REVENUE SERVICE (March 2020), [https://www.irs.](https://www.irs.gov/publications/p555)
12 [gov/publications/p555](https://www.irs.gov/publications/p555) (last visited May 6, 2020). However, potentially the gravest
13 harm faced by Plaintiff and those similarly situated is the fact that in the legal
14 immigration context, tax returns with the married filing jointly status are considered
15 indicia of a bona fide marriage, entitling the immigrant spouse a legal path of
16 immigration, while married filing separately creates a presumption of a marriage only
17 for the purposes of immigration status. *See Exhibit D and Exhibit C.* Thus, the
18 Defendants' encouragement of Plaintiff and those similarly situated to file tax returns
19 separately, which can then detrimentally affect lawful immigration pathways for
20 immigrant spouses, is nothing short of an appalling assault on legal immigration and
21 the constitutional rights of U.S. citizens to marry whom they love, regardless of
22 immigration status. Justice cannot stand for such a result-period.

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

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff JANE DOE, individually and on behalf of the
5 Putative Class, by and through her attorneys, Blaise & Nitschke, P.C., prays for relief
6 as follows:

- 7 a. An Order granting class certification, or in the alternative provisional class
8 certification for purposes of this Motion;
- 9 b. An Order granting Blaise & Nitschke, P.C. and *Khalaf & Abuzir, LLC as
10 class counsel, or in the alternative provisional class counsel for purposes of
11 this Motion;
- 12 c. A temporary, preliminary and/or permanent injunction against the
13 Defendants, and all those acting in concert, prohibiting enforcement of the
14 laws as written and instead applying the provision as follows;
 - 15 i. Issuing a Temporary Restraining Order directing that Section 2101 of
16 the CARES Act be applied as follows:
17 “(a) In General.—Subchapter B of chapter 65 of subtitle F of the
18 Internal Revenue Code of 1986 is amended by inserting after section
19 6427 the following new section:
20 SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS
21 [. . .]
22 “(h) Identification Number Requirement.—
23 “(1) IN GENERAL.—No credit shall be allowed under subsection (a)
24 to an eligible individual who does not include on the return of tax for
25 the taxable year—
26 “(A) such individual’s valid identification number,
27 “(B) in the case of a joint return, the valid identification number of
28 ~~such individual’s spouse~~ for at least one of the filing spouses, and
“(C) in the case of any qualifying child taken into account under
subsection (b)(1)(B), the valid identification number of such
qualifying child.
“(2) VALID IDENTIFICATION NUMBER.—

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

- ii. Issuing a Preliminary and Permanent Injunction amending the CARES Act as identified above and enjoining Defendants from affixing any new terms to the CARES Act, or any future legislation designed to provide economic stimulus to United States citizens that excludes mixed immigration status families.
- d. A determination that the Exclusion Provision, as enacted by Section 2101 of the CARES Act, is unconstitutional and should not be enforced;
- e. Issue a declaratory judgment that Section 2101 of the CARES Act, enacting Sec. 6428(g), is subject to strict scrutiny;
- f. Issue a declaratory judgment that Section 2101 of the CARES Act, enacting Sec. 6428(g), as applied to the Plaintiff, violates the constitutional and statutory rights of Plaintiff;
- g. Issue a declaratory judgment striking from the CARES Act those provisions that are violative of the protections afforded to Plaintiff and those similarly situated under the United States Constitution, federal statutes, and those cases interpreting the same under which this Court is bound under the principles of *stare decisis*;
- h. Enter an Order requiring the Defendants to hold in escrow or otherwise earmark sufficient funds for the issuance of Stimulus Checks to members of the Class;
- i. For an award of attorneys’ fees and costs; and
- j. Such other and further relief as this court may deem just and proper.

DATED: May 8, 2020

Respectfully submitted,

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

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/s/ Heather L. Blaise

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7 Attorneys for Plaintiff,
8 JANE DOE, INDIVIDUALLY AND
9 ON BEHALF OF OTHERS SIMILARLY SITUATED

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

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

15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

**PLAINTIFF’S MOTION AND
MEMORANDUM IN SUPPORT OF
CLASS CERTIFICATION OR IN
THE ALTERNATIVE PROVISIONAL
CLASS CERTIFICATION FOR
PURPOSES OF PLAINTIFF’S
APPLICATION FOR HER
EMERGENCY MOTION FOR A
TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION AND/OR
DECLARATORY JUDGMENT**

Action Filed: May 6, 2020

24 NOW COMES Plaintiff, Jane Doe, (hereinafter “Doe” or “Plaintiff”),
25 individually and on behalf of the proposed class, by and through her attorneys, Blaise
26 & Nitschke, P.C. and hereby respectfully request that this Court grant her Class
27 Certification Or *In The Alternative* Provisional Class Certification for the Purposes of

1 Plaintiff's Application for Her Emergency Motion for a Temporary Restraining
2 Order, Preliminary Injunction and/or Declaratory Judgment Emergency Motion, and
3 appoint her as named Plaintiff in this litigation, and appoint her undersigned attorneys
4 as class counsel.

5 **INTRODUCTION**

6 This Motion incorporates by reference Plaintiff's Motion and Memorandum of
7 Law in Support of Application for Plaintiff's Emergency Motion for a Temporary
8 Restraining Order, Preliminary Injunction and/or Declaratory Judgment (hereinafter
9 "Emergency Motion") filed simultaneously herein.

10 **CLASS DEFINITION**

11 This federal class action seeks to require this Honorable Court to a.) Issue an
12 Order granting class certification, or *in the alternative* provisional class certification
13 for purposes of this Emergency Motion; b.) Issue an Order designating Blaise &
14 Nitschke, P.C. and *Khalaf & Abuzir, LLC as class counsel, or *in the alternative*
15 provisional class counsel for purposes of this Motion; c.) Issue a temporary and/or
16 preliminary injunction against the Defendants and all those acting in concert with
17 them prohibiting enforcement of the laws, as written and instead applying as follows:
18 striking through 26 U.S.C. § 6428 (g)(1)(B), enacted as part of the CARES Act, to
19 permit a valid identification number for at least one of the filing spouses rather than
20 both; d.) A determination that the Exclusion Provision as enacted by Section 2101 of
21 the CARES Act, is unconstitutional and should not be enforced; e.) Issue a
22 declaratory judgment that CARES Act that Section 2101 of the CARES Act, enacting
23 Sec. 6428(g), is subject to strict scrutiny; f.) Issue a declaratory judgment that Section
24 2101 of the CARES Act, enacting Sec. 6428(g), as applied to the Plaintiff violates the
25 constitutional and statutory rights of Plaintiff and the Putative Class; g.) Issue a
26 declaratory judgment striking from CARES Act those provisions that are violative of
27 the protections afforded to Plaintiff and those similarly situated under the United

1 States Constitution, federal statutes, and those cases interpreting the same under
2 which this Court is bound under the principles of *stare decisis*; h.) Enter an Order
3 requiring the Defendants to hold in escrow or otherwise earmark sufficient funds for
4 the issuance of Stimulus Checks to Plaintiffs and the Putative Class; i.) For an award
5 of attorneys' fees and costs; and/or j.) Such other and further relief as this court may
6 deem just and proper.

