



CARES Act denied the tax credit to married joint tax filers when one spouse lacked a social security number. 26 U.S.C. § 6428(g)(2)(B).

2. On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021, which amended provisions of the CARES Act (“CARES Act amendments”). Specifically, the CARES Act amendments expanded relief to married individuals who have a social security number and file federal tax returns jointly with a spouse who lacks a social security number. 26 U.S.C. § 6428(g)(1)(B)(i). The spouse who has a social security number is now entitled to claim the tax credit on a 2020 federal tax return.
3. However, newly-eligible individuals were shut out of the advance refund component of the program. The CARES Act, and the CARES Act amendments, both provided that advance refunds of the tax credit could only be issued prior to December 31, 2020. 26 U.S.C. § 6428(f)(3)(A). After December 31, 2020, any tax credit would have to be claimed on the filer’s 2020 tax return -- and based on the information in the 2020 tax return. By contrast, the advance refund in the Act was based on the information in the filer’s 2019 (or 2018) tax return. 26 U.S.C. §§ 6428(f)(1), (5).
4. Plaintiff Juana Rueda is a U.S. citizen who files her federal tax returns jointly with her spouse who does not have a social security number. Under the original CARES Act, Plaintiff Rueda was not entitled to the tax credit under 26 U.S.C. § 6428(a)(1) even though she has a social security number and her three children were “qualifying children” within the meaning of 26 U.S.C. § 24(c). As a result, she did not receive the tax credit and did not receive the advance refund of that tax credit in 2020, when eligible individuals received their tax credits and advance refunds.

5. Under the CARES Act amendments, Plaintiff Rueda is now able to receive a tax credit *but not the advance refund*. 26 U.S.C. § 6428(g)(1). Because Defendants had ceased issuing advance refunds by the time Plaintiff Rueda became eligible for the tax credit, she can now only claim the tax credit on her 2020 tax return. 26 U.S.C. § 6428(f)(3)(A). Plaintiff Rueda is harmed by more than simply the delay in receiving her tax credit. Because one of her children reached the age of 17 in 2020, she has lost the \$500 payment that she would have received had she not been excluded from eligibility under the original CARES Act. 26 U.S.C. § 6428(a)(2).
6. But for her original exclusion from the CARES Act, Plaintiff Rueda would have received a tax credit as an advance refund for her qualifying child before he turned 17 years old in 2020. This is because under the original CARES Act, Plaintiff Rueda's advance refund would have been based on her 2019 or 2018 tax return when her son was younger than 17 years old and considered a qualifying child for the tax credit. 26 U.S.C. §§ 6428(f)(1)-(2).
7. Thus, although the CARES Act amendments afforded relief to many individuals whose spouses lack social security numbers, certain previously-excluded tax filers, like Plaintiff Rueda, continue to be harmed by the CARES Act and its amendments. In essence, Ms. Rueda became eligible for the tax credit, but lost the ability to receive an advance refund based on the tax year used for other filers -- a tax year in which her son was a qualifying child.
8. Plaintiff Rueda seeks a declaration that 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) are unconstitutional. Plaintiff Rueda further seeks a declaration that the operation of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) are unconstitutional as applied to her and other similarly-situated individuals. Plaintiff Rueda further seeks class-wide relief enjoining enforcement of 26

U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) to the extent that the provisions work to deny the full tax credit amount to tax filers who were made eligible by the CARES Act amendments and who would have received advance refunds but for their unconstitutional exclusion from relief under the original CARES Act. Plaintiff Rueda further seeks to require Defendants to treat Plaintiff Rueda, and those similarly-situated, the same as other married tax filers whose advance refunds of the CARES Act tax credit were based on their 2019 or 2018 filed federal tax returns.

