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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 JANE DOE, *et al.*,

12 *Plaintiff,*

13 v.

14 DONALD J. TRUMP, *et al.*,

15 *Defendants.*

No. 8:20-cv-00858-SVW-JEM

Amicus Curiae Federation for American
Immigration Reform’s Memorandum of Points
and Authorities in Support of Defendants’
Motion to Dismiss

Hearing on Motion to Dismiss

Hearing Date: July 13, 2020
Time: 1:30 p.m.
Courtroom: 10A
Location: 350 W. 1st Street
Los Angeles, CA 90012

Hon. Stephen V. Wilson

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MEMORANDUM OF POINTS AND AUTHORITIES

Individuals whose spouses lack Social Security Numbers (collectively, “Plaintiffs”) have sued various federal officials and offices (collectively, the “Government”) over the exclusion of married couples filing joint tax returns from the stimulus payments of the Coronavirus Aid, Relief, and Economic Security Act, PUB. L. NO. 116-136, § 2201(a), 134 Stat. 281, __ (2020) (“CARES Act”), as codified at 26 U.S.C. § 6428.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae Federation for American Immigration Reform (“FAIR”) is a nonprofit organization incorporated in the District of Columbia and classified as an educational charity under I.R.C. § 501(c)(3). FAIR is American’s largest and oldest public interest group advocating for the control of illegal immigration and the reduction in legal migration to levels more consistent with the national interest and sound public policy. FAIR has members in all fifty states, and nearly one million members in total.

STATUTORY BACKGROUND

As enacted by the CARES Act, Section 6428 establishes a payment program enacted as an emergency macroeconomic stimulus immediately to boost consumer spending within the United States. Congress chose a funding distribution method rationally related to that goal, in that it used a government dataset — individual tax return filers for tax years 2018 and 2019 — that included bank direct deposit information for tens of millions of recipients, thus obviating the delay that requiring an application for the funds wherein the applicant designated deposit information would necessarily entail. In doing so, Congress made the rational political decision to direct funding to a subset of taxpayers — excluding (a) alien taxpayers without work authorization (that is, without Social Security numbers, a precise proxy for aliens without work authorization due to unlawful presence), 26 U.S.C. § 6428(g), (b) citizen or alien taxpayers with

1 reported incomes above certain levels (who could be assumed to be more likely to save rather
 2 than immediately spend the stimulus funds), 26 U.S.C. § 6428(c), (c) nonresident aliens (who are
 3 exempt from taxation on foreign income and also much more likely to remit the stimulus funding
 4 overseas), 26 U.S.C. § 6428(d)(1), and (d) dependents of taxpayers in these three classes,
 5 §6428(d)(2). Congress rationally elected not to make an exception for so-called mixed status
 6 families, with the narrow exception for alien taxpayers without a Social Security number who
 7 were spouses of members of the Armed Forces. 26 U.S.C. § 6428(g)(3).

8 **STATEMENT OF FACTS**

9 For purposes of a motion to dismiss, this Court assumes the well-pleaded facts of the
 10 complaint. *Hernandez v. Mesa*, 137 S.Ct. 2003, 2005 (2017), In the interest of brevity, FAIR
 11 adopts the facts as stated by the Government. Gov't Memo. at 4-5.

12 **ARGUMENT**

13 **I. THIS COURT LACKS JURISDICTION OVER PLAINTIFFS' CLAIMS.**

14 Federal courts are courts of limited jurisdiction. *Bender v. Williamsport Area Sch. Dist.*,
 15 475 U.S. 534, 541 (1986). "It is to be presumed that a cause lies outside this limited jurisdiction,
 16 and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen*
 17 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Accordingly, federal courts must
 18 determine their jurisdiction, even if the parties concede jurisdiction: "Although the parties did
 19 not raise the issue in their briefs on the merits, we must first consider whether we have jurisdiction
 20 to decide this case." *Demore v. Kim*, 538 U.S. 510, 516 (2003) (interior quotation marks omitted);
 21 *cf. Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 97 n.4 (1991) (jurisdictional arguments are an
 22 exception to rule that courts ordinarily do not consider issues raised only by an *amicus*). *Amicus*
 23 FAIR concurs with the Government that this Court lacks jurisdiction over Plaintiffs' claims. *See*
 24 Gov't Memo. at 5-14. In this Section, FAIR not only expands on the issues that the Government

1 raises but also raises additional jurisdictional defects in Plaintiffs' case.

