UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

JUANA RUEDA, Plaintiff, v. JANET YELLEN sued in her official capacity as U.S. Secretary of the Treasury; CHARLES RETTIG, sued in his official capacity as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF THE TREASURY; and the U.S. INTERNAL REVENUE SERVICE, Defendants.	*	Civil Action No. 1:20-cv-01102-ELH

I. INTRODUCTION

The CARES Act provides eligible taxpayers with economic assistance as a tax credit. 26 U.S.C. § 6428. Most eligible taxpayers received an advance refund of the tax credit in 2020 based on taxpayers' information from the 2019 or 2018 tax year. 26 U.S.C. § 6428(f). Under the CARES Act's original provisions, Plaintiff Rueda was excluded from eligibility on account of her spouse's use of an ITIN to file federal income taxes. 26 U.S.C. § 6428(g)(1)(B) (Mar. 27, 2020). In December 2020, Congress amended the CARES Act and expanded eligibility to provide a tax credit to taxpayers like Plaintiff Rueda. 26 U.S.C. § 6428(g)(1)(B)(i). The December 2020 amendments did not allow Plaintiff Rueda to obtain an advance refund. 26 U.S.C. § 6428(g)(1). As a result, Plaintiff Rueda must rely on her 2020 tax return instead of her 2019 return to receive a tax credit. Plaintiff Rueda's son turned 17 years old in 2020 and thus is no longer a qualifying child for CARES Act purposes. 26 U.S.C. § 6428(a)(2). As a result, she is unable to receive the

same tax credit for her son that other parents received in 2020. *See* Dkt. 66 at 2-3 ("Second Amended Complaint").

Plaintiff Rueda respectfully requests that the Court deny Defendants' motion to dismiss for two reasons. First, the Court has jurisdiction because this case falls outside the scope of the Anti-Injunction Act and Declaratory Judgment Act. Even if the Anti-Injunction Act and Declaratory Judgment Act apply, Plaintiff Rueda adequately pleaded that an exception to the Anti-Injunction Act and Declaratory Judgment Act is applicable in this case. Second, Plaintiff Rueda adequately pleaded that the CARES Act violates her First and Fifth Amendment rights.

II. ARGUMENT

A. The Anti-Injunction Act and Declaratory Judgment Act do not preclude subject matter jurisdiction.

Defendants argue that this case is a challenge to a tax assessment or collection and as a result, the Anti-Injunction Act ("AIA") and Declaratory Judgment Act ("DJA") bar judicial review at this stage. However, this Court has already concluded in an earlier stage of this case that the claims presented "do[] not seek the recovery of any monies wrongfully 'assessed'" because Plaintiff Rueda does not allege that the IRS improperly calculated her tax liability or that her taxes were wrongfully collected. *See Amador v. Mnuchin*, 476 F.Supp.3d 125, 145 (D. Md. 2020). In addition, even if the AIA and DJA are applicable, this matter falls within an exception to the AIA.

1. This case falls outside the scope of the AIA and DJA.

The AIA bars suits that seek to restrain the assessment or collection of any tax. 26 U.S.C. § 7421(a). The AIA has an "'almost literal effect': It prohibits only those suits seeking to restrain the assessment or collection of taxes" by divesting the court of subject matter jurisdiction. *Cohen v. U.S.*, 650 F.3d 717, 724 (D.C. Cir. 2011). The AIA is coterminous with the tax exception of the DJA, which likewise prohibits most suits for declaratory relief with respect to federal taxes. *Cohen*

v. U.S. at 727. If a suit is allowed under the AIA, it is not barred by the DJA. *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 583 (4th Cir. 1996).

Defendants mischaracterize Plaintiff Rueda's lawsuit as seeking to restrain the assessment and collection of income taxes. Motion to Dismiss at 7. Defendants claim Plaintiff Rueda seeks an "extra $500" "windfall," and to prevent the IRS from collecting $500 in tax. *Id.*s at 4, 8. However, as this Court previously held, Plaintiff Rueda does not seek recovery of any money wrongfully assessed because she does not allege the IRS improperly calculated her tax liability and she does not complain taxes were wrongfully collected.[1] *Amador*, 476 F. Supp. at 146. Here, Plaintiff Rueda seeks an injunction against the separate and unequal statutory treatment of taxpayers who file their taxes jointly with spouses who do not possess social security numbers. Second Amended Complaint at 3. The result of the injunction, by itself, is not determinative of the AIA's application. *See Amador*, 476 F. Supp. at 145 (D. Md. 2020) (holding "[a]n injunction's secondary effects do not transform a suit for equitable relief into one for damages.").