### **PARTIES**

#### **Plaintiff**

9. Plaintiff JUANA RUEDA is a United States citizen who lives with her husband and three children in Canal Winchester, Ohio. Plaintiff RUEDA and her husband have been married for 3 years. Plaintiff RUEDA has a social security number and her husband does not have a social security number. One of Plaintiff RUEDA's children, who lives with her and is included as a dependent on her tax returns, reached the age of 17 in the 2020 calendar year.

#### **Defendants**

10. Defendant JANET YELLEN is the Secretary of the U.S. Department of the Treasury. In that capacity, among other things, she oversees the collection of revenue, the preparation of plans for the improvement and management of the revenue and the preparation and report of estimates of the public revenue and public expenditures. As Secretary, Defendant Yellen exercises full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce these laws. As part of her duties, Defendant Yellen oversees the award of tax credits and advance refunds to eligible individuals under the CARES Act.

She is sued in her official capacity. At all times relevant herein, Defendant Yellen acted in an official capacity and under color of legal authority.

11. Defendant CHARLES RETTIG is the United States Commissioner of Internal Revenue. In that capacity, Defendant Rettig administers the application of the internal revenue laws and tax conventions to which the United States is a party. 26 U.S.C. § 7803. Defendant Rettig reports to Secretary of the Treasury Defendant Yellen. As part of his duties, Defendant Rettig oversees the award of tax credits and advance refunds to eligible individuals under the CARES Act. He is sued in his official capacity. At all times relevant herein, Defendant Rettig acted in an official capacity and under color of legal authority.

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

13. Defendant U.S. INTERNAL REVENUE SERVICE is a bureau of the U.S. Department of the Treasury organized to carry out the responsibilities of the Secretary of the Treasury under section 7801 of the Internal Revenue Code. The Internal Revenue Service was created based on the legislative grant of authority to the Secretary of the Treasury to enforce the internal revenue laws. The IRS calculates and sends tax credits to those eligible under the CARES Act.

**JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1343 over Plaintiff's causes of action under the United States Constitution. This Court may grant Plaintiff's request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.
15. Venue is proper in this judicial district to 28 U.S.C. § 1391(e)(1), because a substantial part of the events or omissions giving rise to the claims occurred in this District.
16. The United States has waived sovereign immunity for this action for declaratory and injunctive relief against its agencies, and the agencies' officers are sued in their official capacities. 5 U.S.C. § 702.

**FACTUAL ALLEGATIONS**

**A. COVID-19 and the CARES Act**

17. In March 2020, the United States saw a drastic increase in the number of its residents who became sick and died from COVID-19. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020, President Donald J. Trump declared COVID-19 a national emergency.
18. According to the U.S. Department of Labor, the national unemployment rate jumped to 4.4% in March 2020, up from 3.5% in February. This was the largest month-to-month increase since January 1975.<sup>1</sup> The increase in unemployment was driven by COVID-19 and the shelter-in-place orders implemented to combat the coronavirus. According to the Department of Labor, employment in leisure and hospitality fell by 459,000, mainly in food services and

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<sup>1</sup> U.S. Department of Labor, Bureau of Labor Statistics, "THE EMPLOYMENT SITUATION — MARCH 2020," available at <https://www.bls.gov/news.release/pdf/empst.pdf> (last visited April 27, 2019).

drinking places, and declines also occurred in health care and social assistance, professional and business services, retail trade, and construction.

19. To provide families and workers assistance during this once-in-a-lifetime economic and health crisis, Congress enacted H.R. 748, the CARES Act. The Senate passed the CARES Act with a vote of 96 to 0 on March 25, 2020 and on March 27, 2020, the House of Representatives passed the CARES Act by voice vote. On March 27, 2020, the President signed the CARES Act into law (Public Law Number 116-136).
20. At the signing of the CARES Act, President Donald J. Trump stated: “This is a very important day. I’ll sign the single-biggest economic relief package in American history[.] And this will deliver urgently needed relief to our nation’s families, workers, and businesses.”<sup>2</sup>
21. Section 2201 of the CARES Act amends Subchapter B of chapter 65 of subtitle F of the Internal Revenue Code of 1986, by adding a new section 6428. Section 6428 is codified at 26 U.S.C. § 6428.
22. Section 6428(a) provides economic stimulus payments in the form of tax credits, and Section 6428(f) permits the credits to be distributed as advance refunds to tax filers. Under section 6428(a) each “eligible individual” receives \$1,200, and “eligible individuals filing a joint return” receive \$2,400. Section 6428(a)(2) provides each eligible individual an additional \$500 for each of the individual’s “qualifying children.” Section 6428(c) reduces these amounts for individuals who earn more than \$75,000 and married couples filing jointly who earn more than \$150,000.