2 **A. Plaintiffs lack standing.**

3 Under Article III, a "bedrock requirement" is that federal courts are limited to hearing
4 cases and controversies. U.S. CONST. art. III, § 2; *Valley Forge Christian College v. Americans*
5 *United for Separation of Church & State, Inc.*, 454 U.S. 464, 471 (1982). As relevant here, courts
6 assess Article III standing under a tripartite test for an "injury in fact": judicially cognizable
7 injury to the plaintiff, causation by the challenged conduct, and redressability by a court. *Lujan*
8 *v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). Plaintiffs fail to meet their burden to show
9 that they have standing. Because Plaintiffs cannot meet that burden, moreover, this Court should
10 dismiss this action.

11
12 Although Plaintiffs seek to represent those who file their federal taxes with an individual
13 taxpayer identification numbers ("ITIN") rather than a Social Security Number ("SSN"), the
14 standing analysis requires digging deeper to inquire into the *reason* that a given plaintiff or
15 member of the proposed plaintiff class files with an ITIN. For illegal aliens whose only option is
16 to use an ITIN, the plaintiffs have no right to enforce here. By contrast, for class members who
17 are not illegal aliens, the filing via an ITIN over an SSN is the class member's choice (that is, the
18 class members could get an SSN). For this second subset of the plaintiff class, the injury that this
19 suit seeks to redress is, therefore, self-inflicted and does not form the basis for either Article III
20 jurisdiction or injunctive relief.

21
22 By way of background, § 6428 excludes taxpayers who are not work-authorized from
23 recovery payment eligibility. *Amicus* FAIR suspects that that immigration status is the only
24 reason many — or even all — Plaintiffs' alien spouses lack an SSN. For any Plaintiffs' spouses
25 who were not illegal aliens, those Plaintiffs could have petitioned for no-quota work-authorized
26

1 immigrant visas (and SSNs) under the “immediate relative” classification. 8 U.S.C. §
2 1151(b)(2)(A)(i). For this reason, the proposed class consists of two *subclasses*: (a) illegal aliens
3 ineligible for SSNs; and (b) other aliens who have chosen not to apply for an SSN. The standing
4 analysis differs for these two subclasses, but neither has standing.

5 **1. Class members who *are not* illegal aliens suffer self-inflicted injuries,
6 which do not support standing.**

7 For Plaintiffs — and class members, if a class is certified — who could obtain an SSN,
8 but have chosen not to do so, the injury from the CARES Act’s criteria is a self-inflicted injury.
9 Such injuries cannot support standing. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013);
10 *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976). Accordingly, if any of Plaintiffs are in
11 this subclass, they should be dismissed.

12 **2. Class members who are spouses of illegal aliens lack a legally protected
13 interest.**

14 As indicated, *amicus* FAIR suspects that most Plaintiffs fall into this second subclass:
15 citizens married to illegal aliens who cannot obtain an SSN because they are not authorized to
16 work in the United States. Even these Plaintiffs could, of course, obtain CARES payments for
17 the U.S. citizen spouse and any U.S. citizen children by filing a “married, filing separately” tax
18 return, but Plaintiffs want more.

19
20 But these Plaintiffs simply have no right to more. Even if Plaintiffs’ characterization of §
21 6428 were presumed to be accurate, that section could not provide the basis for a claim for the
22 individual taxpayers or their proposed class members because that assistance would constitute a
23 “welfare” or “similar” federal public benefit “provided by appropriated funds of the United
24 States.” 8 U.S.C. § 1611(c)(2). Thus, none of these Plaintiffs or proposed class members would
25 be eligible for such assistance. Their alien spouses are not “qualified aliens” as defined by federal
26

1 welfare reform law. *See* 8 U.S.C. §§ 1611(a) (restriction of federal public benefits to “qualified
2 aliens”), 1641(b) (definition of “qualified alien”). In sum, the CARES Act payments are not open
3 to illegal aliens based on federal immigration law.