The cases on which Defendants rely are inapposite. *Bob Jones University* involved the IRS' decision to revoke the tax-exempt status of a university. *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974). The U.S. Supreme Court concluded that the AIA applied because the suit's aim was to prevent future tax liability, which is not the case here. *Compare id.* at 738 *with Amador*, 476 F.Supp.3d at 144 (finding "Plaintiffs do not 'complain[ ] of the manner in which a tax was assessed or collected,' nor do they seek 'reimbursement for wrongly paid sums.'"). Similarly, *Americans United* involved the IRS' revocation of an organization's tax exempt status for lobbying. *Alexander v. Am. United Inc.,* 416 U.S. 752, 755 (1974). The Supreme Court concluded that the

[1] Plaintiff Rueda's suit is also not "a claim that [she] overpaid the amount of tax owed." Motion to Dismiss at 6.

reasonable statutory construction of the term "purpose" in the AIA made clear that the suit sought to restrain the assessment and collection of taxes from the organization's contributors and was thus barred by the AIA. *Id*. at 760.

Thus, both cases are distinguishable because they sought injunctive relief to limit the plaintiffs' future tax liability and thus fell within the meaning "assessment" in the AIA. *See U.S. v. Galletti*, 541 U.S. 114, 122 (2004) (holding "the term 'assessment' [in the AIA] refers to little more than the calculation or recording of a tax liability," which allows the IRS to "employ administrative enforcement methods to collect the tax."). Plaintiff Rueda neither challenges her tax liability nor alleges that the IRS incorrectly assessed taxes on her. She also does not seek to restrain the IRS from collecting taxes.[2]

Defendants' cases are also different because the case involved an across-the-board rule and not a rule that targets one type of taxpayer for different treatment. In *Bob Jones University*, the tax-exempt status revocation was based on a change to IRS policy that applied equally to all private

[2] Defendants' argument erroneously conflates Plaintiff Rueda's constitutional claims challenging the separate and unequal statutory scheme under Section 6428 with an attempt to avoid tax collection by the IRS. The recovery rebate is a credit against income but is not itself income. *See* Internal Revenue Service, "Calculating the Economic Impact Payment", available at https://www.irs.gov/newsroom/calculating-the-economic-impact-payment, last visited May 27, 2021 (clarifying "[t]axpayers will not include the payment in taxable income on their 2020 tax return or pay income tax on the payment. It will not reduce a taxpayer's refund or increase the amount of tax a taxpayer owes when the taxpayer files a 2020 Federal income tax return next year."). Recipients of the 2020 advance refund who are no longer eligible based on their 2020 tax information do not have to return the portion of the advance refund for which they are no longer eligible. *See* Internal Revenue Service, "First Economic Impact Payment Questions and Answers — Topic J: Reconciling on Your 2020 Tax Return", available at https://www.irs.gov/newsroom/first-economic-impact-payment-questions-and-answers-topic-j-reconciling-on-your-2020-tax-return, last visited May 27, 2021. Plaintiff Rueda was otherwise eligible for the tax credit in 2020 and but for her spouses' lack of a social security number, she would have received an advance refund of the credit. Her request to be treated equally is neither an attempt to "avoid" being taxed nor an improper attempt to "enjoy a windfall[.]" Motion to Dismiss at 4.

schools. In *Americans United*, the revocation was based on the IRS' policy that denies exempt status to any organization if a substantial part of its activities is attempting to influence legislation. Both policies were neutral and applied to all similarly situated organizations, unlike the facts here. Defendants are incorrect in their assertion that Plaintiff Rueda is treated the same as any eligible individual who has a child 17 years of age or older—no matter whether Rueda is married or to whom she is married. Motion to Dismiss at 13. On its face, Section 6428(g) sets out two eligibility requirements for joint tax returns based entirely on whether a taxpayer's spouse has a social security number. *Compare* § 6428(g)(1)(B) *with* § 6428(g)(2(B). These different eligibility requirements result in two different procedures for eligible taxpayers to obtain the tax credit.

Defendants cite to no binding authority that holds, for AIA analysis purposes, that an individual's challenge to the requirements of a refundable tax credit on constitutional grounds is construed as challenging the assessment or collection of the taxpayer's income tax liability. Motion to Dismiss at 6-7. Plaintiff Rueda challenges the separate and unequal statutory scheme the CARES Act applies to her solely because she files her federal tax returns jointly with her husband who does not have a social security number. Second Amended Complaint at 3. The distinction between "*assessment*" and "*procedure*" prevents the AIA's jurisdictional bar in this case. *See, e.g. Cohen v. U.S.*, 650 F.3d 717, 720, 725 (D.C. Cir. 2011) (challenge to an IRS procedure to refund overcharged taxes did not implicate the collection of revenue or alter the parties' future tax liability). *See also Marcello v. Regan*, 574 F. Supp. 586 (D.R.I. 1983) ("[a] suit to recover an intercepted refund can have no impact on either the amount of *tax* which the government will collect or on the method and manner in which the government may collect it.").