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<sup>2</sup> The White House, “Remarks by President Trump at Signing of H.R.748, The CARES Act,” available at <https://www.miragenews.com/us-president-trump-s-remarks-at-signing-of-hr748-cares-act/> (last visited March 21, 2021).

23. Section 6428(g)(2)(B) excludes otherwise eligible individuals from receiving CARES Act advance refund payments solely because their spouses lack social security numbers.
24. Under Section 6428(d), Plaintiff Rueda is defined as an “eligible individual” because she is neither a “nonresident alien individual” nor dependent child.
25. Plaintiff Rueda’s children are also defined as “qualifying” under Section 6428(a)(2). 26 U.S.C § 24(c).
26. However, in order to receive an advance refund Section 6428(g)(2)(B) also requires an eligible individual’s spouse to have provided a “valid identification number” on the most recent jointly-filed tax return with the IRS.
27. Section 6428(g)(3)(A) defines a “valid identification number” for an adult as a social security number.
28. Sections 6428(g)(2)(B) and (g)(3) operate together to require both spouses to have social security numbers in order for any member of the family, including qualifying children, to receive an advance refund in the 2020 calendar year.
29. Plaintiff Rueda’s spouse possesses an Individual Taxpayer Identification Number (ITIN) issued to him by Defendant U.S. Internal Revenue Service.
30. An ITIN is not a social security number and is not a “valid identification number” for the purpose of receiving a tax credit or an advance refund of the tax credit under Section 6428(a) of the CARES Act.
31. On her 2019 tax return, Plaintiff Rueda provided her social security number, which is required by Section 6428(g)(2)(A) in order for an eligible individual to receive a tax credit and an advance refund. Plaintiff Rueda also provided her children’s social security numbers, which is required by Section 6428 (g)(2)(C) in order for additional amounts for qualifying children

to be included in the advance refund and tax credit. Plaintiff Rueda also provided the ITIN of her spouse on the tax return.

32. However, as a result of Section 6428(g)(2)(B), although Plaintiff Rueda was otherwise eligible to receive a tax credit under Section 6428 (a) of the CARES Act, Plaintiff Rueda did not receive the tax credit or an advance refund by December 31, 2020 because her spouse lacks a social security number.

33. But for her spouse lacking a social security number, Plaintiff Rueda would have received an advance refund for herself and all her children under the CARES Act in the 2020 calendar year. 26 U.S.C. § 6428(a).

34. There was no mechanism by which Plaintiff Rueda could dispute her exclusion from receiving a CARES Act tax credit and an advance refund of the tax credit.

35. During the U.S. House of Representatives debate on the CARES Act, Representative TJ Cox pointed out what he called “this bill’s glaring shortcomings,” which included the fact that the bill “punishes mixed-status households and denies some American citizens benefits they deserve.”<sup>3</sup>

36. The original Senate version of the CARES Act, S. 3548, required all married joint filers to include social security numbers for both spouses. However, the Senate created an exception for cases in which “at least 1 spouse was a member of the Armed Forces of the United States at any time during the taxable year and at least 1 spouse [has a social security number].” Section 6428(g)(4). The exception for military couples in which one spouse lacks a social security number appeared in the Senate’s final version of the CARES Act, H.R. 748, and was enacted into law.