4 An Article III “injury in fact” requires “an invasion of a *legally protected interest* which
5 is ... concrete and particularized” to that plaintiff. *Defenders of Wildlife*, 504 U.S. at 560
6 (emphasis added). Plaintiffs have no such rights, so this is an instance where standing merges
7 with the merits. *See* Section II, *infra* (Plaintiffs fail to state a claim); *Land v. Dollar*, 330 U.S.
8 731, 735 (1947) (when jurisdiction and the merits “intertwine,” federal courts resolve the
9 jurisdictional and merits issues together). As the Supreme Court recently explained in rejecting
10 standing for *qui tam* relators based on their financial stake in a False Claims Act penalty, not all
11 *interests* qualify as *legally protected* interests:
12

13 There is no doubt, of course, that as to this portion of the recovery —
14 the bounty he will receive if the suit is successful — a *qui tam* relator
15 has a concrete private interest in the outcome of the suit. But the
16 same might be said of someone who has placed a wager upon the
17 outcome. *An interest unrelated to injury in fact is insufficient to give
a plaintiff standing.* The interest must consist of obtaining
compensation for, or preventing, the violation of a legally protected
right. A *qui tam* relator has suffered no such invasion[.]

18 *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 772-73 (2000) (emphasis
19 added, interior quotation marks, citations, and alterations omitted); *accord McConnell v. FEC*,
20 540 U.S. 93, 226-27 (2003). Thus, not all pecuniary losses necessarily qualify as an injury in
21 fact. The same is true with Plaintiffs’ alleged interest.

22 “[Article] III standing requires an injury with a nexus to the substantive character of the
23 statute or regulation at issue.” *Diamond v. Charles*, 476 U.S. 54, 70 (1986); *cf. Stevens*, 529 U.S.
24 at 772-73 (claimed interest must qualify as a “legally protected right”). As explained in Section
25 II, *infra*, neither the CARES Act nor the Constitution provides Plaintiffs a legally protected
26

1 interest in payments to families with illegal-alien spouses.³

2 **B. Plaintiffs' claims are not ripe.**

3 As the Government explains, Plaintiffs' claims are not ripe. Gov't Memo. at 9-11. "A
4 claim is not ripe for adjudication if it rests upon contingent future events that may not occur as
5 anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998)
6 (internal quotations and citations omitted). Here, it is uncertain whether Plaintiffs will be entitled
7 to a CARES payment (for example, their income might go up, their immigration or Armed Forces
8 status might change).

9 **C. Sovereign immunity bars this suit.**

10 As the Government explains, Plaintiffs' tax-refund remedy under 26 U.S.C. § 7422
11 provides not only an adequate remedy but also the exclusive remedy for Plaintiffs' injuries. Gov't
12 Memo. at 6-8, 11-14. That puts this action outside the United States' waiver of sovereign
13 immunity. *Id.* at 11-12. Specifically, the status quo does not constitute "final agency action," but
14 even if it did, Plaintiffs would have an "adequate remedy in a court." *See* 5 U.S.C. § 704. For
15 either reason — lack of finality or availability of an alternate remedy — the injuries raised here
16 must proceed under the special statutory review in the tax code, *see* 5 U.S.C. § 703, not the
17 general action for review under the Administrative Procedure Act ("APA"). *Id.*

18 **D. Plaintiffs cannot bring an officer suit under *Ex parte Young*.**

19 By naming federal officers, Plaintiffs seek to evade sovereign immunity by enjoining a
20 violation of federal law. *See, e.g., United States v. Lee*, 106 U.S. 196, 220-21 (1882) (property);
21 *Ex parte Young*, 209 U.S. 123, 149 (1908) (property); *Youngberg v. Romeo*, 457 U.S. 307, 316
22

23
24
25 ³ Although this requirement is analogous to the prudential zone-of-interests test, *Stevens*
26 and *McConnell* make clear that the need for a *legally protected interest* is an element of the
threshold inquiry under Article III of the Constitution, not a merely prudential inquiry.

1 (1982) (liberty). But — like the APA and its waiver of sovereign immunity — equity requires
2 the lack of an adequate alternate remedy, which restricts Plaintiffs’ equitable claims for the same
3 reason that it bars their APA claims. *See* Section I.C, *supra*. Three other issues also bar the relief
4 that Plaintiffs seek in equity.