7 Plaintiff, therefore, seeks to certify the following class:

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

12 ARGUMENT

13 I. Plaintiff Meets Her Burden for Certification of the Putative Class

14 Under Federal Rule of Civil Procedure 23(a), the four prerequisites for class
15 certification are numerosity, commonality, typicality, and adequate representation.
16 *Middlesex Ret. Sys. v. Quest Software, Inc.*, No. CV 06-6863 DOC (RNBx), 2009
17 U.S. Dist. LEXIS 132650, at *5-6 (C.D. Cal. Sep. 8, 2009). After satisfying the four
18 prerequisites of numerosity, commonality, typicality, and adequacy, a party must also
19 demonstrate either: (1) a risk that separate actions would create incompatible
20 standards of conduct for the defendant or prejudice individual class members not
21 parties to the action; or (2) the defendant has treated the members of the class as a
22 class, making appropriate injunctive or declaratory relief with respect to the class as a
23 whole; or (3) common questions of law or fact predominate over questions affecting
24 individual members and that a class action is a superior method for fairly and
25 efficiently adjudicating the action. Fed. R. Civ. P. 23(b). *Middlesex Ret. Sys. v. Quest*
26 *Software, Inc.*, No. CV 06-6863 DOC (RNBx), 2009 U.S. Dist. LEXIS 132650, at *6
27 (C.D. Cal. Sep. 8, 2009).

1 **A. Numerosity**

2 As for numerosity, “the class is so numerous that joinder of all members is
3 impracticable.” Fed. R. Civ P. 23(a)(1). While the numerosity requirement is satisfied
4 based on the specific facts of each case, it is generally met where the class size
5 exceeds forty (40) members. In addition, the exact size of the class need not be
6 known as long as common sense and judicial experience warrant the assumption that
7 the class is indeed large. See *Schwartz*, 108 F.R.D. at 281. *Middlesex Ret. Sys. v.*
8 *Quest Software, Inc.*, No. CV 06-6863 DOC (RNBx), 2009 U.S. Dist. LEXIS
9 132650, at *18 (C.D. Cal. Sep. 8, 2009).

10 In this case, statistics show there are 1.2 million U.S. Citizens married to
11 immigrants who do not hold Social Security numbers. Accordingly, of the 1.2 million
12 Americans who are married to immigrants without Social Security numbers, those
13 who file joint tax returns, are not in the military, and whose adjusted gross income is
14 not excess of the requisite amounts meet the definition of the Putative Class. See Dkt.
15 1 at ¶ 60. Specifically, and as provided in the affidavit of Vivian Khalaf, Esq., most
16 of the Americans who are married to spouses with ITIN numbers file jointly. See
17 Exhibit C; see also Corbin Blackwell, CFP, *Married Filing Separately: Marriage Tax*
18 *Benefit or Penalty?*, BETTERMENT (January 25, 2019), [https://www.betterment.com/](https://www.betterment.com/resources/married-filing-separately)
19 [resources/married-filing-separately](https://www.betterment.com/resources/married-filing-separately) (last visited May 6, 2020); see also Andrea
20 Woroch, *Married Couples: Is It Better to File Taxes Jointly or Separately?*, U.S.
21 NEWS MONEY (January 6, 2020), [https://money.usnews.com/money/personal-](https://money.usnews.com/money/personal-finance/taxes/articles/married-couples-is-it-better-to-file-taxes-jointly-or-separately)
22 [finance/taxes/articles/married-couples-is-it-better-to-file-taxes-jointly-or-separately](https://money.usnews.com/money/personal-finance/taxes/articles/married-couples-is-it-better-to-file-taxes-jointly-or-separately)
23 (last visited May 6, 2020). In fact, most couples she counsels, regardless of whether
24 or not one party has an ITIN, file jointly and not separately; this is, in part, because
25 married filing separately status typically results in application of the highest income
26 tax rate. See *id.* Indeed, most of her clients who have ITINs and are married to U.S.
27 citizens are usually going through the immigration process in order to obtain legal

1 status for the immigrant spouses. *See id.* This legal immigration process requires bona
2 fide proofs of the marriage. *See id.* The filing of joint tax returns are used as bona fide
3 proof of marriage and are weighted heavily in favor of a bona fide marriage. *See*
4 Exhibit Instructions for Form I-130, Petition for Alien Relative, and Form I-130 A,
5 Supplemental Information for Spouse Beneficiary at pp. 6-7, Section 5, attached
6 hereto and incorporated herein as Exhibit D; *see also* Exhibit C. When a couple files
7 separately, it raises the presumption that the marriage may have been entered into
8 solely for purposes of acquiring an immigration benefit and thus, requiring couples to
9 file individually could harm the immigrant spouse’s chances at achieving documented
10 immigrant status. *See* Halina Schiffman-Shilo, *Opinion: The Cruelties of the COVID-*
11 *19 Stimulus Bill*, CITYLIMITS.ORG (April 3, 2020), [https://citylimits.org/2020/04/03/](https://citylimits.org/2020/04/03/opinion-the-cruelties-of-the-covid-19-stimulus-bill/)
12 [opinion-the-cruelties-of-the-covid-19-stimulus-bill/](https://citylimits.org/2020/04/03/opinion-the-cruelties-of-the-covid-19-stimulus-bill/) (last visited May 4, 2020); *see*
13 *also* Exhibit C. In her practice, Attorney Khalaf has personally seen separately filed
14 tax returns result in negative consequences for couples going through the immigration
15 process. *See id.* Moreover, filing separately does not give the filers many benefits and
16 tax credits available for joint filers, and requiring tax returns to be amended to be
17 married filing separately for 2018 and/or 2019 tax years will likely cause additional
18 expenses (and losses of preferred tax rate, credits and deductions) that would eclipse
19 the benefits provided under the CARES Act. *See id.*

