COGNITIVE CARE ALLIANCE

Statement for the Record
Cognitive Care Alliance
600 Maryland Avenue, SW, Suite 835W Washington, DC 20024
Ways & Means Hearing
Implementation of the Medicare Access & CHIP Reauthorization Act
May 25, 2016

The Cognitive Care Alliance, representing over 92,000 physicians from 8 cognitive specialty societies shares the Ways & Means Committee's concerns about the implementation of the Medicare Access & CHIP Reauthorization Act (MACRA). MACRA fundamentally changes the physician payment system, paying physicians based on quality and value rather than volume. However, for MACRA to succeed changes must be made to the resource-based relative value scale (RBRVS) on which the Merit-Based Incentive Payment System (MIPS) and alternative payment models (APMs) will continue to rely.

Though responsible for the accuracy and validity of the fee schedule, the Centers for Medicare and Medicaid Services (CMS) currently utilizes a relative value scale that fails to accurately capture the complex work of non-procedural physician office visits. We have urged CMS to conduct a national research study of cognitive work to address the deficiencies of the RBRVS. With a well-constructed, valid, and representative knowledge-base, new service codes can be defined and provided with appropriate valuations that recognize the complexities and demands of current cognitive medical practice.

Our members, representing the specialties of primary care, endocrinology, infectious disease, gastroenterology, hepatology, neurology, and rheumatology are united in our concern that the existing evaluation and management (E/M) codes do not accurately define discrete levels of cognitive service, do not capture the broad range of cognitive services, and undervalue the critical role that careful evaluation and consideration have in ensuring the safe provision of appropriate, effective, and high quality healthcare services to patients.

The result of this misvaluation is evident in the primary care workforce shortage, which remains a national crisis despite steps taken by CMS. However, the agency has not recognized the impact of the E/M service code deficiencies on other physician specialties, all of which rely on complex integration and thoughtful analysis in their work. We believe that ultimately workforce shortages will have a particularly negatively impact for all the subspecialties represented by our membership of cognate physician groups.

The value proposition of the Medicare Access and CHIP Reauthorization Act (MACRA) will remain unattainable if the foundational deficiencies of Resource-Based Relative Value Scale (RBRVS) are not addressed in a systematic and sustainable fashion.

MACRA requires a balanced workforce, one that not only provides necessary interventions and procedures, but also has a sufficient number of physicians to decide when and if interventions are appropriate. For MACRA to succeed, cognitive physicians must serve as health care advocates for the individual patients who comprise the "populations" served. Primary care physicians must manage the complex interactions in patients who have multiple simultaneous conditions, multiple medications, multiple providers, and multiple tests ordered. Cognitive specialists must have an enormous depth of knowledge in order to judiciously apply interventions that range from procedures to high risk and high cost biologic and pharmacologic therapies. There is a "complexity density" within the work of cognates that is not properly identified or valued in the existing fee schedule.

New models of care delivery must be built from trustworthy building blocks. CMS must prioritize the reworking of the E/M service codes using a strong evidence base. With a well-constructed and valid representative knowledge-base, new service codes can be defined and provided with appropriate relative valuations that recognize the complexities and demands of current medical practice.

This is a "Five Win" opportunity for providers and for the Department of Health and Human Services:

1. For the all those who bill for cognitive services, new evidence-based services definitions will allow physicians to finally have code choices that accurately and completely capture their work.
2. For the cognate providers and those who build new health care delivery models, new valuations will provide equitable payment for equal work intensity.
3. For those who want more straightforward and efficient documentation expectations, new codes can be developed with new guidelines that reduce unneeded clutter and redundancy.
4. For the Office of the National Coordinator, new documentation guidelines can lead to the development of the "electronic footprint" for each service code. This "footprint" can set the reporting expectation for the vendors and simplify the EHR requirements for physicians.
5. For the Agency for Healthcare Quality and Research, an in-depth understanding of the actual content of cognitive services can become the base from which need quality metrics are developed, ones that capitalize on the value added by cognitive work.

Each and every one of these justifications for the needed research will benefit Medicare beneficiaries by ensuring access, improving physician focus on medical decision making, and facilitating the development of valid measures of quality care. They will also help ensure that MACRA succeeds.

As long as MACRA's payment system relies of fee for service, the problems of the RBRVS will have an impact on physicians' success in MACRA. The Ways & Means Committee should force CMS to address these deficiencies in order to ensure patients have access to the care and physicians they require.

Cognitive Care Alliance Member Organizations:

American Academy of Neurology
American Association of the Study of Liver Diseases
American College of Rheumatology
American Gastroenterological Association
Coalition of State Rheumatology Organizations
Endocrine Society
Infectious Diseases Society of America
Society of General Internal Medicine

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JANICE MAYS,
MINORITY CHIEF COUNSEL

August 11, 2015

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

As members of the House Ways and Means Subcommittee on Oversight, we are writing to urge you to exercise the discretion conferred to you under 19 U.S.C. § 1618 and 31 U.S.C. § 5321(c) to remit the funds seized from Randy and Karen Sowers pursuant to the attached petition filed with the Department of Justice. We also ask you to review other cases in which the Internal Revenue Service seized funds on the suspicion that the account holders violated the structuring statute[1] and return funds as appropriate in cases that do not meet the IRS's current policy that the funds must have come from an illegal source.

On February 11, 2015, the Subcommittee held a hearing to examine the IRS's use of its civil asset forfeiture authority to seize funds in cases in which the IRS believed monetary transactions had been structured to avoid IRS reporting requirements. As you know, the statute that prohibits structuring was designed to help interdict money laundering, drug trafficking, and terror financing schemes, not innocent Americans who simply make frequent cash deposits. However, in the course of our investigation we heard from numerous small business owners whose funds the IRS seized solely for this reason. The IRS and the Department of Justice attorneys who pursued these cases would then offer to settle if the small business owners would agree to relinquish a portion of the seized funds—even though in many of these cases, the DOJ and IRS conceded that the small business owners had done nothing wrong.