Here, Plaintiff Rueda challenges the separate *process* to which she is subjected under Section 6428 solely because she files her taxes jointly with a spouse who does not have a social

security number. Defendants concede that "§ 6428 treats the refundable credit as a tax overpayment." Motion to Dismiss at 6. The case at hand is unrelated to the assessment or collection of a tax; under § 6428(a-b) the tax credit is treated as though a taxpayer *overpaid* income taxes by the credit amount and thus the tax credit is refundable. *See Marcello v. Regan*, 574 F. Supp. 586, 594 (D.R.I. 1983) (once the IRS determines tax liability has been overpaid, assessment and collection are "ancient history.").

The original CARES Act denied a tax credit to Plaintiff Rueda and similarly situated individuals based on requirements this Court found Plaintiff Rueda plausibly alleged violated the Constitution's equal protection guarantees, the fundamental right of marriage, and the freedom to intimate association. *See Amador*, 476 F. Supp. at 152, 157. Section 6428(f) creates an advance refund process for eligible individuals. In spite of the fact that the CARES Act amendments expanded eligibility for relief, the amendments further codified the separate process and differential treatment this Court found Plaintiff plausibly alleged to be a concrete and particular injury. *Amador*, 476 F. Supp. at 147-48.

2. If the court finds this case falls within the AIA and DJA, an exception to the AIA applies.

Even when it applies, the AIA does not bar suit if the plaintiff can show that "under no circumstances could the government ultimately prevail" and equity jurisdiction exists. *Enochs v. Williams Packing & Navigation Co.* 370 US 1, 8 (1962). Equity jurisdiction means "the taxpayer will suffer irreparable injury." *Comm'r v. Shapiro*, 424 U.S. 614, 627 (1976).

Here, dismissal of Plaintiff Rueda's suit will cause irreparable injury for which a tax refund suit under 26 U.S.C. § 7422 is an inadequate remedy. As this Court concluded in its denial of Defendants' previous motion to dismiss, a refund suit under 26 U.S.C. § 7422 is an inadequate remedy for Plaintiff Rueda's injury. *Amador*, 476 F. Supp. at 143. The CARES Act's December

2020 amendments do not change the analysis. Plaintiff Rueda has adequately pleaded in her amended complaint that she faces "imminent" injury. Second Amended Complaint at 18-21; *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)(quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155(1990)). The additional hurdles that Section 6428(g) forces Plaintiff, but not other eligible individuals, to overcome in order to obtain what remains an incomplete recovery payment also creates an injury in fact. Delay in processing a benefit application or in distributing a benefit constitutes a distinct injury in fact. *See Covenant Media of S.C. v. City of N. Charleston*, 493 F.3d 421, 428–29 (4th Cir. 2007).

Congress intended the CARES Act and subsequent stimulus bills to provide direct economic assistance to individuals and families. In the CARES Act, Congress urged the IRS to issue payments "as rapidly as possible." 26 U.S.C. § 6428(f)(3)(A). Requiring Plaintiff to bring a tax refund action would erect unnecessarily onerous and costly barriers to securing relief. *Amador*, 476 F. Supp 3d at 144. Forcing Plaintiff Rueda to exhaust her administrative remedies would be an arduous, expensive and long process that serves none of the goals underlying the tax refund suit. *Id*. Unlike the facts in *Bob Jones University*, where "the problems presented [did] not rise to the level of constitutional infirmities," Plaintiff Rueda adequately pleaded that such infirmities exist here. *Bob Jones University*, 416 U.S. 725, 747 (1974); Second Amended Complaint at 18-21.

Plaintiff Rueda also satisfies the second prong of the *Enochs* test. Defendants will not ultimately prevail in demonstrating that discrimination against Plaintiff Rueda pursuant to § 6428 is justified under either strict scrutiny or rational basis review. Defendants argue that § 6428 does not exclude Plaintiff Rueda from an additional tax credit for her son because of her marital status, and that any statutory distinction by § 6428 that may implicate marriage does not significantly

interfere with her right to enter marriage so § 6428 does not violate the fundamental right to marriage. Motion to Dismiss at 17. However, this Court held Plaintiff Rueda adequately alleged § 6428(g)(1)(B) (now § 6428(g)(2)(B)) burdens her fundamental right of marriage and she has plausibly alleged § 6428(g)(1)(B) fails rational basis review. *Amador*, 476 F. Supp. at 152-153. The CARES Act amendments do not change this analysis. Second Amended Complaint at 14.