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<sup>3</sup> 166 Cong. Rec. H1841 (daily ed. Mar. 27, 2020) (statement of Rep. Cox of Cal.).

37. Neither Plaintiff Rueda nor her spouse was a member of the Armed Forces of the United States at any time during the taxable year.
38. Prior to Senate passage of the CARES Act, the U.S. House of Representatives on March 23, 2020 took up (but did not pass) its own proposal, H.R. 6379, which also provided tax credits to families.<sup>4</sup> H.R. 6379 did not require joint filers to provide social security numbers for both spouses and did not exclude the ITIN as a valid tax identification number.
39. Section 6428(g)(4) of the CARES Act demonstrates that Congress was aware that both a tax credit and an advance refund of the tax credit would be generally unavailable to qualified individuals who are married to, and jointly file their taxes with, spouses who lack a social security number.
40. The exclusion of ITINs from the definition of a “valid identification number” for the purpose of providing both a tax credit and an advance refund of the tax credit under the CARES Act, and the exception created for current members of the Armed Forces, demonstrate that Congress purposefully excluded from relief otherwise eligible individuals who have social security numbers and who are married to spouses who lack social security numbers.
41. In the weeks following passage of the CARES Act, the U.S. economy continued to contract because of the COVID-19 pandemic. Across the U.S., states shut down schools and businesses and ordered residents to stay at home to slow the spread of the coronavirus.<sup>5</sup>
42. The U.S. is now the country with the highest number of reported COVID-19 cases.<sup>6</sup>

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<sup>4</sup> Take Responsibility for Workers and Families Act, H.R. 6379, 116th Cong. div. T, tit. II, § 201 (2020).

<sup>5</sup> The New York Times, “See Which States Are Reopening and Which Are Still Shut Down,” March 31, 2021, available at <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html> (last visited March 31, 2021).

<sup>6</sup> The New York Times, “Coronavirus Map: Tracking the Global Outbreak,” March 31, 2021, available at <https://www.nytimes.com/interactive/2020/world/coronavirus->

**B. Background on Individual Taxpayer Identification Numbers**

43. An ITIN is a unique tax processing number that the U.S. Internal Revenue Service issues to individuals who do not have and are not eligible for a social security number. I.R.C. § 6109; Treas. Reg. § 301.6109-1(a)(1)(ii)(B). Individuals use the ITIN to fulfill their legal obligation to file federal tax returns when their lack of formal immigration status prevents them from obtaining a social security number. An ITIN does not confer any immigration status or provide work authorization or eligibility for social services programs.<sup>7</sup>
44. Federal law generally requires all wage earners to file tax returns and use an identification number. I.R.C. § 1. Individuals apply for an ITIN by submitting a W-7 form and a completed tax return to the IRS. I.R.C. § 6109. The W-7 form requires applicants to prove their identity and foreign status with any of 13 acceptable documents by the IRS, such as a passport or a birth certificate.<sup>8</sup>
45. The ITIN application process is not an immigration enforcement tool, and the IRS is prohibited by law from sharing any taxpayer information with any other governmental agencies. I.R.C. § 6103(a). An estimated 4.3 million adults file taxes using an ITIN.<sup>9</sup> The IRS estimates ITIN tax filers pay over \$9 billion in annual payroll taxes.<sup>10</sup>

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[maps.html?action=click&pgtype=Article&state=default&module=stylncoronavirus&variant=show&region=TOP\\_BANNER&context=storyline\\_menu](#) (last visited March 31, 2021).

<sup>7</sup> Internal Revenue Serv., “Instructions for Form W-7” (Sept. 2019), available at <https://www.irs.gov/pub/irs-pdf/iw7.pdf> (last visited April 27, 2020).

<sup>8</sup> Internal Revenue Serv., “Instructions for Form W-7” (Sept. 2020), available at <https://www.irs.gov/pub/irs-pdf/iw7.pdf> (last visited March 31, 2021).