At our hearing, Randy Sowers, a Maryland dairy farmer, testified that after the IRS seized $67,000 from his farm's account in 2012 because his wife, Karen, often made large cash deposits of proceeds from farmer's markets. A bank teller told Mrs. Sowers that it would reduce paperwork if she deposited the funds in increments under $10,000. Mrs. Sowers did so, believing she was making life easier for the teller, not because she intended to violate federal law. Then, in the course of settlement negotiations, Mr. Sowers told their

[1] 31 U.S.C. § 5324 (prohibiting structuring of financial transactions to avoid IRS reporting requirements).

story to a reporter who published an article on the Sowers' plight. The attorney prosecuting the case then stated in an e-mail that the terms of the settlement agreement were harsher than in other, similar cases because Mr. Sowers had exercised his First Amendment right and spoken to the press. Ultimately, the Sowers settled their case for $29,500 because they needed the remainder of the funds to run their farm.

In his testimony, IRS Commissioner Koskinen apologized to everyone who had been treated unfairly. And, in fact, several months before the hearing, the IRS changed its policy to prohibit seizures based on suspicions of structuring unless the funds came from an illegal source or there were other, exceptional circumstances.[2] That policy change, however, came too late to help the victims of the IRS's abusive seizure practices. Now, Treasury still holds funds seized from innocent small business owners who settled their cases only because they could not afford to do otherwise.

As the Treasury Secretary, you have the opportunity to right the wrong done to these small business owners. As discussed in the attached petition on behalf of Randy and Karen Sowers, you have the discretion to return the seized funds to their rightful owners. The IRS's October 2014 policy change is tantamount to an admission that it never should have seized funds that were not associated with an illegal source. The Sowers and others like them should be treated with the same fairness applied to cases going forward. We ask that you grant this petition and review other, similar cases and return the seized funds expeditiously.

Thank you for your attention to this important matter. If you have any questions about our request, please contact Oversight Subcommittee staff at (202) 225-3783.

Sincerely,

PETER J. ROSKAM
Chairman
Subcommittee on Oversight

JOHN LEWIS
Ranking Member
Subcommittee on Oversight

MIKE KELLY
Subcommittee on Oversight

JOSEPH CROWLEY
Subcommittee on Oversight

[2] Statement of Richard Weber, Chief of I.R.S. Criminal Investigation, N.Y. TIMES, Oct. 25, 2014.

PATRICK MEEHAN
Subcommittee on Oversight

CHARLES RANGEL
Subcommittee on Oversight

JASON SMITH
Subcommittee on Oversight

KRISTI NOEM
Subcommittee on Oversight

JIM RENACCI
Subcommittee on Oversight

CC:

The Honorable Loretta Lynch
United States Attorney General

The Honorable Rod J. Rosenstein
United States Attorney, District of Maryland

The Honorable John Koskinen
Internal Revenue Service Commissioner

Mr. M. Kendall Day
Acting Chief
United States Department of Justice Asset Forfeiture and Money Laundering Division

Enclosure:

Sowers Petition

INSTITUTE FOR JUSTICE

February 16, 2016

The Honorable Loretta Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Madam Attorney General:

I am writing to inquire about the status of a petition for remission or mitigation submitted to your agency on July 16, 2015, on behalf of citizens seeking the return of $29,500 seized and forfeited under the structuring laws.

Petitioners Randy and Karen Sowers are victims of a former DOJ policy—abandoned in March 2015—under which the agency pursued forfeiture of money belonging to Americans accused of nothing more than depositing or withdrawing cash in amounts under $10,000 (so-called "legal source structuring"). Under current DOJ policy, the agency would not pursue forfeiture of Randy and Karen's funds. If it would be wrong to take the money today, it is equally wrong to keep it. Randy and Karen are therefore asking to have their money returned.

As detailed in the enclosed petition for remission or mitigation, Randy and Karen run a dairy farm in rural Maryland. Randy and Karen keep a grueling schedule, waking every day in the middle of the night to care for their cows, and they hardly ever take days off. They are not criminals; they are hard-working Americans who have built a successful business through hard work and perseverance. Shockingly, in February 2012, the IRS seized their entire bank account. The IRS took that money without accusing them of any crime, apart from the mere act of depositing lawfully-earned cash in the bank in amounts under $10,000.

Randy testified before the House Ways and Means Oversight Subcommittee in February 2015. At that hearing, IRS Commissioner John Koskinen stated that there was "no doubt" that Randy had "been aggrieved" and offered an apology. Meanwhile, Chairman Peter Roskam stated that Randy and others like him had "hand[ed] over thousands of fairly earned dollars to the IRS all without having done anything wrong," while Ranking Member John Lewis stated that he also "want[ed] to apologize" for the government's treatment of Randy.

On August 11, 2015, the members of the House Ways and Means Oversight Subcommittee sent a letter to Treasury Secretary Jacob Lew—copied to your office—urging

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your agency to review Randy and Karen's petition, as well as petitions filed by others in similar circumstances, and to "return funds as appropriate in cases that do not meet the IRS's current policy that the funds must have come from an illegal source."

At this point, Randy and Karen have waited over six months for an answer to their petition. Nobody from DOJ has contacted Randy or Karen, or their attorneys, to request additional information related to the petition. Indeed, the petition has generated no response from your agency of any kind.