B. Plaintiff Rueda adequately pleaded violations of her Fifth Amendment rights and First Amendment right of intimate association

In prior proceedings in this case, this Court ruled that Plaintiff Rueda adequately pleaded violations of her Fifth Amendment rights to due process and equal protection and the First Amendment right to intimate association. *Amador*, 476 F. Supp. at 152, 157. Although the CARES Act amendments established Plaintiff Rueda's eligibility for the tax credit, the legislation precludes her from obtaining a refund based on her 2019 tax return—the basis for establishing other couples' eligibility. *See* § 6428(f). Accordingly, Plaintiff Rueda remains able to, and did, adequately plead violations of her Fifth Amendment right to due process and equal protection and First Amendment right to intimate association, and the Court's analysis in its October 1, 2020 opinion denying Defendants' Motion to Dismiss remains compelling. *See Amador*, 476 F. Supp. at 152, 157. Because Plaintiff Rueda adequately pleaded these causes of action, her complaint survives a Rule 12(b)(6) motion to dismiss for failure to state a claim. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); Second Amended Complaint at 18-21.

1. Section 6428 burdens Plaintiff Rueda's fundamental right of marriage and denies her equal protection in violation of the Fifth Amendment

a. Section 6428 substantially burdens the fundamental right of marriage

Earlier in the case, this Court ruled that Plaintiff Rueda plausibly alleged that § 6428 substantially burdened the fundamental right of marriage. *See Amador*, 476 F. Supp. at 152. The

Supreme Court has "reiterated that the right to marry is fundamental under the Due Process Clause." *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015); *see also Amador*, 476 F. Supp. at 148 (collecting cases). Although the CARES Act amendments extended eligibility for tax credits to Plaintiff Rueda, her fundamental right of marriage is infringed upon because her marriage continues to be treated differently than other marriages: due to her initial exclusion from eligibility on account of her spouse's use of an ITIN to file taxes, Plaintiff Rueda must rely on her 2020 tax returns instead of her 2019 returns to receive a tax credit. Plaintiff Rueda's son turned 17 years old in 2020 and thus is no longer a minor for CARES Act purposes. As a result, she is unable to receive the same tax credit for her son that other parents received. *See* Second Amended Complaint at 2-3.

Plaintiff Rueda alleges that § 6428 discriminates on the basis of whom she chose to marry, not whether she is married or unmarried. Defendants suggest that § 6428 does not interfere with the decision to marry, but this contention does not address the true nature of Plaintiff Rueda's allegation. Motion to Dismiss at 13. Plaintiff Rueda does not allege that the CARES Act prevents her from getting married, but rather that § 6428 treats her marriage differently because of the identity of her chosen spouse. *See* Second Amended Complaint at 2-3. The Supreme Court has intervened to protect the right to marry when statutes draw distinctions based on the identity of one of the spouses (or hopeful spouses) of the union. *See, e.g.*, *Obergefell*, 576 U.S. at 680-81 (holding that "same-sex couples may exercise the fundamental right to marry[.]"); *Turner v. Safley*, 482 U.S. 78, 95-96 (1987) (recognizing right of inmates to marry other inmates or civilians); *Zablocki v. Redhail*, 434 U.S. 374 (1978) (holding noncustodial parent behind on child support payments had right to marry without state approval); *Loving v. Virginia*, 388 U.S. 1 (1967) (invalidating ban on interracial marriage). Here, § 6428 treats Plaintiff Rueda's marriage

differently because her spouse lacks a social security number. This disparate treatment merits the heightened scrutiny of this Court.