20 Accordingly, the numerosity requirement is met.

21 **B. Commonality**

22 “Lead Plaintiff must next demonstrate that ‘questions of law or fact common to
23 the class’ warrant class treatment.” Fed. R. Civ. P. 23(a)(2). *Middlesex Ret. Sys. v.*
24 *Quest Software, Inc.*, No. CV 06-6863 DOC (RNBx), 2009 U.S. Dist. LEXIS
25 132650, at *19 (C.D. Cal. Sep. 8, 2009). “All questions of fact and law need not be
26 common to satisfy this rule. The existence of shared legal issues with divergent
27 factual predicates is sufficient, as is a common core of salient facts coupled with

1 disparate legal remedies within the class.” *Hanlon*, 150 F.3d at 1019; accord *Staton v.*
2 *Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). *Middlesex Ret. Sys. v. Quest Software,*
3 *Inc.*, No. CV 06-6863 DOC (RNBx), 2009 U.S. Dist. LEXIS 132650, at *19-20 (C.D.
4 Cal. Sep. 8, 2009).

5 In the instant matter, Plaintiff’s claims are typical of the claims of the Putative
6 Class, as they are based on the same legal theory and arise from the same unlawful
7 conduct. There are common questions of law and fact affecting the Putative Class
8 which predominate over questions that may affect individual members (hereinafter
9 “Class Members”). These common questions include, but are not limited to:

- 10 a. Whether and to what extent Defendants have deprived Class
11 Members of their First Amendment Rights; Equal Protection and
12 Due Process under the Law;
- 13 b. Whether and to what extent Defendants have deprived Class
14 Members of their property interest;
- 15 c. Whether and to what extent Defendants have deprived Class
16 Members of their rights, privileges, and/or immunities secured by
17 the Constitution of the United States;
- 18 d. Whether Section 2101 of the CARES Act, which enacted 26
19 U.S.C. § 6428 (g)(1)(B), violates the U.S. Constitution by
20 discriminating against individuals with social security numbers
21 who are married to individuals who lack social security numbers;
- 22 e. Whether Plaintiffs and the Class suffered harm as a result of
23 Defendants' unlawful policies and/or practices and enforcement of
24 26 U.S.C. §6428 (g)(1)(B), as enacted by the CARES Act;
- 25 f. Whether Class Members are entitled to actual damages, statutory
26 damages, and/or punitive damages as a result of Defendants'
27 wrongful conduct;

- 1 g. Whether Class Members are entitled to equitable and injunctive
- 2 relief to redress the imminent and currently ongoing harm faced as
- 3 a result of their exclusion from the CARES Act;
- 4 h. What the scope of a resulting permanent injunction would include;
- 5 and
- 6 i. Whether or not Class Members are entitled to Declaratory
- 7 Judgment relating to their classification and exclusion, among
- 8 others, under the CARES Act.

9 These nine questions are common to all the Class Members, and
10 accordingly the commonality requirement of Rule 23(a) is met.

11 C. Typicality

12 “The purpose of the typicality requirement is to assure that the interest of
13 the named representative aligns with the interest of the class.” *Hanon v.*
14 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “Under the rule's
15 permissive standards, the representative claims are ‘typical’ if they are
16 reasonably co-extensive with those of absent class members; they need not be
17 substantially identical.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th
18 Cir. 1998). Thus, this requirement is met where “‘each class member's claim
19 arises from the same course of events, and each class member makes similar
20 legal arguments to prove the defendant's liability.’” *Armstrong v. Davis*, 275
21 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol v. Giuliani*, 126 F.3d 372, 376
22 (2d Cir. 1997); *Middlesex Ret. Sys. v. Quest Software, Inc.*, No. CV 06-6863
23 DOC (RNBx), 2009 U.S. Dist. LEXIS 132650, at *22 (C.D. Cal. Sep. 8, 2009).

24 The claim of the Plaintiff here is typical of the class, because Plaintiff
25 and the Class Members all contend they have intentionally been excluded from
26 receiving the Stimulus Check -- a benefit conferred upon all other U.S. Citizens
27 -- simply because of whom they chose to marry, which is facially

1 discriminatory, retributive, and unconstitutional. None of the Class Members
2 have any additional claims under these facts that are not or cannot be raised by
3 Plaintiff given her exact same factual posture.

4 Therefore, the typicality requirement is met.

5 **D. Adequate Representation**

6 “Adequate representation depends on the qualifications of counsel for the
7 representatives, an absence of antagonism, a sharing of interests between
8 representatives and absentees, and the unlikelihood that the suit is collusive.” *Local*
9 *Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d
10 1152, 1162 (9th Cir. 2001) (internal quotations and citations omitted). The adequacy
11 inquiry requires the court to ask two questions: “(1) Do the representative plaintiffs
12 and their counsel have any conflicts of interest with other class members, and (2) will
13 the representative plaintiffs and their counsel prosecute the action vigorously on
14 behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003).
15 *Middlesex Ret. Sys. v. Quest Software, Inc.*, No. CV 06-6863 DOC (RNBx), 2009
16 U.S. Dist. LEXIS 132650, at *26-27 (C.D. Cal. Sep. 8, 2009).

17 Plaintiff Doe is a U.S. citizen who earns less than \$75,000.00 in adjusted gross
18 income, whose children are also U.S. Citizens, and Plaintiff filed her 2018 Federal
19 Tax Return jointly with her spouse, an immigrant who used an Individual Taxpayer
20 Identification Number. *See* Exhibit A. Accordingly, Plaintiff shares the same interest
21 and injury as the members in the class who would otherwise qualify for the Stimulus
22 Check but for whom they chose to marry.

23 **1. Absence of Conflict within the Class**

24 Named Plaintiff Jane Doe has no known conflicts with other class members
25 and is willing and able to serve as named Plaintiff in this Action. The undersigned
26 counsel has no known conflicts with other class members and is willing and able to
27 serve as Class Counsel in this Action. *See* Exhibit B.

1 **2. Plaintiff and Counsel will Prosecute Vigorously**

2 Further, per Rule 23(a), Plaintiff has retained counsel experienced in handling
3 civil rights cases and class actions. *See* Exhibit B. Neither Plaintiff nor her counsel
4 have any interests that might cause them not to pursue these claims vigorously.
5 Moreover, the Undersigned Counsel has filed Class Action Complaints representing
6 individuals similarly situated in the Northern District of Illinois; Western District of
7 Wisconsin; and Eastern District of Wisconsin in hopes to bring immediate relief to
8 the Plaintiffs and the Putative Class. Since filing the first Complaint, the undersigned
9 Counsel has received over 4,000 inquiries regarding eligibility. *See* Exhibit B.
10 Further, many, if not all, of the putative class members are fraught with worry and
11 despair that they will be unable to sustain the basic necessities of life for themselves
12 and their children if they are denied the benefits available to other similarly situated
13 Americans who are not married to immigrants filing jointly with ITIN numbers in
14 light of the COVID-19 pandemic which the CARES Act sought to provide
15 emergency response. *See* Exhibit B.