While we appreciate your thorough consideration of the petition, we wish to underscore the burden caused by any unnecessary delay in the return of these funds. The government seized Randy and Karen's money in February 2012—now over four years ago. Randy and Karen have waited years for the government to correct this grave injustice and should not have to wait years more to receive an answer to their petition.

Thank you for your time and careful attention to this matter.

Sincerely,

Robert Everett Johnson
Attorney
Institute for Justice

Enc: Letter from Ways & Means Subcommittee on Oversight (August 2015)
Petition for Remission or Mitigation (July 2015)

cc: Members of the House Ways & Means Oversight Subcommittee
The Honorable Peter J. Roskam
The Honorable John Lewis
The Honorable Patrick Meehan
The Honorable George Holding
The Honorable Jason Smith
The Honorable Tom Reed
The Honorable Tom Rice
The Honorable Kenny Marchant
The Honorable Joseph Crowley
The Honorable Charles Rangel
The Honorable Danny Davis

Former Members of the House Ways & Means Oversight Subcommittee
The Honorable Mike Kelly
The Honorable Kristi Noem
The Honorable Jim Renacci

The Honorable John A. Koskinen, Commissioner, Internal Revenue Service

The Honorable Rod J. Rosenstein, U.S. Attorney, District of Maryland

Mr. M. Kendall Day, Chief, U.S. Department of Justice AFMLS

INSTITUTE FOR JUSTICE

March 11, 2016

The Honorable Loretta Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Madam Attorney General:

I am writing to update your office about developments relevant to a petition for remission or mitigation submitted to your agency on July 16, 2015 on behalf of Randy and Karen Sowers.

Randy and Karen—two Maryland dairy farmers—have asked DOJ to return $29,500 forfeited under the structuring laws. DOJ has recognized that it was wrong to take this money; in March 2015, DOJ announced a policy change designed to prevent precisely this type of forfeiture by limiting application of the structuring laws to real criminals seeking to conceal illegal activity. Randy and Karen are now asking DOJ to do the right thing and return money taken before that policy change.

Recently, on February 18, 2016, the IRS granted "in full" a nearly-identical petition filed on behalf of a North Carolina convenience store owner named Khalid Quran, agreeing to return $153,907.99 taken under the structuring laws. Khalid filed his petition on the same day as Randy and Karen, and the petitions use similar language to make essentially identical arguments.

Randy and Karen should be treated the same as Khalid. The only real difference between the petitions is technical in nature: Khalid's case was processed as an administrative forfeiture because he signed papers consenting to the forfeiture of his money prior to the filing of a complaint, whereas Randy and Karen's case was processed as a judicial forfeiture because they agreed to forfeit their money after a complaint was filed. This distinction explains why the petitions are addressed to different agencies. But this distinction cannot justify granting one petition and denying the other.

While Randy and Karen agreed to forfeit their money, the same was true of Khalid. Both agreements were exacted under inherently coercive circumstances. As Randy and Karen explain in their petition, the cost to fight the forfeiture would likely have exceeded the amount at issue. Moreover, Randy and Karen were threatened with *criminal* prosecution for structuring if they refused to agree to the forfeiture. As the IRS necessarily determined when granting relief to

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Khalid, that kind of coercive agreement should pose no barrier at all to a petition for remission or mitigation.

Khalid's petition was granted "in full"—meaning that *all* of the money taken from his account will be returned. Randy and Karen deserve nothing less. Their petition should be granted and their $29,500 returned.

Thank you for your attention to this matter.

Sincerely,

Robert Everett Johnson
Attorney
Institute for Justice

Enc: Letter from Richard Weber re: Petition of Khalid Quran

cc: Members of the House Ways & Means Oversight Subcommittee
The Honorable Peter J. Roskam
The Honorable John Lewis
The Honorable Patrick Meehan
The Honorable George Holding
The Honorable Jason Smith
The Honorable Tom Reed
The Honorable Tom Rice
The Honorable Kenny Marchant
The Honorable Joseph Crowley
The Honorable Charles Rangel
The Honorable Danny Davis

Former Members of the House Ways & Means Oversight Subcommittee
The Honorable Mike Kelly
The Honorable Kristi Noem
The Honorable Jim Renacci

The Honorable John A. Koskinen, Commissioner, Internal Revenue Service

The Honorable Rod J. Rosenstein, U.S. Attorney, District of Maryland

Mr. M. Kendall Day, Chief, U.S. Department of Justice AFMLS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Chief, Criminal Investigation

February 18, 2016

Scott Bullock
Robert Everett Johnson
The Institute for Justice
901 N. Glebe Rd., Ste. 900
Arlington, VA 22203
(fax) 703 - 682 - 9321

Re: Petition for Remission or Mitigation of Forfeiture Filed by Scott Bullock and Robert Everett Johnson, of the Institute for Justice, on behalf of Khalid Quran, concerning: $153,907.99 in U.S. Currency Seized from the Southern Bank and Trust Company Account [redacted] Held in the Name 427 Convenient Mart [redacted]

Dear Mr. Bullock & Mr. Johnson:

On behalf of your client, Khalid Quran, you submitted a petition for remission or mitigation of forfeiture of $153,907.99 in U.S. currency seized from the Southern Bank and Trust Company account [redacted] held in the name of "427 Convenient Mart," pursuant to a seizure warrant authorized by a federal judge and administratively forfeited.

After careful consideration of your petition, all relevant facts and applying the criteria for remission or mitigation pursuant to Internal Revenue Manual (IRM) section 9.7.7.4.6 and Title 28, Part 9 of the Code of Federal Regulations, I have concluded that mitigation of forfeiture is granted in full.