5 First, the other half of the core entitlement to equitable relief is irreparable harm. As
6 explained, some of the alleged injuries may be self-inflicted. *See* Sections I.A.1-I.A.2, *supra*.
7 Even injuries that can qualify as cognizable under Article III can nonetheless fail to qualify under
8 the higher bar for irreparable harm. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149-
9 50, 162 (2010). Plaintiffs’ injuries result from their own choices, such as not getting an SSN or
10 filing jointly. “[S]elf-inflicted wounds are not irreparable injury.” *Second City Music, Inc. v. City*
11 *of Chicago*, 333 F.3d 846, 850 (7th Cir. 2003); *Novartis Consumer Health, Inc. v. Johnson &*
12 *Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 596 (3d Cir. 2002) (“injury ... may be
13 discounted by the fact that [a party] brought that injury upon itself”); *Davis v. Mineta*, 302 F.3d
14 1104, 1116 (10th Cir. 2002). To the extent Plaintiffs’ allegedly irreparable harm is self-inflicted,
15 this Court should not issue relief to Plaintiffs.
16

17 Second, the *Ex parte Young* exception to sovereign immunity does not allow the Court to
18 order the Government to make payments from the Treasury that Congress has not appropriated
19 or authorized. Under the circumstances, then, this Court’s injunctive relief would need to “level
20 down” the allegedly unequal treatment if Plaintiffs prevailed:
21

22 [W]hen the ‘right invoked is that to equal treatment,’ the appropriate
23 remedy is a mandate of *equal* treatment, a result that can be
24 accomplished by withdrawal of benefits from the favored class as
25 well as by extension of benefits to the excluded class.
26

1 *Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (citations and footnotes omitted, emphasis in
2 original). In other words, Plaintiffs cannot get CARES payments, but they potentially can stop
3 citizens, lawful residents, and other work-authorized aliens from getting CARES payments.

4 Third, the CARES Act seeks to stimulate the economy in a national emergency. This
5 Court should hesitate before enjoining the payment of benefits that Congress found necessary to
6 help address that emergency. Thus, even if Plaintiffs could establish not only this Court’s
7 jurisdiction but also the merits of Plaintiffs’ claims, that would not necessarily require injunctive
8 relief: “a federal judge sitting as chancellor is not mechanically obligated to grant an injunction
9 for every violation of law.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982); *cf.*
10 *Burford v. Sun Oil Co.*, 319 U.S. 315, 318 (1943) (“It is in the public interest that federal courts
11 of equity should exercise their discretionary power with proper regard for the rightful
12 independence of ... governments in carrying out their domestic policy.”). Where Plaintiffs have
13 a later action for a tax refund, their equitable cause of action could be “dismissed for want of
14 equity without prejudice to an action at law.” *Beasley v. Tex. & P. R. Co.*, 191 U.S. 492, 494
15 (1903). *Port Angeles W. R. Co. v. Clallam Cty.*, 44 F.2d 28, 31 (9th Cir. 1931). That would leave
16 Plaintiffs free to request the favorable treatment that they seek.

17
18
19 While *amicus* FAIR respectfully submits that Plaintiffs lack a legally protected interest
20 and bring meritless claims, this Court should dismiss an equitable action even if the Court views
21 its jurisdiction and the merits differently.

22 **E. With respect to Senator McConnell, the Speech or Debate Clause bars this**
23 **suit.**

24 The Speech or Debate Clause, U.S. CONST., art. I, § 6, cl. 1, provides immunity for
25 Congress and its Members for any claims predicated on legislative activities. *See Eastland v.*
26 *U.S. Servicemen’s Fund*, 421 U.S. 491, 502 (1975). This immunity extends to all civil actions.