<sup>9</sup> Institute on Taxation and Economic Policy, “How the Tax Rebate in the Senate’s Bill Compares to Other Proposals,” (March 27, 2020), available at <https://itep.org/how-the-tax-rebate-in-the-senates-bill-compares-to-other-proposals/> (last visited March 31, 2021).

<sup>10</sup> Internal Revenue Serv., “IRS Nationwide Tax Forum: Immigration and Taxation” (2014), available at <https://www.irs.gov/pub/irs-utl/20-Immigration%20and%20Taxation.pdf> (last visited March 31, 2021).

C. **Mixed-Status Families**

46. The Migration Policy Institute, a nonpartisan organization, estimates that more than two million U.S. citizens or lawful permanent residents are married to undocumented immigrants.<sup>11</sup> Five million children in the U.S. share a home with at least one parent who is unauthorized.<sup>12</sup>

47. Families that contain a non-U.S. citizen spouse are particularly vulnerable to the economic dislocation associated with the COVID-19 pandemic.

48. Non-U.S. citizen immigrants make up a strong proportion of the workers in some of the industries that experienced the biggest job layoffs.<sup>13</sup>

49. Foreign-born workers earn less than native-born workers. In 2018, median usual weekly earnings of foreign-born, full-time wage and salary workers were 83.3 percent of the earnings of their native-born counterparts.<sup>14</sup> In addition, non-U.S. citizen immigrants are significantly more likely than citizens to lack health insurance.<sup>15</sup>

50. Plaintiff Rueda possesses a social security number and her spouse, with whom she lives and raises three children, does not possess a social security number.

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<sup>11</sup> Migration Policy Institute, “Profile of the Unauthorized Population: United States,” available at <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US#marital> (last visited March 31, 2021).

<sup>12</sup> Migration Policy Institute, “A Profile of U.S. Children with Unauthorized Immigrant Parents,” available at <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents> (last visited March 31, 2021).

<sup>13</sup> U.S. Bureau of Labor Statistics, “Foreign-Born Workers: Labor Force Characteristics -- 2018,” May 16, 2019, available at <https://www.bls.gov/news.release/pdf/forbrn.pdf> (last visited March 31, 2021)

<sup>14</sup> *Id.*

<sup>15</sup> Kaiser Family Foundation, “Health Coverage of Immigrants,” March 18, 2020, available at <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/> (last visited March 31, 2021).

**D. The Consolidated Appropriations Act, 2021 and the CARES Act amendments**

51. On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021, which amended provisions of the CARES Act. Specifically, the CARES Act amendments expanded relief to married individuals who have social security numbers and file federal tax returns jointly with spouses who lack social security numbers. The spouse that holds a social security number is now entitled to claim the CARES Act tax credit on a 2020 federal tax return.
52. The CARES Act amendments, in addition to the original CARES Act, provide that an advance refund of the CARES Act tax credit shall not issue after December 31, 2020. 26 U.S.C. § 6428(f)(3)(A). Defendants ceased accepting new information to process advance refunds of the CARES Act tax credit on November 21, 2020.
53. In 2020, under the original provisions of the CARES Act, an eligible individual was entitled to receive an advance refund of \$1,200. 26 U.S.C. § 6428(f)(3)(A). Eligible married couples that filed joint federal tax returns that included the social security numbers of both spouses were entitled to receive \$2,400. 26 U.S.C. § 6428(a)(1). In the case of families with qualifying children under the age of 17, the advance refund amount increased by \$500 per qualifying child. 26 U.S.C. § 6428(a)(2). All calculations for the advance refund are based on the information contained in the tax filer's 2019 or 2018 filed federal tax return. 26 U.S.C. §§ 6428(f)(1), (5). A tax return that included only one spouse's social security number was ineligible for both a tax credit and an advance refund of the tax credit. 26 U.S.C. § 6428(g)(2)(B). Under the original CARES Act, Plaintiff Rueda was eligible for neither a tax credit nor an advance refund of the tax credit. If she had been eligible, her tax credit and

advance refund would have been based on her 2019 federal tax return -- a year in which she had three children under the age of 17 living with her.