Sincerely,

Richard Weber
Chief, Criminal Investigation

BEFORE THE
UNITED STATES DEPARTMENT OF JUSTICE

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

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Pursuant to 19 U.S.C. § 1618 and 31 U.S.C. § 5321(c), Randy and Karen Sowers hereby petition the United States Department of Justice and the Internal Revenue Service to remit or mitigate $29,500 that was seized from their bank account on or about February 28, 2012, and ordered forfeited by the United States District Court for the District of Maryland on May 30, 2012. Those funds would not be seized—much less forfeited—under current government policy. Now, the government should do the right thing and give the money back.

INTRODUCTION

Randy and Karen Sowers run a dairy farm in Frederick County, Maryland, in the same rural community where they were born, married, and lived their entire lives. Both Randy and Karen had grandparents who were farmers, and they met while participating in 4-H programs. They purchased their first 100 cows together in 1981. Since then, they have worked virtually without pause to care for their animals and grow the operation. More than 30 years after opening their farm, Randy and Karen still wake before dawn every day to milk their cows.

In February 2012, the IRS seized the entire bank account for Randy and Karen's farm, containing $62,936.04. The government took the money because Randy and Karen deposited cash earned at farmers' markets into their account in amounts under $10,000. Federal law requires banks to report cash transactions over $10,000 and makes it a crime ("structuring") to deposit cash in amounts under $10,000 in order to evade that reporting requirement. This law was intended to target drug dealers, tax evaders, and other criminals seeking to conceal their activities from the government. But, in Randy and Karen's case, the law was applied to innocent business owners guilty of nothing more than doing business in cash. Randy and Karen deposited cash in amounts under $10,000 only because a bank teller told Karen that doing so would avoid unnecessary, unspecified paperwork. Apart from that act of depositing cash, the government has never even *alleged* that Randy and Karen did anything unlawful.

After taking Randy and Karen's money, the government presented them with an offer they could not afford to refuse. Randy and Karen could go to court and fight for months or even years to contest the forfeiture—likely spending more in attorney fees than the amount that had been seized—or they could agree to forfeit $29,500 of the approximately $63,000 that was taken. Even though Randy and Karen believed they had done nothing wrong, they needed the seized money for their farming operations and could not afford a protracted legal battle to prove their innocence. So, like many other property owners faced with this choice, Randy and Karen reluctantly agreed to forfeit $29,500 of their hard-earned money.

While the government still holds that $29,500, the government today would not even *initiate* forfeiture proceedings against Randy and Karen. Cases like Randy and Karen's have been harshly condemned, including by Members of Congress at a hearing this spring where Randy was called to testify. *See*, *e.g.*, Exhibit C at 86 (statement of Rep. Crowley) ("Mr. Sowers . . . I don't think you, nor any of the gentlemen before us today, deserve to be treated by your Government, by the IRS, in the way in which you have been."). In the face of this criticism, both the IRS and the DOJ recently announced policy changes under which they will no longer seek to forfeit money under the structuring laws where—as here—the money involved in the allegedly structured transactions is derived from lawful activity. *See* Exhibits A, B. As the IRS Commissioner explained at the same congressional hearing at which Randy testified, this policy will "ensure fairness for taxpayers" and "protect the rights of individuals" by "making sure that taxpayers get appropriately protected." Exhibit C at 11, 15. The policy change implicitly recognizes that what happened to Randy and Karen was not fair, was not appropriate, and did not adequately respect Randy and Karen's constitutional rights to property and due process.

Having recognized that what happened to Randy and Karen was wrong, the government should do the right thing and give the money back. The government has ample authority to correct this injustice: Congress has authorized the return of forfeited money, under the remission and mitigation procedure, so long as it will promote the interests of justice. *See* 19 U.S.C. § 1618; 31 U.S.C. § 5321(c). And DOJ regulations recognize that return of forfeited money is appropriate where it "will promote the interest of justice and will not diminish the deterrent effect of the law." 28 C.F.R. § 9.5(b)(1)(i). In light of current policy, the DOJ and IRS evidently have determined that seizure of money from people like Randy and Karen is neither just nor necessary to deter criminal behavior. So there can be no question that return of property is merited under the standards for remission and mitigation.

When Randy testified before Congress, Representative John Lewis told Randy, "as one Member of Congress and a member of this committee, I want to apologize to you for . . . what the IRS did to you." Exhibit C at 93. Under the remission and mitigation procedure, the government can offer something even better than an apology: The petition should be granted, and the money should be returned.

STATEMENT OF FACTS

A. Randy And Karen's Dairy Farm Business

For over thirty years, Randy and Karen Sowers have run a dairy farm in Frederick County, Maryland. Exhibit D ("Randy Dec.") ¶ 2. They both grew up in Frederick County, just miles from where their farm is located today. *Id.* They opened the farm in 1981, and in 2000, after selling through middlemen for years, they began selling milk directly to consumers under the name "South Mountain Creamery." *Id.* ¶¶ 2, 4. South Mountain Creamery delivers milk, eggs, and other dairy products to the doorsteps of homes throughout large parts of Maryland,

Virginia, and the District of Columbia. *Id.* ¶ 4. In 2011, the farm was certified humane by Humane Farm Animal Care. *Id.*

Randy and Karen wake up every day around midnight to milk the cows and work through the night until about 4:30 or 5:00 a.m. *Id.* ¶ 3. Then they head back to bed to catch a few hours' rest before beginning their morning shift. *Id.* Randy and Karen maintain that schedule every day of the week, without weekends or days off, and only rarely take vacations. *Id.*

In addition to delivering their products directly to customers, Randy and Karen also sell at farmers' markets. *Id.* ¶ 5. The number of markets that they attend has fluctuated over the years. *Id.* At some points they have sold at as many as seven different markets, but today they sell at only two markets in Baltimore—one on Saturdays and another on Sundays. *Id.* To get to a farmers' market, Randy and Karen must pack up their truck and leave the farm by 4:30 a.m. for the drive into Baltimore. *Id.*