1 *Id.* at 503. “[T]he Speech or Debate Clause immunizes Congressmen from suits for either
2 prospective relief or damages.” *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446
3 U.S. 719, 731 (1980); *accord Chateaubriand v. Gaspard*, 97 F.3d 1218, 1220 (9th Cir. 1996).
4 Where it applies, the Clause protects legislators “not only from the consequences of litigation’s
5 results but also from the burden of defending themselves.” *Dombrowski v. Eastland*, 387 U.S.
6 82, 85 (1967). Accordingly, “[t]he Speech or Debate Clause operates as a jurisdictional bar” to
7 this type of action. *Howard v. Office of the Chief Admin. Officer*, 720 F.3d 939, 941 (D.C. Cir.
8 2013) (interior quotation marks omitted).
9

10 While it has become common under the Obama and Trump administrations for plaintiffs
11 to name Presidents as defendants for claims that a federal court lacks jurisdiction to press against
12 the President, Plaintiffs here can cite no such trend with respect to Senator McConnell, who was
13 merely one sponsor of the challenged legislation. *Amicus* FAIR respectfully submits that this
14 Court should not only dismiss Senator McConnell as a defendant but also ask Plaintiffs’ counsel
15 to explain why including Senator McConnell as a defendant is “warranted by existing law or by
16 a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing
17 new law.” FED. R. CIV. P. 11(b)(2).
18

19 **II. PLAINTIFFS CANNOT STATE A CLAIM UNDER EITHER THE CARES ACT
20 OR THE CONSTITUTION.**

21 If this Court has jurisdiction, the Court should dismiss Plaintiffs’ claims for failure to
22 state a claim.

23 **A. The Government has not interfered with Plaintiffs’ right to marry.**

24 Nothing in the CARES Act impinges on Plaintiffs’ marriages. *See* Gov’t Memo. at 15-
25 18. Under the circumstances, Plaintiffs’ invocation of the heightened scrutiny afforded to state
26 or federal marriage restrictions is misplaced.

1 **B. The rational-basis test applies to discrimination based on work-**
2 **authorization or illegal-alien status.**

3 *Amicus* FAIR agrees with the Government that the SSN-ITIN divide is a proxy for work
4 status, not race or alienage. *See* Gov’t Br. at 19. Equal-protection and due-process analyses under
5 the Fifth Amendment involve sliding scales of scrutiny, based on whether a fundamental right or
6 protected class is implicated. Here, the discrimination — *if there is any* — would fall under the
7 rational-basis test because no fundamental right or protected class suffers from the CARES Act’s
8 focus on work-authorization status.

9 In *Morales-Izquierdo v. Dep’t of Homeland Sec.*, 600 F.3d 1076 (9th Cir. 2010), the Ninth
10 Circuit rejected a claim that denying an application for adjustment of status “violates a
11 substantive due process right of Morales and his family to live together as a family, by effectively
12 excluding him from the United States for ten years.” 600 F.3d at 1091. While expressing
13 “sympathy ... as it is always troubling when the impact of our immigration laws is to scatter a
14 family,” the Ninth Circuit held that “the right as asserted by Morales is one far removed from the
15 right of United States citizens to live together as a family.” *Id.* Specifically, denial of the benefit
16 “does not violate any of his or his family’s substantive rights protected by the Due Process
17 Clause.” *Id.* The Ninth Circuit explained:

18 To hold otherwise would create a barrier to removing an illegal alien
19 like Morales in any case where that alien has married a United States
20 citizen wife or fathered United States citizen children. Stated
21 another way, to indulge this theory is to hold that an illegal alien
22 with United States citizen family members cannot be removed,
23 regardless of the illegality of that alien’s entry into the United States
24 or conduct while within its borders. Such a remarkable proposition,
25 which would radically alter the status quo of our immigration law,
26 simply cannot be gained by judicial fiat from an intermediate court.

1 *Morales-Izquierdo*, 600 F.3d at 1091. If the Constitution does not protect against separating these
2 families *geographically*, it cannot protect against a requirement to file *tax returns* separately.⁴

3 Assuming *arguendo* that the CARES Act discriminates based on a type of alienage, the
4 Act still triggers rational-basis review. Targeted in Plaintiffs’ view against those officially known
5 as “illegal aliens,” the CARES Act would “discriminate” based on illegality, not on race or
6 national origin: “Undocumented aliens cannot be treated as a suspect class because their presence
7 in this country in violation of federal law is not a ‘constitutional irrelevancy.’” *Plyler v. Doe*, 457
8 U.S. 202, 223 (1982); *cf. Korab v. Fink*, 797 F.3d 572, 577-78 (9th Cir. 2014) (“federal statutes
9 regulating alien classifications are subject to the easier-to-satisfy rational-basis review”). Where,
10 as here, a law does not “discriminate[] against aliens *lawfully admitted* to this country,” it is
11 constitutional. *DeCanas v. Bica*, 424 U.S. 351, 358 n.6 (1976) (emphasis added); *INS v. Nat’l*
12 *Ctr. for Immigrants’ Rights, Inc.*, 502 U.S. 183, 196 n.11 (1991). To avoid the issue of illegality,
13 the defenders of illegal aliens often claim discrimination based on race or national origin, but
14 doing so has two problems.
15