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

20 **II. Plaintiff and the Putative Class Satisfy Fed. R. Civ. P. Rule 23(B)(2): This**
21 **Case Seeks an Injunction and/or Declaratory Judgment Prohibiting the**
22 **Enforcement of the Exclusion Provision in the CARES Act and Declaring**
23 **it Unconstitutional.**

24 The final requirement for class certification is satisfaction of at least one of the
25 subsections of Rule 23(b). Rule 23(b)(2) allows a class action if “the party opposing
26 the class has acted or refused to act on grounds that apply generally to the class, so
27 that final injunctive relief or corresponding declaratory relief is appropriate respecting
28 the class as a whole.” Rule 23(b)(2) is “almost automatically satisfied in actions

1 primarily seeking injunctive relief.” *Hernandez v. Cty. of Monterey*, 305 F.R.D. 132,
2 150-51 (N.D. Cal. 2015).

3 Courts have repeatedly held that civil-rights class actions are the paradigmatic
4 23(b)(2) suits, “for they seek classwide structural relief that would clearly redound
5 equally to the benefit of each class member.” *Marcera v. Chinlund*, 595 F.2d 1231,
6 1240 (2d Cir. 1979), *vacated on other grounds*, 442 U.S. 915 (1979); *see also*
7 *Johnson v. General Motors Corp.*, 598 F.2d 432, 435 (5th Cir. 1979). As identified in
8 the leading treatise on class actions:

9 Rule 23(b)(2) was drafted specifically to facilitate relief in civil
10 rights suits. Most class actions in the constitutional and civil
11 rights areas seek primarily declaratory and injunctive relief on
behalf of the class and therefore readily satisfy Rule 23(b)(2)
class action criteria.

12 A. Conte & H. Newberg, *Newberg on Class Actions* § 25.20 (4th ed. 2002).

13 Plaintiff satisfies this requirement because she seeks the same injunctive relief
14 for everyone in the class, namely the prohibition of enforcement of the Exclusion
15 Provision in the CARES Act as illustrated throughout.

16 Consequently, Plaintiff respectfully request this Honorable Court certify the
17 Class and appoint the undersigned counsel as Class Counsel, or in the alternative
18 grant provisional class certification and provisional appointment of Class Counsel for
19 purposes of this Emergency Motion for Temporary Restraining Order, Preliminary
20 Injunction and/or Declaratory Judgment; and grant any additional relief this Court
21 deems necessary and just under the circumstances.

22 CONCLUSION

23 WHEREFORE, Plaintiff JANE DOE, individually and on behalf of the
24 Putative Class, by and through her attorneys, Blaise & Nitschke, P.C. prays this
25 Honorable Court certify the Class, or *in the alternative* provisional class certification
26 for purposes of Plaintiff’s Emergency Motion for a Temporary Restraining Order,
27 Preliminary Injunction and/or Declaratory Judgment.

1 DATED: May 8, 2020

Respectfully submitted,

2 JANE DOE, individually and on behalf of
3 others similarly situated.

4
5 By: /s/ Heather L. Blaise
6 HEATHER L. BLAISE, ESQ. (SBN 261619)
7 123 N. Wacker Drive, Suite 250
8 Chicago, IL 60606
9 Telephone: 312-448-6602
10 Email: hblaise@blaisenitschkelaw.com
11 *Attorney for Plaintiff*

12 BLAISE & NITSCHKE, P.C.
13 Lana B. Nassar (IL Bar No. 6319396) *
14 Thomas J. Nitschke (IL Bar No. 6225740) *
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18 T: (312) 448-6602
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20 Inassar@blaisenitschkelaw.com

21 KHALAF & ABUZIR, LLC
22 Vivian Khalaf (IL Bar No. 6210668) *
23 Omar Abuzir (IL Bar No. 6257708) *
24 20 N. Clark, Suite 720
25 Chicago, IL 60602
26 T: (708)-233-1122
27 F: (708)-233-1161
28 vkhalaf@immigrationjd.com

* Application for admission *pro hac vice*
forthcoming

1 BLAISE & NITSCHKE, P.C.
2 HEATHER L. BLAISE, ESQ. (SBN 261619)
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7 Attorneys for Plaintiff,
8 JANE DOE

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 JANE DOE, individually and on behalf of
12 others similarly situated,

13 Plaintiff,

14 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

AFFIDAVIT OF [REDACTED]

26 Affiant, [REDACTED], first duly sworn upon oath and in support of
27 Plaintiff's, individually and on behalf of others similarly situated, Emergency Motion
28

1 for a Temporary Restraining Order, Preliminary Injunction and/or Declaratory
2 Judgment, states:

3 1. I am a citizen of the United States.

4 2. I am a mother of five (5) United States citizen minor children.

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

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

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

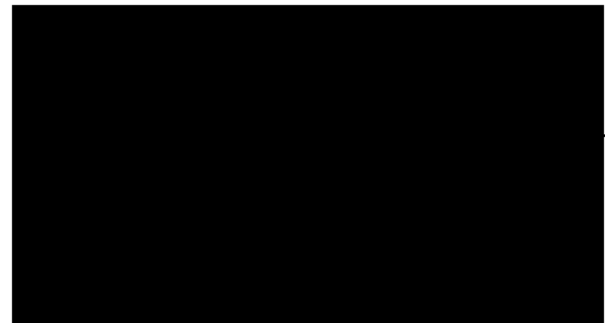
11 6. With my minor children's school closure as a result of the COVID-19
12 pandemic and the requirements of e-learning, my husband has been forced to remain
13 at home with our five (5) minor children and is unable to work from home.