B. Randy And Karen's Cash Deposits

Because of the nature of their business, Randy and Karen often deposit cash in the bank. Randy Dec. ¶ 6; *see also* Exhibit E ("Karen Dec.") ¶ 3. After all, customers at farmers' markets frequently pay in cash. Randy Dec. ¶ 6. The size of Randy and Karen's cash deposits varies depending on the number of farmers' markets that they visit and the amount of milk, eggs, and other products that they sell. *Id.* Sometimes Randy and Karen have less than $10,000 in cash to deposit, but sometimes they have more. *Id.*

After one particularly busy weekend in spring 2011, a bank teller told Karen that cash deposits over $10,000 would require "paperwork." Karen Dec. ¶ 4; *see also* Randy Dec. ¶ 7. The teller suggested that this paperwork would be time-consuming for bank personnel to fill out and that Karen could make life easier for bank employees by keeping the size of her deposits under $10,000. Karen Dec. ¶ 4. Karen did not know what this paperwork consisted of. *Id.* The teller

said nothing at all about the IRS, and, for all Karen knew, the paperwork might have been required by internal bank rules with no connection whatsoever to the federal government. *Id.* Karen generally kept some cash on hand to make change and to help cover expenses at the store, and, given the teller's advice, it seemed reasonable to hold enough cash in reserve to keep the size of the deposits under $10,000. *Id.* Karen did this to avoid red tape at the bank—not to hide information from the IRS. *Id.* ¶ 5; *see also* Randy Dec. ¶ 7.

C. The Seizure And Subsequent Retaliation For Speaking To The Press

On February 29, 2012, two government agents came to Randy and Karen's farm without any prior warning and informed them that the government had seized their farm's entire bank account—in total, $62,936.04—based on a pattern of under-$10,000 cash deposits. Randy Dec. ¶ 8; *see also* Exhibit G (affidavit supporting seizure warrant). After a brief interview, the agents said that they did not believe Randy and Karen were criminals. Randy Dec. ¶ 8. Nevertheless, the agents made it clear that the government would not be returning the seized money. *Id.* The agents also served Randy and Karen with a grand jury subpoena, raising the possibility that Randy and Karen could be prosecuted *criminally* for structuring their bank deposits. *Id.*; *see also* Exhibit H.

Alarmed by this visit, Randy contacted his attorney, David Watt, who in turn reached out early the following week to Stefan Cassella, the responsible Assistant United States Attorney. *See* Exhibit F ("Watt Dec.") ¶ 4.[1] After Mr. Watt explained the situation, Mr. Cassella indicated that the government would need to examine the Sowers' financial records but that—so long as that examination turned up nothing unlawful—the case could likely be resolved through negotiation. *Id.* Mr. Cassella explained that each side would propose some amount below the total sum seized and that the parties would then agree upon an amount for the forfeiture. *Id.*

[1] Mr. Watt also enlisted the assistance of Paul Kamenar, a Washington, D.C. attorney with experience in civil and criminal enforcement. Watt Dec. ¶ 9.

In the meantime, although Randy and Karen did not seek out press attention, Randy did respond to inquiries about the case from the press. Randy Dec. ¶ 13. In April 2012, a reporter from *The City Paper* in Baltimore learned about the case from court filings and contacted Randy. *Id.* Randy told the reporter:

> We had no idea there was supposedly a law against it—we were just doing it the way we figured we were supposed to, making deposits every week . . . We're farmers, we struggle every day to pay bills. We don't know what else to do. Now we just feel like putting [our cash] in a can somewhere.

Exhibit I (Van Smith, *South Mountain Creamery's Bank Account Seized as Part of Money Laundering Crack Down*, City Paper, Apr. 18, 2012).[2]

The same day this article appeared in the paper, Mr. Watt contacted Mr. Cassella to continue settlement negotiations. Randy and Karen had fully complied with the government's request for financial information, and Mr. Watt expected Mr. Cassella to be willing to resolve the case on favorable terms in light of that disclosure. Watt Dec. ¶ 6. Instead, Mr. Cassella stated that that they now had a "problem" because Randy had spoken with the press. *Id.* ¶ 7. Mr. Cassella indicated that he could not be seen to exercise any leniency in Randy's case—lest that be interpreted as somehow giving in to media pressure—and stated that he would be forced to file a formal forfeiture complaint as a result. *Id.* ¶ 7. One day after this conversation, Mr. Cassella did in fact file a forfeiture complaint. *Id.* ¶ 8; *see also* Exhibit J.

Mr. Cassella was still willing to settle the case out of court after *The City Paper* ran its article, but he made clear in that same conversation with Mr. Watt that he was no longer willing

[2] Steven Levin, a former Assistant United States Attorney for the District of Maryland, was quoted in that same article saying the following about the structuring laws: "The emphasis is on basically seizing money, whether it is legally or illegally earned. . . . It can lead to financial ruin for business owners, and there's a potential for abuse here by the government, where they use it basically as a means of seizing money." Exhibit I at 2. Another former Assistant United States Attorney, Gerard Martin, exclaimed: "South Mountain Creamery! . . . They're going after South Mountain Creamery! That's an icon. That's like going after mom and apple pie." *Id.*

to negotiate the settlement amount. Watt Dec. ¶ 7. Instead, Mr. Cassella told Mr. Watt that Randy and Karen would have to forfeit $29,500. *Id.*

Mr. Cassella also insisted that any settlement agreement include a concession that the government had "reasonable cause" to seize the money. Watt Dec. ¶ 10. When Mr. Watt objected to that language, Mr. Cassella said that it was standard in these types of settlements. *Id.* However, Mr. Watt obtained a copy of an agreement recently negotiated by Mr. Cassella in a similar case (also involving a farmer accused of structuring) that did *not* contain such language. *Id.* ¶ 11. Mr. Watt emailed Mr. Cassella to ask about the difference, and Mr. Cassella responded that the farmer in the earlier case "did not give an interview to the press." Exhibit K.