16 First, equal-protection analysis applies only to an action taken “at least in part *because*
17 *of*, not merely *in spite of*, its adverse effects” on a protected class. *Pers. Adm’r v. Feeney*, 442
18 U.S. 256, 279 (1979) (emphasis added). That does not apply to disparate impacts like those
19 alleged here.⁵ Second, the disparate impact is not so great or so unexpected as to provide an
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22 ⁴ The fact that Plaintiffs’ “mixed-status” families may include citizen dependents with
23 SSNs is also constitutionally irrelevant. *Gonzalez-Cuevas v. INS*, 515 F.2d 1222 (5th Cir. 1975)
24 (having citizen children does not advantage alien parents, directly or vicariously, regarding
immigration laws).

25 ⁵ In *Feeney*, the passed-over female civil servant alleged that Massachusetts’ veteran-
26 preference law for civil-service promotions and hiring constituted sex discrimination. Because
women then represented less than two percent of veterans, *Feeney*, 442 U.S. at 270 n.21, men
were more than *fifty times* more likely to benefit from the state law challenged in *Feeney*.

1 inference of animus: “because Latinos make up a large share of the unauthorized alien
2 population, one would expect them to make up an outsized share of recipients of any cross-cutting
3 immigration relief program.” *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, Nos.
4 18-587, 18-588, 18-589, 2020 U.S. LEXIS 3254, at *47 (June 18, 2020) (Slip Op. at 27-28).
5 Neither illegality nor unauthorized work status are protected classes. Plaintiffs must, therefore,
6 proceed under the rational-basis test.

7 **C. The CARES Act satisfies the rational-basis test.**

8 Plaintiffs argue that the CARES Act’s ITIN focus is a proxy for alienage or race. Under
9 the rational-basis test, “a legislative choice is not subject to courtroom fact-finding and may be
10 based on rational speculation unsupported by evidence or empirical data,” *F.C.C. v. Beach*
11 *Communications, Inc.*, 508 U.S. 307, 315 (1993).⁶ Consequently, rational-basis plaintiffs must
12 “negative every conceivable basis which might support [the challenged statute],” including those
13 bases on which the state plausibly *may have* acted. *Lehnhausen v. Lake Shore Auto Parts Co.*,
14 410 U.S. 356, 364 (1973) (internal quotation marks omitted, emphasis added). By contrast,
15 plaintiffs cannot prevail even by marshaling “impressive supporting evidence ... [on] the
16 probable consequences of the [statute]” vis-à-vis the legislative purpose but must instead negate
17 “the *theoretical* connection” between the two. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S.
18 456, 463-64 (1981) (emphasis in original). Plaintiffs’ conjecture — while not evidence — would
19 not help Plaintiffs, even if it were evidence.
20
21

22
23 _____
24 Nonetheless, Massachusetts did not discriminate *because of sex* when it acted because of another,
25 permissible criterion (veteran status). *Id.* at 272. Like Massachusetts, the CARES Act is based
26 on a permissible criterion (work authorization), which is not unlawful discrimination.

⁶ The rational-basis test applies because the due-process right here involves neither fundamental rights nor protected classes. *Id.* at 313.

1 Under *Beach* and *Lehnhausen*, it would be enough for the Government if Congress
2 plausibly *may have* acted based on work-authorization status. Under the Supreme Court's recent
3 *Regents* decision, any disparate impact is entirely understandable and shows no animus. In short,
4 Plaintiffs cannot disprove the *theoretical* connection between Congress's efforts to target
5 CARES Act payments and the CARES Act's goals.

6 **CONCLUSION**

7 This Court should grant the Government's motion to dismiss this action.

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9 Respectfully submitted,

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