Plaintiff Rueda's fundamental right to marry a person without a social security number is entitled to protection from discriminatory treatment even after the marital union is formed. In earlier proceedings in this case, this Court observed that "the fundamental right of marriage encompasses more than the decision to marry." *Amador v. Mnuchin*, 476 F. Supp. 3d 125, 150 (D. Md. 2020). The State must protect not only the right to enter a marriage, but also the "'constellation of benefits' that are inextricably intertwined" with it. *Id.* (quoting *Obergefell*, 576 U.S. at 670). Defendants suggest that "interference with the decisions, benefits, and obligations of marriage" does not necessarily render a marriage "second-tier," and instead requires an inquiry into the scope of the injury and indignity caused by such denials. Motion to Dismiss at 14. This approach mischaracterizes Supreme Court precedent. The Supreme Court has recognized that marriage confers a wide range of benefits, ranging "from the mundane to the profound." *Windsor*, 570 U.S. at 772, 773-74 (providing examples of benefits burdened by DOMA, like healthcare benefits, the Bankruptcy Code's protections, the ability to file a joint tax return, and eligibility for burial as a couple in veterans' cemeteries). When the state withholds benefits from parents with respect to their children, it also burdens the fundamental right of marriage. *See Pavan v. Smith*, 137 S. Ct. 2077, 2078 (2017) (holding that same-sex couples were entitled to include both parents' names on their children's birth certificates). When a statute "identif[ies] a subset of state-sanctioned marriages and make[s] them unequal," the disparate treatment renders those marriages second-tier. *See Windsor*, 570 U.S. at 772. In fact, the Supreme Court expressly rejected a "case-by-case determination of the required availability of specific public benefits" to gay and lesbian couples. 576 U.S. at 679. Defendants ask this Court to engage in such a case-by-case inquiry with

respect to the tax credit challenged here. Motion to Dismiss at 16, 17. This argument neglects the underlying, profound cause of Plaintiff Rueda's inability to receive a $500 refund; her continued exclusion is a product of the State's earlier discrimination against her for marrying a spouse who lacks a social security number and the process the State provided for issuing credits prescribed by the amended statute. Supreme Court precedent counsels that the denial to Plaintiff Rueda of a benefit that similarly situated couples with 17-year-olds received in itself "demeans the couple" and "singles out a class of persons deemed by a State entitled to recognition." *Amador*, 476 F. Supp. 3d. at 152 (citing *Windsor*, 570 U.S. at 772, 775) (internal quotations omitted). Such "injury and indignity is a deprivation of an essential part of the liberty protected by the Fifth Amendment." *Windsor*, 570 U.S. at 768. "Accordingly, plaintiffs have adequately alleged that § 6428(g)(1)(B) imposes a discriminatory burden on the fundamental right of marriage." *Amador*, 476 F. Supp. 3d at 152.

b. Section 6428 violates equal protection

Plaintiff Rueda plausibly alleged that § 6428 violates equal protection because she is treated differently than other eligible parents whose children turned 17 years old in 2020. Second Amended Complaint at 14. The Fourteenth Amendment's equal protection guarantee, made applicable to the federal government through the Due Process Clause of the Fifth Amendment, requires that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *Bolling v. Sharpe*, 347 U.S. 497 (1954).[3] Defendants argue

[3] Plaintiff Rueda pleaded her third cause of action under the "Fifth Amendment to the U.S. Constitution (Equal Protection Clause)[.]" Dkt. 66 at 20. Plaintiff Rueda further explained that "The Fifth Amendment to the United States Constitution guarantees all persons equal treatment under the law" and that the challenged statutory provisions "violate the equal protection guarantee of the Fifth Amendment[.]" *Id.* Defendants' poorly-aimed footnote (Motion to Dismiss at 1) aside, there is no basis to dismiss Plaintiff's equal protection claim for lack of adequate pleading.

that Plaintiff Rueda's failure to receive the $500 advance refund is not a denial of equal protection because her son is treated no differently than other 17-year-olds who are no longer eligible. But this is not so. The parents of other children who turned 17 years old in 2020 were eligible to receive the advance refund on the basis of information in their 2019 tax returns, and they were able to keep that credit even if their 2020 returns indicated that the child turned 17 years old during the year. *See* § 6428(f)(1)-(5). By contrast, the statute requires Plaintiff Rueda to seek a tax credit based on her 2020 return, under which she is not eligible to receive the $500 tax credit for her son. *See* § 6428(f)(1), (5). "[A] disadvantage need not be especially onerous to merit assessment under the Equal Protection Clause." *Lewis v. Thompson*, 252 F.3d 567, 590 (2d Cir. 2001). This process disadvantages Plaintiff Rueda by virtue of her marriage to someone who lacks a social security number and denies her a significant sum of money she will use to support her family.

Plaintiff Rueda plausibly alleged that § 6428 "identif[ies] a subset of state-sanctioned marriages and make[s] them unequal" for the "principal purpose" of "impos[ing] inequality," violating the substantive due process and the equal protection guarantees of the Fifth Amendment. *Windsor*, 570 U.S. at 722; Second Amended Complaint at 14-15. Such violations trigger strict scrutiny. *See Bostic v. Schaefer*, 760 F.3d 352, 377 (4th Cir. 2014). If, in accordance with its earlier ruling, the Court agrees that Plaintiff Rueda plausibly alleged that the amended § 6428 continues to burden a fundamental right, then the Government bears the burden of demonstrating that the statute is "narrowly drawn" to serve a "compelling state interest." *See Bostic*, 760 F.3d at 377.