D. The Forfeiture Of Randy And Karen's Money

Faced with an ultimatum to either accept the forfeiture of $29,500 or proceed to court, Randy and Karen felt they had little choice. *See* Randy Dec. ¶ 15. Fighting the forfeiture of the money would have taken months or even years. *Id.*[3] The cost to fight the forfeiture in court almost certainly would have dwarfed the amount at issue. *Id.* And, in the meantime, the money would have remained in the possession of the government—although it was money that Randy and Karen needed for their business. *Id.* For Randy and Karen, the only logical thing to do was to accept the government's offer.

That logic was confirmed by the possibility, raised by the grand jury summons, of *criminal* prosecution for structuring. *Id.* ¶ 16. And Randy and Karen also had to consider the possibility that the government could seek the forfeiture of a far larger amount of money, as authorized by the seizure warrant. *Id.* While Randy and Karen firmly believed they had done

[3] Between 2005 and 2012, the average time from seizure to forfeiture in civil judicial structuring cases was 460 days. The longest case in that period took over 2,390 days to resolve. *See* Dick M. Carpenter II and Larry Salzman, *Seize First, Question Later: The IRS and Civil Forfeiture* 19 (2015).

nothing wrong, they could not ignore the possibility that the government would go after additional money or even pursue criminal charges.

This harsh logic led to a single conclusion: Although Randy and Karen did not understand why they should be punished for the mere act of depositing lawfully-earned money in the bank, they agreed to the forfeiture of nearly half the contents of their bank account. Under the terms of the settlement agreement submitted to the court in May 2012, Randy and Karen agreed to forfeit $29,500. *See* Exhibit L. As Mr. Cassella had insisted, the agreement stated that there was "reasonable cause to seize the defendant currency." *Id.* However, the agreement was clear that Randy and Karen "admit no wrongdoing," *id.*, and nothing in the agreement purported to bar the filing of a petition for remission or mitigation.

The seizure and forfeiture of their bank account was extremely difficult for Randy and Karen. Randy was forced to scramble to replace money that he had planned to use to buy supplies for that year's crops and ultimately had to divert money that he otherwise would have used to pay off debts or grow the business. Randy Dec. ¶ 17. Meanwhile, although Karen has always been careful to avoid bouncing checks, she found herself forced to explain to business partners why scheduled transactions were not going through. Karen Dec. ¶ 7. The bank where they had done business over a decade summarily closed their account. *Id.* Randy and Karen worried that people would assume they must have committed a serious violation of the law to have had their money seized, and in fact they became aware that they were the subject of hurtful gossip in their community. *Id.* Karen found the situation so stressful that she suffered physical effects. *Id.* And Randy was left wondering how something like this could possibly happen in America. Randy Dec. ¶ 19.

ARGUMENT

I. The Government Has Authority To Return Randy And Karen's Money, And There Are No Procedural Barriers To Granting The Petition.

Although the forfeiture of Randy and Karen's money is complete, the government retains the ability to make this situation right. In recognition of the "extraordinarily broad scope of federal forfeiture laws and the harsh results they sometimes occasion," Congress has established a procedure—called a petition for remission or mitigation—that allows property owners to seek return of property that has been forfeited to the federal government. 2 David B. Smith, Prosecution and Defense of Forfeiture Cases, § 15.01 (2015). Randy and Karen now invoke that procedure to ask the government to return the money it has taken.

A. The Government Has Statutory Authority To Return The Money.

The government's statutory authority to return Randy and Karen's money is plain and clear. The general provision governing petitions for remission or mitigation dates back to the First Congress, *see* Smith, *supra*, § 15.01, and authorizes the Secretary of the Treasury ("the Secretary") to grant a petition whenever he "finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture." 19 U.S.C. § 1618. The Secretary has broad discretion to "remit or mitigate the same upon such terms and conditions as [the Secretary] deems reasonable and just." *Id.* More specifically, Congress has provided that the Secretary "may remit *any part* of a forfeiture under . . . section 5317 of this title," which in turn is the provision authorizing forfeiture for structuring violations of the sort at issue here. 31 U.S.C. § 5321(c) (emphasis added).

As the governing statutes make plain, Congress intended to confer broad authority to return forfeited money whenever doing so would advance the interests of justice. The statutes do not limit the factors that officials may consider in deciding whether to grant a petition for

remission or mitigation; officials charged with deciding a petition can grant relief whenever they find the existence of "such mitigating circumstances as to justify the remission or mitigation." 19 U.S.C. § 1618. In other words, the law confers "virtually unreviewable discretion to ameliorate the harshness of forfeiture statutes in appropriate cases." *United States v. United States Currency in the Amount of $2,857.00*, 754 F.2d 208, 214 (7th Cir. 1985). And, as the Supreme Court has observed, that grant of discretion was intended to ensure that the forfeiture laws "impose a penalty only upon those who are *significantly involved* in a criminal enterprise." *United States v. United States Coin and Currency*, 401 U.S. 715, 721-22 (1971) (emphasis added). The only limitation on this grant of statutory authority is the government's sense of justice.