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

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

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

23 **FURTHER AFFIANT SAYETH NAUGHT.**

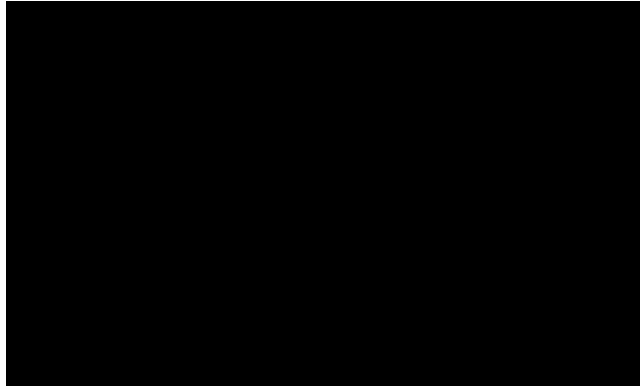


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VERIFICATION BY CERTIFICATION

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 7th day of May, 2020.



1 BLAISE & NITSCHKE, P.C.
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3 123 N. Wacker Drive, Suite 250
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5 Telephone: 312-448-6602
6 Email: hblaise@blaisenitschkelaw.com

7 Attorneys for Plaintiff,
8 JANE DOE, INDIVIDUALLY AND
9 ON BEHALF OF OTHERS SIMILARLY SITUATED

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

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

15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

**AFFIDAVIT OF HEATHER L.
BLAISE IN SUPPORT OF
PLAINTIFF'S EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION,
AND/OR DECLARATORY
JUDGMENT AND PLAINTIFF'S
EMERGENCY MOTION FOR
CLASS CERTIFICATION**

Action Filed: May 6, 2020

I, Heather L. Blaise, declare:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and the United States District Court for the Central District of California, as well as all courts of the State of Illinois and the United States District

1 Court for the Northern District of Illinois.

2 2. The facts stated herein are based upon my personal knowledge, or,
3 where stated, upon information and belief. If called upon to testify thereto, I could
4 and would competently do so.

5 3. I submit this Declaration in support of Plaintiff's Emergency Motion for
6 Temporary Restraining Order, Preliminary Injunction, and/or Declaratory Judgment
7 and Plaintiff's Emergency Motion for Class Certification

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

10 5. I certify that my law firm Blaise & Nitschke, P.C. has filed Class Action
11 Complaints regarding the same issues in the Northern District of Illinois, the Western
12 District of Wisconsin, and the Eastern District of Wisconsin.

13 6. I certify that the reason for the multiple filings is to redress the
14 immediate need of the Plaintiff and the Putative Class.

15 7. I certify that at the time of execution of this Affidavit on the 8th day of
16 May 2020, Affiant's Law Firm, Blaise & Nitschke, P.C. has received not less than
17 4,000 inquiries of eligibility for the putative class since the date of filing the
18 Complaint in the Northern District of Illinois on April 24, 2020.

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

25 9. I certify that I have complied with the U.S. Attorney General's Office in
26 the Central District of California, temporary emergency measure necessitated by
27 circumstances related to the spread of COVID-19, by placing the Complaint in the
28

1 mail by Certified Mail on May 8, 2020 and emailing the same to Defendants'
2 Counsel. Our office has not received an issued summons as of today's date.

3 10. I further certify that Pursuant to the Federal Rules of Civil Procedure,
4 and the Local Rules in the Central District of California, I have advised counsel for
5 the Defendants of the date of filing and substance of this Application by telephone on
6 May 8, 2020. I spoke to Melissa Briggs, Esq. and John Ellis, Esq., who indicated they
7 were the attorneys assigned to the Case. Defendants' counsel informed me that
8 Defendants oppose this Emergency Motion.

9 11. Further, pursuant to Local Rule 77-1, I certify that I notified the
10 courtroom deputy for the assigned judge, Kelly Davis, in advance, via e-mail at
11 Kelly_Davis@cacd.uscourts.gov.

12 12. Further, I certify that I will call the deputy after filing the Emergency
13 Motion per the Honorable Judge's standing order and e-mail usacac.civil-
14 tronotice@usdoj.gov regarding the same.

15 13. I certify that I and my law firm Blaise & Nitschke, P.C. are experienced
16 in handling civil rights cases and class actions.

17 14. I declare under penalty of perjury, under the laws of the State of
18 California and of the United States, that the foregoing is true and correct.

19
20 Executed on this the 8th day of May, 2020 in Chicago, Illinois.

21
22 /s/ Heather L. Blaise
23 Heather L. Blaise
24
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26
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1 BLAISE & NITSCHKE, P.C.
2 HEATHER L. BLAISE, ESQ. (SBN 261619)
3 123 N. Wacker Drive, Suite 250
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6 Email: hblaise@blaisenitschkelaw.com

7 Attorneys for Plaintiff,
8 JANE DOE, INDIVIDUALLY AND
9 ON BEHALF OF OTHERS SIMILARLY SITUATED

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

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

15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858

Assigned to the Hon. David O. Carter

**AFFIDAVIT OF VIVIAN KHALAF
IN SUPPORT OF PLAINTIFF'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION, AND/OR
DECLARATORY JUDGMENT
AND PLAINTIFF'S EMERGENCY
MOTION FOR CLASS
CERTIFICATION**

Action Filed: May 6, 2020

I, Vivian Khalaf, declare:

1. I am an attorney at law duly admitted to practice in the State of Illinois and have practiced Immigration Law for 28 years and has been licensed to practice law in Illinois since 1993.

1 2. The facts stated herein are based upon my personal knowledge, or,
2 where stated, upon information and belief. If called upon to testify thereto, I could
3 and would competently do so.

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

6 4. I submit this Declaration in support of Plaintiff's Emergency Motion for
7 Temporary Restraining Order, Preliminary Injunction, and/or Declaratory Judgment
8 and Plaintiff's Emergency Motion for Class Certification.

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

- 11 a. A non-resident foreign national who owns or invests in a U.S.
12 business and receives taxable income from that U.S. business, but
13 lives in another country;
- 14 b. A foreign national student who qualifies as a resident of the United
15 States (based on days present in the United States);
- 16 c. A dependent or spouse of a U.S. citizen or lawful permanent resident;
17 and
- 18 d. A dependent or spouse of a foreign national on a temporary visa such
19 as a H-4 and J-2.