Even were this Court to evaluate § 6428 using rational basis review, as the Government argues it should, Plaintiff Rueda plausibly alleges that the provision "fails to clear the low bar of rational basis review." *Amador*, 476 F. Supp. at 153. To survive rational basis review, Defendants

must demonstrate that the challenged statute is "rationally related to a legitimate state interest." *Pulte Home Corp. v. Montgomery County*, 909 F.3d 685, 693 (4th Cir. 2018) (citation omitted). Defendants principally assert that the State's interest in administrative efficiency warrants the requirement that Plaintiff Rueda use her 2020 tax returns to access tax credits under the CARES Act. Motion to Dismiss at 17. Invocation of administrative efficiency, however, does not end the rational basis review. "[A]lthough efficacious administration of governmental programs is not without some importance, 'the Constitution recognizes higher values than speed and efficiency.'" *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973) (quoting *Stanley v. Illinois*, 405 U.S. 645, 656 (1972)). Efficiency arguments may be particularly inappropriate where the government denies benefits to U.S. citizens based on a parent's immigration status. *See Lewis*, 252 F.3d at 591-92 (holding that denial of immediate eligibility for Medicaid benefits to the newborn children of noncitizen parents could not survive rational basis review). Even if we were to accept Defendants' proffered efficiency considerations, Defendants do not explain the choice to require families that were initially excluded from the CARES Act to rely on 2020 tax returns as a basis for issuing refunds, rather than calculating their eligibility based on 2019 returns. Efficacious administration of the CARES Act does not allow the government to run roughshod over the equal protection guarantee, which Plaintiff Rueda plausibly alleges the CARES Act does when it denies her an advance refund based on her 2019 tax return.

Caution is also warranted where benefits granted to children are restricted on account of the government's classification of a parent. *See Collins v. Brewer*, 727 F. Supp. 2d 797, 806 (D. Ariz. 2010) (holding that denial of benefits to dependents of same-sex couples could not survive rational basis review), *aff'd sub nom. Diaz v. Brewer*, 656 F.3d 1008 (9th Cir. 2011). Plaintiff

Rueda's case implicates these issues, undermining the legitimacy of the Government's asserted interests.

Finally, § 6428 fails rational basis review because it perpetuates the effects of the classification of a disfavored group—nonmilitary couples with a spouse who lacks a social security number.[4] Harming a "politically unpopular group" is not a legitimate state interest. *Cleburne Living Ctr.*, 473 U.S. at 447, 447-50 (1985) (holding that requiring a special use permit for a home for the mentally disabled could not withstand rational basis review because the decision appeared to rest on irrational prejudice); *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534, 534-36 (1973) (holding that prohibition on issuing food stamps to unrelated households could not withstand rational basis review because its purpose was to prevent "hippies" from participating in the food stamp program). In fact, this Court observed that "depriving plaintiffs of the credit is an unnecessary prophylactic given that § 6428(g)(1)(A) limits receipt of the impact payment to individuals with a [social security number]." *Amador*, 476 F. Supp. 3d at 153. Defendants nevertheless assert that administrative reasons, like the inability of the IRS to issue refunds by December 31, 2020, or the feasibility of using 2020 returns as a basis for issuing refunds, are legitimate bases for Congress's chosen approach for amending the CARES Act. But these administrative rationales do not constitute "a rational effort to deal with these concerns." *Moreno*, 413 U.S. at 536. To fully remedy the "invidious discrimination" that the original CARES Act's exclusion of mixed-status families represented, *Cleburne Living Ctr.*, 473 U.S. at 446, the § 6428 must not subject Plaintiff Rueda to a different process for calculating her tax credits that results in

[4] Plaintiff refers to "nonmilitary couples" because the original version of the CARES Act created an exception for military spouses who do not have a social security number. *See* § 6428(g)(3) (March 27, 2020). The existence of this provision suggests that Congress recognized the negative effect of § 6428(g) on families in which one spouse does not have a social security number.

the denial of a refund she would have otherwise received had her family not been singled out for discriminatory treatment.

In sum, Plaintiff Rueda plausibly alleges that § 6428 infringes on her fundamental right of marriage in violation of substantive due process and the equal protection guarantee of the Fifth Amendment.