The government, moreover, has authority to return *all* of the property. The relevant statute is clear that the government has discretion to choose to "remit *any part* of a forfeiture." 31 U.S.C. § 5321(c) (emphasis added). When that language is read in conjunction with applicable DOJ regulations, it becomes clear that the phrase "any part" encompasses the sum total of the forfeiture. Remission of the entire amount of the forfeiture is authorized where a petitioner is an innocent owner. *See* 28 C.F.R. § 9.5(a). And regulations pertaining to *mitigation* likewise allow return of the entire property, at least so long as return is paired with imposition of non-monetary conditions. *See* 28 C.F.R. § 9.5(b)(3) (stating that mitigation may be premised on "a monetary condition *or* the imposition of other conditions relating to the continued use of the property"). The government might, for instance, require Randy and Karen to sign a notification stating that they are now aware of the structuring laws. While Randy and Karen do not believe they should have to enter into any kind of agreement to get their property back—as it is their property and should never have been taken in the first place—they are willing to sign such a paper if it is the only way to secure the return of the entire amount of the forfeited property.

B. Randy And Karen's Agreement To Forfeit The Money Does Not Bar Their Petition.

Nothing in Randy and Karen's settlement agreement bars this petition. To be sure, the agreement releases the government from any "claims, damages, losses, and action resulting from or arising out of the seizure and release of the defendant property." Exhibit L ¶ 5. But that language is plainly intended to shield the government from liability that might be imposed by a court; it speaks of "damages" or an "action" and does not mention a request for the government to *voluntarily* return the property via remission or mitigation.

More broadly, an agreement to forfeit property does not bar the government from voluntarily returning the forfeited property via remission or mitigation. A petition for remission or mitigation is an entirely separate procedure from the underlying forfeiture. *See* Internal Revenue Manual § 9.7.7.4 ("Petitions for remission or mitigation are separate and independent of (administrative or judicial) or criminal forfeiture proceedings."). So, while the agreement concededly bars Randy and Karen from contesting the validity of the forfeiture, the filing of a petition for remission or mitigation "does not serve to contest the forfeiture, but rather is a request for an executive pardon of the property." *Ibarra v. United States*, 120 F.3d 472, 475 (4th Cir. 1997). A petition for remission or mitigation "seeks relief from forfeiture on fairness grounds," *United States v. German*, 76 F.3d 315, 318 (10th Cir. 1996), and is a "plea for leniency," Internal Revenue Manual § 9.7.7.4. Randy and Karen admit their property has been legally forfeited to the government, but now they ask the government to nonetheless do the right thing and give the property back.

The availability of remission or mitigation after settlement of a forfeiture proceeding is akin to the availability of an executive pardon after a criminal plea agreement. Presidents routinely issue pardons to petitioners who have pleaded guilty to a criminal offense. *See*, *e.g.*,

Todd Spangler, *Detroit Man's Drug Sentence Among 46 Commuted by Obama*, Detroit Free Press, July 13, 2015, http://www.freep.com/story/news/local/michigan/2015/07/13/obama-commutes-sentence/30090465/ (reporting that President Obama pardoned a man who "pleaded guilty to conspiracy to distribute"); Philip Rucker, *Obama Grants Pardons to 17 People for Nonviolent Offenses*, Wash. Post, Mar. 1, 2013, http://www.washingtonpost.com/politics/obama-grants-pardons-to-17-people-for-nonviolent-offenses/2013/03/01/1932107e-82bf-11e2-a350-49866afab584_story.html (reporting that President Obama pardoned a "fishing magnate who pleaded guilty more than 20 years ago").[4] In short, an agreement not to contest a judicial proceeding does not bar a later request for executive clemency. Here, regardless of the settlement agreement resolving the earlier forfeiture proceeding, the IRS has authority to issue a similar type of pardon to return Randy and Karen's hard-earned money.

C. Randy And Karen's Petition Is Timely.

Finally, applicable DOJ regulations establish that Randy and Karen's petition is timely notwithstanding the time that has elapsed since the forfeiture of the money.

DOJ regulations state that a petition for remission or mitigation pertaining to a civil judicial forfeiture "will be considered *any time* after notice *until* such time as the forfeited property is placed into official use, sold, or otherwise disposed of according to law." 28 C.F.R. § 9.4(a) (emphasis added). Thus, although the notice sent to a property owner "shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission and mitigation within 30 days," *id.*, applicable regulations make clear that this 30-day deadline is merely advisory and does not draw a hard line after which the petition will no longer

[4] *See also* Ethan Trex, CNN, 11 Notable Presidential Pardons (Jan. 5, 2009), http://edition.cnn.com/2009/LIVING/wayoflife/01/05/mf.presidential.pardons/index.html?eref=rss_us (discussing pardons granted by Presidents Ronald Reagan and Bill Clinton following guilty pleas).

be considered. So long as the property has not been "placed into official use, sold, or otherwise disposed of according to law," it is available to be returned to its owner at any time.

Although the money taken from Randy and Karen presumably has been deposited into the Treasury Forfeiture Fund, that fact alone cannot be sufficient to establish that the money has been "placed into official use, sold, or otherwise disposed of according to law."[5] Under federal law, money placed in the Treasury Forfeiture Fund is "available to the Secretary . . . for . . . [p]ayment of amounts authorized by law with respect to remission and mitigation." 31 U.S.C. § 9705(a)(1)(E). That same statute lists the various types of "disposition" that can be made of money placed in the Treasury Forfeiture Fund: "sale, *remission*, cancellation, placement into official use, sharing with State and local agencies, and destruction." *Id.* § 9705(f)(2)(I)(ii) (emphasis added). These provisions plainly convey Congress's understanding that money contained within the Treasury Forfeiture Fund would be available to satisfy petitions for remission or mitigation. It would violate manifest congressional intent to interpret the timeliness provisions such that a petition for remission or mitigation is no longer timely once money has been placed in the Treasury Forfeiture Fund, as that would be tantamount to saying that money in the fund is *not* in fact available for a purpose authorized by Congress.