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

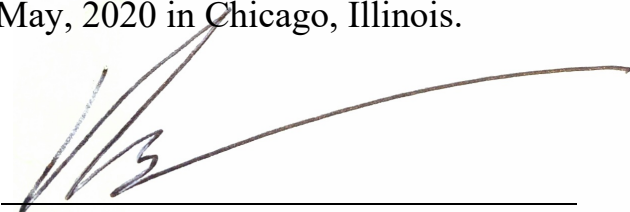
- 22 a. Most couples I counsel, regardless of whether or not one party has an
23 ITIN file jointly and not separately;
- 24 b. This is, in part, because married filing separately status presents the
25 highest income tax rate;

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- c. Most of my clients who have ITINs and are married to U.S. citizens are usually going through the immigration process in order to obtain legal status for the immigrant spouses;
- d. This process requires bona fide proofs of the marriage;
- e. The filing of joint tax returns are used as bona fide proof of marriage and are weighted heavily in favor of a bona fide marriage;
- f. When a couple files separately it raises the presumption that the marriage may be entered into solely for purposes of acquiring an immigration benefit and thus, requiring couples to file individually could harm the immigrant spouse’s chances at achieving documented immigrant status. In my practice, I have personally seen separately filed tax returns result in negative consequences for immigration process;
- g. Filing separately does not give the filers the benefits and tax credits available for joint filers; and
- h. Requiring tax returns to be amended to be married filing separately for 2018 and 2019 tax years will likely cause additional expenses that would eclipse the benefits provided under the CARES Act.

7. I declare under penalty of perjury, under the laws of the State of California and of the United States, that the foregoing is true and correct.

Executed on this the 8th day of May, 2020 in Chicago, Illinois.



Vivian Khalaf

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



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

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

What Is the Purpose of Form I-130?

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

Who May File Form I-130?

1. If you are a U.S. citizen, you must file a separate Form I-130 for each eligible relative. You may file Form I-130 for:
 - A. Your spouse;
 - B. Your unmarried children under 21 years of age;
 - C. Your unmarried sons or daughters 21 years of age or older;
 - D. Your married sons or daughters of any age;
 - E. Your brothers or sisters (you must be 21 years of age or older); and
 - F. Your mother or father (you must be 21 years of age or older).
2. If you are a lawful permanent resident of the United States, you must file a separate Form I-130 for each eligible relative. You may file Form I-130 for:
 - A. Your spouse;
 - B. Your unmarried child under 21 years of age; and
 - C. Your unmarried son or daughter 21 years of age or older.

NOTE:

1. If you are filing for your spouse, he or she must complete and sign Form I-130A, Supplemental Information for Spouse Beneficiary. If your spouse is overseas, Form I-130A must still be completed, but your spouse does not have to sign Form I-130A. Form I-130A must be submitted with Form I-130.
2. There is no visa category for married children of lawful permanent residents. If you are a lawful permanent resident and you filed Form I-130 for your unmarried son or daughter, but your son or daughter marries before immigrating to the United States or adjusting status to lawful permanent resident, we will deny or automatically revoke your petition.
3. Non-citizen U.S. nationals (as defined in the Immigration and Nationality Act (INA) section 308) have the same rights as lawful permanent residents to petition for family members. If you are a U.S. national born in American Samoa or Swains Island (or who otherwise qualifies as a non-citizen U.S. national, as described in INA section 308), you should indicate in **Part 2., Item Number 36.** of the petition that you are a lawful permanent resident. You do not need to list an Alien Registration Number (A-Number) in **Part 2., Item Number 1.** of the petition.
4. If the beneficiary qualifies under **Items 1.C., 1.D., or 1.E.** above, you are not required to file separate petitions for the beneficiary's spouse or unmarried children under 21 years of age. They are considered derivative beneficiaries and you should list them in **Part 4.** of this petition.

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

Who May Not File Form I-130?

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

1. An adoptive parent or adopted child, if the adoption took place after the child turned 16 years of age, or if the child has not been in the legal custody and has not lived with the parents for at least 2 years before filing the petition;
2. A natural parent, if you gained lawful permanent resident status or U.S. citizenship through adoption or as a special immigrant juvenile;
3. A stepparent or stepchild, if the marriage that created the relationship took place after the child turned 18 years of age;
4. A spouse, if you and your spouse were not both physically present at the marriage ceremony, unless the marriage was consummated;
5. A spouse, if you gained lawful permanent resident status through a prior marriage to a U.S. citizen or lawful permanent resident, unless:
 - A. You are now a naturalized U.S. citizen;
 - B. You have been a lawful permanent resident for at least five years;
 - C. You can establish by clear and convincing evidence that you did not enter the prior marriage (through which you gained your lawful permanent resident status) in order to evade any U.S. immigration law; or
 - D. Your prior marriage through which you gained your immigrant status was terminated by the death of your former spouse;
6. A spouse, if you married your spouse while he or she was the subject of an exclusion, deportation, removal, or rescission proceeding regarding his or her right to be admitted into or to remain in the United States, or while a decision in any of these proceedings was before any court on judicial review. However, you may be eligible for the bona fide marriage exemption under INA section 245(e)(3) if:
 - A. You request in writing a bona fide marriage exemption and prove by clear and convincing evidence that the marriage is legally valid where it took place and that you and your spouse married in good faith and not for the purpose of obtaining lawful permanent resident status for your spouse and that no fee or any other consideration (other than appropriate attorney fees) was given to you for your filing of this petition. The request must be submitted with Form I-130; or
 - B. Your spouse has lived outside the United States, after the marriage, for a period of at least two years;
7. Any person, if USCIS determines that he or she entered into or attempted or conspired to enter into a marriage in order to evade U.S. immigration laws; and
8. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or parent-in-law.

General Instructions

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

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

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

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

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

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

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

1. You provided or authorized all information in the petition;
2. You reviewed and understood all of the information contained in, and submitted with, your petition; and
3. All of this information was complete, true, and correct at the time of filing.

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

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

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

How To Fill Out Form I-130

1. Type or print legibly in black ink.

2. If you need extra space to complete any item within this petition, use the space provided in **Part 9. Additional Information** or attach a separate sheet of paper; type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.
3. Answer all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print "N/A," unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None," unless otherwise directed.
4. Enter dates in mm/dd/yyyy format. If you cannot provide an exact date, provide an approximate date in the same format and include an explanation in **Part 9. Additional Information**.
5. **USCIS Online Account Number** (if any). If you have previously filed an application, petition, or request using the USCIS online filing system (previously called USCIS Electronic Immigration System (USCIS ELIS)), provide the USCIS Online Account Number you were issued by the system. You can find your USCIS Online Account Number by logging in to your account and going to the profile page. If you previously filed certain applications, petitions, or requests on a paper form via a USCIS Lockbox facility, you may have received a USCIS Online Account Access Notice issuing you a USCIS Online Account Number. If you received such a notice, your USCIS Online Account Number can be found at the top of the notice. If you were issued a USCIS Online Account Number, enter it in the space provided at **Part 2., Item Number 2**. The USCIS Online Account Number is not the same as an A-Number.
6. **Part 3. Biographic Information.** Provide the biographic information requested in **Part 3., Item Numbers 1. - 6.** Providing this information as part of your petition may reduce the time you spend at your USCIS ASC appointment as described in the **Biometric Services Appointment** section of these Instructions.

