

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ISOBEL BERRY CULP & DAVID CULP,            )  
  )  
  ) Appellants,  
  ) v.  
  ) Docket No. 22-1789  
  )  
COMMISSIONER OF INTERNAL REVENUE,        ) Filed Electronically  
  )  
  ) Appellee.                                        )

**AFFIDAVIT OF KEITH FOGG**

State of Massachusetts )  
  ) ss.:  
County of Suffolk        )

KEITH FOGG, being duly sworn, deposes and says:

1. I am one of the attorneys for the amicus in the above-entitled case.
2. In an effort to comply with this Court’s rules with respect to amicus briefs, I reached out by phone to counsel for Appellee, Isaac Rosenberg, on Friday, June 10 in the late morning and requested permission to file the amicus brief with consent.
3. Mr. Rosenberg asked a few questions during the conversation including whether the brief related to the case in chief or the motion. In response to this specific question, I informed him that the amicus brief related to the case in chief.

8. During the discussion with Mr. Rosenberg and during the email exchange with Ms. Oppenheimer, neither I, nor my colleague, Carl Smith, discussed the exact time the amicus brief would be filed.

 6-14-2022  

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Keith Fogg

## Fogg, Keith

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**From:** Oppenheimer, Joan I (TAX) <Joan.I.Oppenheimer@usdoj.gov>  
**Sent:** Friday, June 10, 2022 2:42 PM  
**To:** carltonsmth@aol.com; Fogg, Keith; Rosenberg, Isaac B. (TAX)  
**Subject:** RE: [EXTERNAL] Re: Culp

You can file on consent, without a motion.

Joan

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**From:** carltonsmth@aol.com <carltonsmth@aol.com>  
**Sent:** Friday, June 10, 2022 2:40 PM  
**To:** Oppenheimer, Joan I (TAX) <Joan.I.Oppenheimer@usdoj.gov>; kfogg@law.harvard.edu; Rosenberg, Isaac B. (TAX) <Isaac.B.Rosenberg2@usdoj.gov>  
**Subject:** [EXTERNAL] Re: Culp

Joan,

Just to be clear, does the government "consent" to the filing of the brief without a motion, as the taxpayers do? The government's not objecting, technically, might mean that we would have to file a motion for leave to file the brief and simply note that the government has no objection to the motion. In a prior case, the government made us file a motion and note its lack of objection, though that case was many years ago. The DOJ has always in recent years lets us file on consent, without a motion.

Carl

-----Original Message-----

**From:** Oppenheimer, Joan I (TAX) <Joan.I.Oppenheimer@usdoj.gov>  
**To:** Fogg, Keith <kfogg@law.harvard.edu>; Rosenberg, Isaac B. (TAX) <Isaac.B.Rosenberg2@usdoj.gov>  
**Cc:** carltonsmth@aol.com <carltonsmth@aol.com>  
**Sent:** Fri, Jun 10, 2022 2:00 pm  
**Subject:** RE: Culp

We have no objection to your filing an amicus brief.

Joan Oppenheimer

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**From:** Fogg, Keith <kfogg@law.harvard.edu>  
**Sent:** Friday, June 10, 2022 12:11 PM  
**To:** Rosenberg, Isaac B. (TAX) <Isaac.B.Rosenberg2@usdoj.gov>; Oppenheimer, Joan I (TAX) <Joan.I.Oppenheimer@usdoj.gov>  
**Cc:** carltonsmth@aol.com  
**Subject:** [EXTERNAL] RE: Culp

Issac and Joan

Following up on my conversation with Issac this morning and in response to his email below, the tax clinic would like to file an amicus brief in the Culp case. Attached is a draft of that brief. The issue presented here is similar to the issue in the case of