2. Section 6428 burdens Plaintiff Rueda's freedom of expression.

Despite Defendants' argument that Plaintiff Rueda cannot state a claim that § 6428 infringes upon freedom of expression because filing her taxes "does not implicate speech," Motion to Dismiss at 18, Plaintiff Rueda plainly alleges that she files her taxes jointly as an "expression of her marriage and the unity of her family," Second Amended Complaint at 14, and therefore states a claim that § 6428 burdens her freedom of expression. The First Amendment protects Plaintiff Rueda's speech on tax forms because "the creation and dissemination of information are speech within the meaning of the First Amendment." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) (striking down statute regulating use of pharmacy records as burdening protected expression). "To determine whether conduct is sufficiently expressive, courts consider both the intent of the speaker and the perception of the audience. The speaker must demonstrate an 'intent to convey a particularized message,' and 'the likelihood [must be] great that the message would be understood by those who viewed it.'" *Amador*, 476 F. Supp. at 155-57 (citing *Spence v. Washington*, 418 U.S. 405, 410-11 (1974)).

Here, Plaintiff Rueda plausibly alleges that the challenged statutory provisions burden her freedom of speech because they deny her the advanced credit based on her expressive choice to file her taxes jointly. *See* Second Amended Complaint at 14-15, 19-20. 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." *Id.* at 15. This expression is "fundamental [to Plaintiff Rueda's] right to self-determination to express to whom she is married. That expression is sacred to her. Expressing that she is married and to whom she is married dignifies Plaintiff Rueda's wish to define herself by her commitment to her spouse." *Id.* Plaintiff Rueda also plainly alleges that the likelihood is great that Defendants will understand her message because, as explained further below, she files her taxes jointly with her spouse to "express her family union to the government and society," which provides her a benefit because "most married couples pay a lower rate of income tax if they file jointly compared to filing separately." *Id.* at 14-15. Thus, Plaintiff Rueda's choice to file her taxes jointly is "sufficiently imbued with elements of communication so as to be symbolic speech entitled to First Amendment protection" because it is how she expresses her commitment to, and association with, her spouse to whom she is legally married.[5] *Amador,* 436 F. Supp. 3d at 153-54 (citing *Spence*, 418 U.S. at 409); *see Obergefell*, 576 U.S. at 666 ("The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression.").

The challenged statutory provisions also burden Plaintiff Rueda's speech because, in the immigration context, Plaintiff Rueda will submit her tax returns not only to the IRS, but other federal agencies. Jointly-filed taxes are important to the spousal petitioning process. *See* Second Amended Complaint at 14. When it comes to an immigration petition, courts recognize that filing taxes jointly is evidence that the applicant and spouse are in a bona fide marriage. *See, e.g., Agyeman v. INS*, 296 F.3d 871, 882-83 (9th Cir. 2002) ("Evidence of the marriage's bona fides

[5] Defendants rely on *Doe v. Trump,* 2020 WL 5492994, at*3 (C.D. Cal. Sept. 2, 2020), to argue that the First Amendment does not protect Rueda's right to expression. Motion to Dismiss at 22. However, *Doe* is not applicable here because it is an unpublished out-of-circuit decision where the court did not apply strict scrutiny to the plaintiff's First Amendment compelled speech claim, which is not involved here, or address the merits of plaintiff's First Amendment claim.

may include: jointly-filed tax returns. . . ."); *Dos Reis v. McCleary*, 200 F. Supp. 3d 291, 298-99 (D. Mass. 2016) ("When determining whether a petitioner enters into a marriage in good faith, the [court] considers . . . whether the couple jointly . . . filed tax returns.").[6] Thus, Plaintiff Rueda filing her taxes jointly constitutes speech necessary to pursuing immigration relief for her husband and family. *See* Second Amended Complaint at 8, 15.

The allegations in the amended complaint plausibly allege that the statute's infringement of Plaintiff Rueda's expression is "more than incidental" and thus warrant heightened scrutiny. *Sorrell*, 564 U.S. at 567. When the restriction on expressive conduct is more than incidental, the defendant must establish that the burden on the expression is "no greater than necessary to accomplish the statute's legitimate purpose." *Roberts v. United States Jaycees,* 468 U.S. 609, 628-29 (1984). However, as Plaintiff Rueda alleges, there is no substantial governmental interest, rational basis, or compelling governmental interest in denying her a tax credit because she files her tax returns jointly with her spouse who lacks a social security number. Second Amended Complaint at 20.