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

Categories and Definitions for Ethnicity and Race

- (1) **Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. (**NOTE:** This category is only included under Ethnicity in **Part 3., Item Number 1.**)
 - (2) **White.** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
 - (3) **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
 - (4) **Black or African American.** A person having origins in any of the black racial groups of Africa.
 - (5) **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
 - (6) **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- B. Height.** Select the values that best match your height in feet and inches. For example, if you are five feet and nine inches, select "5" for feet and "09" for inches. Do not enter your height in meters or centimeters.
- C. Weight.** Enter your weight in pounds. If you do not know your weight, or need to enter a weight under 30 pounds or over 699 pounds, enter "000." Do not enter your weight in kilograms.
- D. Eye Color.** Select the box that best describes the color of your eyes.
- E. Hair Color.** Select the box that best describes the color of your hair.

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

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

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

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

- 8. Part 6. Petitioner's Statement, Contact Information, Declaration, and Signature.** Select the appropriate box to indicate whether you read this petition yourself or whether you had an interpreter assist you. If someone assisted you in completing the petition, select the box indicating that you used a preparer. Further, you must sign and date your petition and provide your daytime telephone number, mobile telephone number (if any), and email address (if any). Every petition **MUST** contain the signature of the petitioner (or parent or legal guardian, if applicable). A stamped or typewritten name in place of a signature is not acceptable.
- 9. Part 7. Interpreter's Contact Information, Certification, and Signature.** If you used anyone as an interpreter to read the Instructions and questions on this petition to you in a language in which you are fluent, the interpreter must fill out this section, provide his or her name, the name and address of his or her business or organization (if any), his or her daytime telephone number, his or her mobile telephone number (if any), and his or her email address (if any). The interpreter must sign and date the petition.
- 10. Part 8. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Petitioner.** This section must contain the signature of the person who completed your petition, if other than you, the petitioner. If the same individual acted as your interpreter **and** your preparer, that person should complete both **Part 7.** and **Part 8.** If the person who completed this petition is associated with a business or organization, that person should complete the business or organization name and address information. Anyone who helped you complete this petition **MUST** sign and date the petition. A stamped or typewritten name in place of a signature is not acceptable. If the person who helped you prepare your petition is an attorney or accredited representative whose representation extends beyond preparation of this petition, he or she may be obliged to also submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with your petition.

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

General Requirements

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

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

2. When will a visa become available?

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

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

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

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

- A. A copy of your birth certificate, issued by a civil registrar, vital statistics office, or other civil authority showing that you were born in the United States;
- B. A copy of your naturalization certificate or certificate of citizenship issued by USCIS or the former Immigration and Naturalization Service (INS);
- C. A copy of Form FS-240, Consular Report of Birth Abroad (CRBA), issued by a U.S. Embassy or U.S. Consulate;
- D. A copy of your unexpired U.S. passport; or
- E. An original statement from a U.S. consular officer verifying that you are a U.S. citizen with a valid passport.

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

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

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

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

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

A. A spouse:

- (1) A copy of your marriage certificate;
- (2) If either you were or your spouse was previously married, submit copies of documents showing that each of the prior marriages was legally terminated; and
- (3) You **must** submit two identical color passport-style photographs of yourself and your spouse (if he or she is in the United States) taken within 30 days of filing this petition. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched.

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

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

- (1) Documentation showing joint ownership of property;
- (2) A lease showing joint tenancy of a common residence, meaning you both live at the same address together;
- (3) Documentation showing that you and your spouse have combined your financial resources;
- (4) Birth certificates of children born to you and your spouse together;
- (5) Affidavits sworn to or affirmed by third parties having personal knowledge of the bona fides of the marital relationship. Each affidavit must contain the full name and address of the person making the affidavit; date and place of birth of the person making the affidavit; and complete information and details explaining how the person acquired his or her knowledge of your marriage; or
- (6) Any other relevant documentation to establish that there is an ongoing marital union.

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

- B. A child and you are the mother:** Submit a copy of the child's birth certificate showing your name and the name of your child.
- C. A child and you are the father:** Submit a copy of the child's birth certificate showing both parents' names, your marriage certificate to the child's mother, and proof of legal termination of the parents' prior marriages, if any, issued by civil authorities.
- D. A child born out of wedlock and you are the father:** Submit evidence that you and the mother were married while the child was under 18 years of age, or submit evidence that the child was legitimated under the law of the child's residence or domicile, or under the law of your residence or domicile, before the child reached 18 years of age. If your child was not legitimated before reaching 18 years of age, you must file your petition with copies of evidence that a bona fide parent-child relationship existed between you and the child before the child reached 21 years of age. This may include evidence that you lived with the child, supported him or her, or otherwise showed continuing parental interest in the child's welfare.
- E. A brother or sister:** Submit a copy of your birth certificate and a copy of your brother's or sister's birth certificate showing that you have at least one common parent. If you and your brother or sister have a common father but different mothers, submit copies of the marriage certificates showing that your father was married to each mother, as well as copies of documents showing that any prior marriages of either your father or mothers were legally terminated. If you and your brother or sister are related through adoption or a stepparent, or if you have a common father and either of you were not legitimated before you turned 18 years of age, see **Items D., H., and I.** in these Instructions for additional information on proving your family relationship.
- F. A mother:** Submit a copy of your birth certificate showing your name and your mother's name.

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

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

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

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

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

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

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

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

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

7. What if a name has changed?

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

8. What if an official document is not available?

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

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

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

- C. Census record:** State or Federal census records showing the names, place of birth, date of birth, or the age of the person listed.
- D.** If records like those described above are not available, then you may submit two or more written statements from individuals who were living at the time and who have personal knowledge of the event you are trying to prove, such as the date and place of birth, marriage, or death. The individuals making the written statements do not have to be U.S. citizens. Each written statement must contain the following information regarding the individual making the written statement: his or her full name, address, date and place of birth, full information concerning the event, and complete details explaining how the individual acquired personal knowledge of the event.
- Finally, each individual’s written statement must include the following declaration, “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date], [signature].”
- E. For parent-child relationships only:** If other forms of evidence have proven inconclusive, the petitioner may submit on a voluntary basis other evidence of a birth parent and birth child relationship to include deoxyribonucleic acid (DNA) testing. DNA test results will only be accepted by USCIS from parentage-testing laboratories accredited by the American Association of Blood Banks (AABB). A list of laboratories can be viewed at www.aabb.org/sa/facilities/Pages/RTestAccrFac.aspx.