54. Under the CARES Act amendments, Plaintiff Rueda and any of her children who have social security numbers and meet all other eligibility requirements may now claim the tax credit. 26 U.S.C. § 6428(g)(1). However, because the advance refund is no longer available, she must now claim the tax credit on her 2020 tax return. 26 U.S.C. § 6428(f)(3)(A). Because one of her children reached the age of 17 in 2020, the CARES Act amendments do not give Plaintiff Rueda the full amount of the tax credit she would have received in 2020 as an advance refund. Specifically, the CARES Act amendments preclude Plaintiff Rueda from receiving a \$500 tax credit for her eldest child who reached the age of 17 in 2020. In sum, the CARES Act amendments expanded eligibility for the tax credit to include Plaintiff Rueda, and at the same time closed the door for her to receive a tax credit for her son who reached the age of 17 in 2020.

55. Had it not been for Section 6428(g)(2)(B) in the original CARES Act, Plaintiff Rueda would have received an advance refund of the tax credit that included \$500 for all three of her children, including the otherwise qualifying child who turned 17 years old in 2020.

56. Plaintiff Rueda pays taxes and files her tax returns jointly with her spouse just like other married individuals. Filing joint tax returns with her spouse is part of married life for Plaintiff Rueda. Plaintiff Rueda jointly files her tax returns to express her family union to the government and society. Plaintiff Rueda's desire to file her taxes jointly is an expression of her marriage and the unity of her family, in addition to securing the benefits available to spouses who file jointly. Filing her tax returns jointly with her spouse also assists Plaintiff Rueda in the immigration petitioning process for her spouse.

57. Most married couples pay a lower rate of income tax if they file jointly compared to filing separately.
58. It is important to Plaintiff Rueda's fundamental right to self-determination to express to whom she is married. That expression is sacred to her. Expressing that she is married and expressing to whom she is married dignifies Plaintiff Rueda's wish to define herself by her commitment to her spouse.
59. Plaintiff Rueda jointly files tax returns to give recognition to her marriage and family, and to allow her children to understand the integrity and closeness of their family and their concord with other families in their community.
60. The CARES Act's initial exclusion of Plaintiff Rueda from relief, and Defendants' failure to provide Plaintiff Rueda an advance refund on the same basis as couples in which both spouses have a social security number, disparages Plaintiff Rueda's choice and diminishes her personhood. By denying Plaintiff Rueda and other mixed-status couples equal treatment in the grant of tax credits and advance refunds of those credits, the CARES Act and Defendants force Plaintiff Rueda and her children to suffer the stigma of knowing their family is adversely treated compared to other families. The CARES Act and Defendants humiliate Plaintiff Rueda and her children by treating them adversely as compared to other families.

**CLASS ACTION ALLEGATIONS**

61. Plaintiff Rueda brings this action on her own behalf and on behalf of all other persons similarly situated, pursuant to Federal Rule of Civil Procedure 23.
62. Plaintiff Rueda brings this action individually and on behalf of a class defined as: All persons who are otherwise qualified for and would have received an advance refund of the tax credits for themselves and their eligible children but for the fact that they were excluded by 26 U.S.C.

§ 6428(g)(2)(B) because their spouses lack social security numbers, and where neither the person nor the spouse was a member of the Armed Forces of the United States at any time during the taxable year, and their otherwise eligible children reached the age of 17 years in 2020.