3. Section 6428 directly and substantially burdens Plaintiff Rueda's right to intimate association.

Defendants renew their unpersuasive argument that § 6428 does not severely burden Plaintiff Rueda's freedom of association. *See* Motion to Dismiss at 19. However, the CARES Act amendments neither relieve the burden on Plaintiff Rueda's freedom of association nor reduce the salience of the Court's holding that Plaintiff Rueda has sufficiently pleaded that the statute directly

[6] According to the U.S. Department of Homeland Security, jointly-filed tax returns are evidence of the legitimacy of the petitioner's marriage. *See Reynoso v. Holder*, 711 F.3d 199, 206 n.22 (1st Cir. 2013) (citing DHS Form I–751 instructions that identify "joint federal and state tax returns" as "relevant to establish that your marriage was not entered into in order to evade the U.S. immigration laws[.]" (available at http://www.uscis.gov/files/form/i-751instr.pdf (last visited May 25, 2021)).

and substantially burdens her right to intimate association. *See Amador*, 476 F. Supp. 3d at 157 ("[P]laintiffs have alleged plausibly that § 6428(g)(1)(B) is subject to strict scrutiny because it denies an impact payment to eligible taxpayers such as themselves on the basis of their marital status."). The First Amendment protects the right "to enter into and maintain certain intimate human relationships." *Roberts*, 468 U.S. at 617. "Marriage, the most intimate human relationship, is indisputably an intimate association for the purposes of the First Amendment." *Amador*, 476 F. Supp. 3d at 157. Further, many government benefits and programs that take marriage into account—including "taxation"— "offer[] symbolic recognition" of a married couple's "union." *Obergefell*, 576 U.S. at 669. Courts recognize that "express[ion] of identity" is a core aspect of the right of marriage. *Id.* at 2593. Thus, jointly filing taxes is a protected expression of a couple's association and marriage.

Here, Plaintiff Rueda states a claim that the statute burdens her right to association because Defendants deny her the advanced credit based on her jointly-filed taxes in which she expresses her intimate association with her spouse. Second Amended Complaint at 19-20; *see Obergefell*, 135 S. Ct. at 2593; *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("[Government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests . . . [including] speech or associations."); *Speiser v. Randall*, 357 U.S. 513, 518 (1958) (striking down state law that withheld property tax exemption if property owners refused to sign loyalty oath); *Amador*, 436 F. Supp. 3d at 157. Plaintiff Rueda also plausibly alleges that Defendants directly and substantially place a burden on her right to association because Defendants' denial of her advance refund flows directly from the statute's initial denial of any payment to her family based on her association with her husband. *See Amador*, 476 F. Supp. 3d at 157; Second Amended Complaint at 19-20. Thus, despite Defendants' argument to the contrary, Plaintiff Rueda plausibly alleged

that the statute is subject to strict scrutiny and Defendants unconstitutionally interfere with her right to intimate association because there is no substantial governmental interest, rational basis, or compelling governmental interest for Defendants to deny her a tax credit because of her intimate association with her spouse who lacks a social security number. Second Amended Complaint at 20.

CONCLUSION

This Court has jurisdiction and Plaintiff Rueda states a claim that Defendants violate her First and Fifth Amendment rights. For the above-stated reasons, Plaintiff Rueda respectfully requests that the Court deny Defendants' motion to dismiss.

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Respectfully submitted,

/s/ Robert P. Newman
Robert P. Newman, MBA, Esq.
Attorney & Counselor At Law
801 Wayne Avenue
Suite 400
Silver Spring, MD 20910
Office: 301.892.2713
Fax: 301.883.1533
Text: 301.786.3793
rnewman@rpnewmanlaw.com

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
/s /Nina Perales
Nina Perales (Tex. Bar No. 24005046)*
Fátima Menéndez (Tex. Bar No. 24090260)*
Samantha Serna (Tex. Bar No. 24090888)*
110 Broadway, Suite 300
San Antonio, TX 78205
Telephone: 210.224.5476
Facsimile: 210.224.5382

nperales@maldef.org

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
Thomas A. Saenz (CA Bar No. 159430)*
Belinda Escobosa (CA Bar No. 214178)*
Andres Holguin-Flores (CA Bar No. 305860)*
634 S. Spring St., 11th Floor
Los Angeles, CA 90014
Telephone: (213) 629-2512
Facsimile: (213) 629-0266
bescobosa@maldef.org

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
Andrea Senteno (NY Bar No. 5285341)*t
1016 16th Street NW, Suite 100
Washington, DC 20036
Phone: (202) 293-2828
Facsimile: (202) 293-2849
asenteno@maldef.org

*Admitted *pro hac vice*
t Not admitted in the District of Columbia

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the 2nd day of June 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