

CARES Act Payment Suit by Immigrant's Spouse Survives Dismissal

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By Andrew Velarde

A putative class action suit filed by a U.S. citizen over the denial of economic impact payments because of his marriage to an immigrant without a Social Security number has survived a motion to dismiss.

In *John Doe v. Trump*, [No. 20-cv-02531](#), the U.S. District Court for the Northern District of Illinois partially denied the government's motion to dismiss on December 14. The government argued that it could not be sued, given the absence of a waiver of sovereign immunity. But the court agreed with Doe, who argued that the Administrative Procedure Act (APA) allows him to bring the suit against the IRS and Treasury even though he is not seeking review of a final agency action.

"Because Doe is seeking injunctive relief, his argument is not barred by [5 U.S.C. section] 702. In addition, despite the United States' argument to the contrary, 'the waiver in [section 702](#) is not limited to claims brought pursuant to the review provisions contained in the APA itself,' but also 'applies when any federal statute authorizes review of agency action, as well as in cases involving constitutional challenges and other claims arising under federal law,'" Judge Sharon Johnson Coleman held (citation omitted).

Guinevere Moore of the Moore Tax Law Group LLC, who is the plaintiff's co-counsel, praised the decision as a "fantastic step in the right direction."

"This is a significant and important ruling both for the plaintiff and the putative class, but also for tax lawyers in general to take note of the limited jurisdiction that the court held exists in APA claims," Moore said.

Moore added that while the court's decision did not delve into the merits of the government's Rule 12(b)(6) motion to dismiss for failure to state a claim, the order implicitly held that the case survived that motion.

Under the Coronavirus Aid, Relief, and Economic Security Act ([P.L. 116-136](#)), [section 6428](#) provides payments of up to \$1,200 for individuals and \$500 for qualifying children. To receive the payments, an individual must have a Social Security number — a qualification that excludes undocumented immigrants who file taxes with an individual taxpayer identification number, as well as U.S. citizens who file a joint tax return with a noncitizen spouse.

Doe is married to an immigrant who pays and files tax returns with an ITIN. According to Doe's amended complaint, there are more than 1.2 million Americans married to immigrants without Social Security numbers, and his suit is brought on behalf of all U.S. citizens married to immigrants who file returns using ITINs and would otherwise have been entitled to the economic impact payment.

The suit alleges violations of the First, Fifth, and Fourteenth Amendments, including the right of association, right to due process, right to equal protection under the law, and the penumbra of privacy rights under the Constitution that creates a fundamental right to marriage.

Duplicative Claims

While denying the dismissal of the suit as it pertains to Treasury and the IRS, the court granted dismissal as to President Donald Trump; Senate Majority Leader Mitch McConnell, R-Ky.; Treasury Secretary Steven Mnuchin; and IRS Commissioner Charles Rettig. The court found that the claims against the individuals are duplicative to those against the United States, and that Trump and McConnell are absolutely immune to the suit because it relates to their constitutional and official duties. While Doe argued that Trump's conduct of signing the CARES Act checks concerned an unofficial act, the court disagreed.

"Doe's argument is unsupported by legal authority except for a treasury directive that does not indicate whether the President can or cannot sign checks drawn from Treasury. Without more, Doe has waived this argument because it is undeveloped and lacks sufficient legal authority," the court held.

The suit is one of several against the government alleging that the CARES Act provision discriminates against undocumented immigrants. In a similar spousal suit in *Jane Doe v. Trump*, [No. 20-cv-00858](#) (C.D. Calif.), a district court held that the plaintiffs failed to state a claim on which relief could be granted. That case is now on appeal before the Ninth Circuit. The Mexican American Legal Defense and Educational Fund has also sued in *Amador v. Mnuchin*, [No. 20-cv-01102](#) (D. Md.), on similar grounds of unconstitutionality. In that case, the district court [denied a motion to dismiss](#) that had been based on sovereign immunity, standing, and failure to state a claim. In *R.V. v. Mnuchin*, [No. 20-cv-01148](#) (D. Md.), [children of undocumented immigrants](#) have also alleged discrimination because of the denial of the economic impact payments.

In *Doe v. Trump*, co-counsel for Doe includes attorneys at Blaise & Nitschke PC and Khalaf & Abuzir LLC.