63. Plaintiff Rueda reserves the right to amend the Class and any potential subclass definitions if further investigation and discovery indicate that the Class and potential subclass definitions should be narrowed, expanded, or otherwise modified. Excluded from the Class and potential subclass are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.
64. Members of the putative Class are so numerous that joinder is impracticable. Upon information and belief, there are over one million individuals against whom Defendants discriminate pursuant to 26 U.S.C. § 6428(g)(2)(B). Plaintiff Rueda does not know the precise number of Class members, as this information is in Defendants' possession.
65. The putative class shares common questions of fact and law. These include the common facts related to individuals who have a social security number, are married to spouses who lack a social security number, and whose child or children reached the age of 17 in 2020, and the common questions: (1) whether 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) violate the U.S. Constitution by discriminating against individuals with social security numbers who are married to individuals who lack social security numbers; (2) whether Plaintiff and the Class suffered harm as a result of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) and Defendants' unlawful policy and/or practice; (3) what equitable and injunctive relief for the Class is warranted; and (5) the scope of a resulting permanent injunction.

66. The claims alleged by Plaintiff Rueda are typical of the claims of the putative Class because the challenged statutory provisions apply with the same force to Plaintiff Rueda as they do to all other members of the Class.
67. The Plaintiff Rueda will fairly and adequately protect the interests of the Class because there are no conflicts of interest between her and any class members. Plaintiff Rueda possesses a strong personal interest in the subject matter of this lawsuit and the claims raised. Plaintiff Rueda is represented by counsel with expertise in class action litigation, complex federal litigation and litigation involving constitutional law. Counsel has the legal knowledge and resources to represent fairly and adequately the interests of all class members in this action.
68. The universe of people affected by the CARES Act's, CARES act amendments', and Defendants' unlawful policy and/or practice is ascertainable through Defendants' records and, therefore, the Class is ascertainable.
69. This class action may be maintained under Federal Rule of Civil Procedure 23(b) because prosecuting separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants. Defendants also have acted or failed to act on grounds that generally apply to all Class members, necessitating the declaratory and injunctive relief Plaintiff Rueda seeks. In addition, questions of law and fact common to Class members predominate over questions affecting only individual Class members. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy because, among other things, a class action would concentrate a multiplicity of individual actions, which share common facts and legal disputes, in a single forum.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**Fifth Amendment to the U.S. Constitution (Substantive Due Process)**

70. Plaintiff Rueda incorporates all of the allegations contained in the previous paragraphs of this complaint as though fully set forth here.
71. The Fifth Amendment to the U.S. Constitution protects freedom of personal choice in matters of marriage and family life.
72. The exclusion from a tax credit of Plaintiff Rueda by 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) based only on to whom she is married “slic[e] deeply into the family itself.” *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 498 (1977). On its face, and as applied, 26 U.S.C. § 6428(g) selects certain categories of married individuals who may receive advance refunds of tax credits and declares that others may not. In particular, 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) work together to deny Plaintiff Rueda an advance refund of the tax credit based on her choice to marry an individual who lacks a social security number. As a result of 26 U.S.C. § 6428(f)(3)(A), Plaintiff Rueda is now unable to receive a tax credit at all for her otherwise eligible child.
73. Defendants’ enforcement of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) threatens Plaintiff Rueda’s freedom of choice in personal matters related to marriage and family, including the sanctity of Plaintiff Rueda’s interest in defining her families through personal choice.
74. Defendants’ enforcement of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) intentionally and substantially infringes upon and unduly burdens

Plaintiff Rueda's liberty interests, as well as other interests that form the basis of Plaintiff Rueda's fundamental right to marriage and to choose how to define her family.

75. Plaintiff Rueda's choice of whom to marry is fundamental to her autonomy, dignity, and self-determination. Defendants' enforcement of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) excludes Plaintiff Rueda from receiving a tax credit, unduly interferes with Plaintiff Rueda's fundamental rights and liberty interests, and is arbitrary, unfair, and unreasonable, and lacks an adequate justification.
76. As a proximate result of Defendants' conduct, Plaintiff Rueda suffered injury to her constitutional rights under the Fifth Amendment's Due Process Clause.