What Is the Filing Fee?

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

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

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

1. The check or money order must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; **and**
2. Make the check or money order payable to **U.S. Department of Homeland Security**.
NOTE: Spell out U.S. Department of Homeland Security; do not use the initials “USDHS” or “DHS.”
3. If you live outside the United States, contact the nearest U.S. Embassy or U.S. Consulate for instructions on the method of payment.

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

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

How To Check If the Fees Are Correct

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

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

Where To File?

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

Address Change

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

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

Processing Information

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

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

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

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

USCIS Forms and Information

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

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

Penalties

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

USCIS Compliance Review and Monitoring

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

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

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

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

DHS Privacy Notice

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

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

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

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

Paperwork Reduction Act

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

Checklist

For all Form I-130 petitioners:

- Did you answer each question on Form I-130?
- Did you sign and date the petition?
- Did you enclose the correct filing fee for each petition?
- Did you submit proof of your U.S. citizenship or lawful permanent resident status?
- Did you submit other required supporting evidence?
- If you have an attorney or accredited representative, did you include a completed Form G-28?

For Form I-130 spouse petitioners:

- Did you include two photographs of your spouse beneficiary?
- Did you include a completed and signed Form I-130A?
- Did you include two photographs of you (spouse petitioner)?

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7 Attorneys for Plaintiff,
8 JANE DOE, INDIVIDUALLY AND
9 ON BEHALF OF OTHERS SIMILARLY SITUATED

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

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

15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

**[PROPOSED] TEMPORARY
RESTRAINING ORDER OR
PRELIMINARY INJUNCTION**

Action Filed: May 6, 2020

Defendants, DONALD J. TRUMP, in his individual and official capacity as
President of the United States; MITCH MCCONNELL, in his individual and official
capacity as United States Senator and the Sponsor of S. 3548 CARES Act; 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

1 as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF THE
2 TREASURY; the U.S. INTERNAL REVENUE SERVICE; and the UNITED
3 STATES OF AMERICA (hereinafter collectively referred to as “Defendants”), and
4 all those acting in concert with them are hereby restrained from enforcement of the of
5 26 U.S.C. § 6428 (g)(1)(B) of the S. 3548-Coronavirus Aid, Relief, and Economic
6 Security Act (hereinafter “CARES Act”) so as to deny the Putative Class their
7 Stimulus Checks and are Ordered to hold in escrow or otherwise earmark sufficient
8 funds for the issuance of Stimulus Checks to members of the Class.

9
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11 Dated: _____, 2020

12 _____
13 _____
14 United States District Court Judge
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7 Attorneys for Plaintiff,
8 JANE DOE, INDIVIDUALLY AND
9 ON BEHALF OF OTHERS SIMILARLY SITUATED

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

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

15 Plaintiff,

16 v.

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

Defendants.

CASE NO: 8:20-cv-00858 DOC (DFMx)
Assigned to the Hon. David O. Carter

**[PROPOSED] ORDER TO SHOW
CAUSE**

Action Filed: May 6, 2020

Defendants, DONALD J. TRUMP, in his individual and official capacity as
President of the United States; MITCH MCCONNELL, in his individual and official
capacity as United States Senator and the Sponsor of S. 3548 CARES Act; STEVEN
MNUCHIN, in his individual and official capacity as the Acting Secretary of the U.S.

1 Department of Treasury; CHARLES RETTIG, in his individual and official capacity
2 as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF THE
3 TREASURY; the U.S. INTERNAL REVENUE SERVICE; and the UNITED
4 STATES OF AMERICA (hereinafter collectively referred to as “Defendants”), are
5 ordered to appear and show cause, if any they have, before the United States District
6 Court for the Central District of California, in the courtroom of the Honorable
7 _____, United States District Judge, on the ____ day of
8 _____, 2020 at o'clock __.m., why a preliminary injunction should not be
9 issued against enforcement of 26 U.S.C. § 6428 (g)(1)(B) of the S. 3548-Coronavirus
10 Aid, Relief, and Economic Security Act (hereinafter “CARES Act”). Specifically:

11 A. A temporary, preliminary and/or permanent injunction against the
12 Defendants, and all those acting in concert, prohibiting enforcement of the
13 laws as written and instead applying the provision as follows:

14 i. Issuing a Temporary Restraining Order directing that Section 2101 of
15 the CARES Act be applied as follows:

16 “(a) In General.—Subchapter B of chapter 65 of subtitle F of the
17 Internal Revenue Code of 1986 is amended by inserting after section
18 6427 the following new section:

19 SEC. 6428. 2020 RECOVERY REBATES FOR INDIVIDUALS

20 [. . .]

21 “(h) Identification Number Requirement.—

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

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

26 “(B) in the case of a joint return, the valid identification number of
27 ~~such individual’s spouse~~ for at least one of the filing spouses, and
28

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

4 “(2) VALID IDENTIFICATION NUMBER.—

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

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

13 B. A determination that the Exclusion Provision, as enacted by Section 2101 of
14 the CARES Act, is unconstitutional and should not be enforced;

15 C. Issue a declaratory judgment that Section 2101 of the CARES Act, enacting
16 Sec. 6428(g), is subject to strict scrutiny;

17 D. Issue a declaratory judgment that Section 2101 of the CARES Act, enacting
18 Sec. 6428(g), as applied to the Plaintiffs, violates the constitutional and
19 statutory rights of Plaintiffs;

20 E. Issue a declaratory judgment striking from the CARES Act those provisions
21 that are violative of the protections afforded to Plaintiffs and those similarly
22 situated under the United States Constitution, federal statutes, and those
23 cases interpreting the same under which this Court is bound under the
24 principles of *stare decisis*;

25 To the extent they have not already done so, plaintiffs are ordered to serve
26 copy of this Order, the Memorandum of Law in Support of Application for
27 Temporary Restraining Order and Order to Show Cause, the Application For A
28

1 Temporary Restraining Order and Order To Show Cause, the Proposed TRO, and the
2 declarations and exhibits in support of the TRO, on the defendants, no later than ____
3 p.m. on _____, 2020.

4 Court Orders an expedited hearing on his Emergency Motion for a Temporary
5 Restraining Order, Preliminary Injunction and/or Declaratory Judgment and Class
6 Certification on the ____ day of _____, 2020 at o'clock __.m.,

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8 Dated: _____, 2020

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United States District Court Judge

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