## **SECOND CAUSE OF ACTION**

### **First Amendment to the U.S. Constitution (Freedom of Expression)**

77. Plaintiff Rueda incorporates all of the allegations contained in the previous paragraphs of this complaint as though fully set forth here.
78. The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech."
79. Plaintiff Rueda is a member of a married couple who engages in protected First Amendment activity when she expresses her lawful marriage and commitment to her spouse who lacks a social security number through means including filing joint federal tax returns.
80. Defendants' enforcement of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) violates Plaintiff Rueda's right to freedom of speech and association guaranteed by the First Amendment by denying her a tax credit because she expresses her lawful marriage and commitment to, and association with, her spouse in their most recent jointly-filed federal tax returns.

81. Defendants rely on Plaintiff Rueda's speech and association in her most recent tax returns to deny Plaintiff Rueda a tax credit.

82. There is no substantial governmental interest, rational basis, or compelling governmental interest in burdening Plaintiff Rueda's speech by denying Plaintiff Rueda a tax credit because she exercises her First Amendment rights through means including filing joint tax returns with her spouse who lacks a social security number.

83. As a proximate result of Defendants' conduct, Plaintiff Rueda suffered injury to her constitutional rights under the First Amendment.

### **THIRD CAUSE OF ACTION**

#### **Fifth Amendment to the U.S. Constitution (Equal Protection Clause)**

84. Plaintiff Rueda incorporates all of the allegations contained in the previous paragraphs of this complaint as though fully set forth here.

85. The Fifth Amendment to the United States Constitution guarantees all persons equal treatment under the law. The right to marry is secured by the Equal Protection Clause.

86. 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) facially and as applied to Plaintiff Rueda, violate the equal protection guarantee of the Fifth Amendment by burdening Plaintiff Rueda's fundamental right to marriage in a way that is incompatible with requirements of equality. Marriage has long been regarded as a fundamental right, the foundation of the family, and of society. It embraces the right to personal choice, individual autonomy, and dignifies couples who define themselves by their commitment to each other.

87. As a direct result of 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) the federal government treats Plaintiff Rueda, who is legally married,

differently than other married couples simply because her spouse lacks a social security number. As a result of the disparate treatment, Plaintiff Rueda is excluded from receiving a tax credit. 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) also infringe on Plaintiff Rueda's right to enjoy all the benefits of marriage afforded to other married couples.

88. Defendants cannot justify creating this classification that singles out one class of married individuals with social security numbers and subjects them to different treatment based on whom they marry.

89. Defendants intentionally discriminate against Plaintiff Rueda when they enforce this statute that infringes on the exercise of a fundamental right.

90. As a proximate result of Defendants' conduct, Plaintiff Rueda suffered injury to her constitutional rights under the Fifth Amendment's Equal Protection Clause.

91. Defendants' violation has caused and will cause Plaintiff Rueda harm.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Rueda respectfully requests that this Court:

(a) Declare that the deprivation of a tax credit to tax filers whose otherwise qualifying children reached the age of 17 years in 2020 under 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A) is unconstitutional and unenforceable because it violates the First Amendment to the U.S. Constitution and the Due Process and Equal Protection guarantees of the Fifth Amendment to the U.S. Constitution;

(b) Enjoin Defendants and their agents from depriving a tax credit to tax filers whose otherwise qualifying children reached the age of 17 years in 2020 and further enjoin Defendants from otherwise denying Plaintiff Rueda and other similarly-situated individuals a tax credit for their children who reached the age of 17 years under 26 U.S.C. § 6428(g)(2)(B), 26 U.S.C. §§ 6428(f)(1)-(2), and 26 U.S.C. § 6428(f)(3)(A);

(c) Award Plaintiff Rueda reasonable costs, expenses and attorneys' fees pursuant to 28 U.S.C. § 2412; and

(d) Award such additional relief as the interests of justice may require.

Dated: March 31, 2021

Respectfully submitted,

/s/ Robert P. Newman

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°Application for admission *pro hac vice* forthcoming

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### **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on the 1st day of April 2021, I electronically filed the above and foregoing document using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Nina Perales  
Nina Perales