DOJ regulations confirm the point. The provision governing timeliness clearly states that remission and mitigation applies to "*forfeited* property," 28 C.F.R. § 9.4(a) (emphasis added), which would be nonsensical if deposit into the Treasury Forfeiture Fund qualified as disposition

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[5] Petitioners lack information regarding the present whereabouts of the forfeited funds, but if regular procedures have been followed the funds should have been deposited into the Treasury Forfeiture Fund. As of September 2014, the Treasury Forfeiture Fund held net assets of $7.5 billion. *See* Department of the Treasury, Treasury Forfeiture Fund Accountability Report Fiscal Year 2014, at 14 (2015), *available at* http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/TFF%20FY%202014%20Final%20Accountability%20Reports%20508.pdf.

of the property for purposes of the subsequent clause. When property has been forfeited by the IRS, it is required by law to be deposited in the Treasury Forfeiture Fund; it would make no sense to allow remission of "forfeited" property if money placed in the Treasury Forfeiture Fund were necessarily unavailable for that purpose because it had already been "disposed of" within the meaning of the relevant timeliness provisions.[6]

Finally, this conclusion is bolstered by the general statute authorizing petitions for remission or mitigation. That law states that a petition is timely so long as it is filed "*before the sale*" of the property seized by the government. 19 U.S.C. § 1618 (emphasis added). Currency is "sold" when it is exchanged by the government for some other good or service—in other words, when it is spent. So long as currency remains in the government's possession, it has not been "sold" and thus remains the proper subject of a petition for remission or mitigation. And there can be no question that currency in the Treasury Forfeiture Fund remains within the government's possession.

II. Because The Forfeited Money Is The Legitimate Proceeds Of Randy And Karen's Lawful Dairy Farm Business, It Should Be Returned In Its Entirety.

Under DOJ regulations pertaining to mitigation, the government has authority to return the *entire* amount of the forfeited property in conjunction with the imposition of a non-monetary condition—for instance, that Randy and Karen sign a document stating that they are now aware

[6] Further confirmation of this conclusion is provided by policy guidance issued by the Treasury Executive Office for Asset Forfeiture concerning the management of the Treasury Forfeiture Fund. Those guidelines state that, "[o]nce [an] agency is aware of a petition [for remission or mitigation], it must ensure that the funds are obligated so that the funds are not available to be expended for another purpose." Department of the Treasury, Guidelines for Treasury Forfeiture Fund Agencies on Refunds Pursuant to Court Orders, Petitions for Remission, or Restoration Requests 7 (2008), *available at* http://www.treasury.gov/resource-center/terrorist-illicit-finance/Asset-Forfeiture/Documents/bluebook.pdf. These policy guidelines plainly contemplate that money that has been forfeited and moved into the Treasury Forfeiture Fund will be available to satisfy remission petitions.

of the structuring laws. Mitigation is generally appropriate where return of the property "will promote the interest of justice and will not diminish the deterrent effect of the law." 28 C.F.R. § 9.5(b)(1)(i); *see also* Internal Revenue Manual § 9.7.7.4.6.1.A. Moreover, DOJ regulations establish other factors that come into play in cases where the petitioner was involved in the commission of the offense underlying the forfeiture, including, among other things, "lack of a prior record" and that the "[v]iolation was minimal and was not part of a larger criminal scheme." 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2. Under these provisions, return of the entire amount of the forfeited property is the appropriate remedy.

A. Return Of The Property Will Promote The Interest Of Justice, Will Not Diminish The Deterrent Effect Of The Law, And Is Necessary To Prevent Extreme Hardship.

DOJ regulations establish that mitigation is appropriate where it will "promote the interest of justice," "not diminish the deterrent effect of the law," and "avoid extreme hardship." 28 C.F.R. § 9.5(b)(1)(i). In light of current government policy, there can be no question that this standard has been satisfied in this case.

If the policy announced by the IRS in October 2014 and confirmed by the DOJ in March 2015 had been in place just a few years earlier, the government would never even have *attempted* to seize the money that has been taken from Randy and Karen. Current IRS policy, a copy of which is attached as Exhibit A, limits application of the structuring laws to "illegal-source" cases, meaning cases where the structured funds are derived from otherwise illegal activity. Current DOJ policy, meanwhile, states that the government will not seek forfeiture absent "probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity." Exhibit B. By contrast, the funds seized from Randy and Karen were derived

from their legitimate dairy farm business. *See* Randy Dec. ¶ 9; Karen Dec. ¶ 3. Randy and Karen are not criminals; they are law-abiding, tax-paying small business owners. The government has never suggested anything to the contrary, including in the seizure affidavit, *see* Exhibit G, or its forfeiture complaint, *see* Exhibit J. Randy and Karen are thus exactly the kinds of people supposed to be shielded from forfeiture actions by current policy.

1. The Interests Of Justice

The government's policy change represents recognition by the IRS and DOJ that forfeiture under the structuring laws promotes the "interest of justice" *only* where the funds are derived from illegal activity. As the IRS Commissioner explained, in testimony before the House Ways & Means Oversight Subcommittee, the policy change will "ensure fairness for taxpayers" and "protect the rights of individuals" by "making sure that taxpayers get appropriately protected." Exhibit C at 11, 15. While the structuring law itself sweeps more broadly than the new IRS policy, the IRS has recognized through its policy that the statute's broad scope encompasses innocent businesspeople guilty of nothing more than doing business in cash. Such people were not the intended focus of the structuring law, and justice is not served by application of the law in such cases.

All of this is particularly true in the case of Randy and Karen, who had *no* interest in hiding from the federal government, and who merely sought to avoid what they understood to be unnecessary red tape at the bank when depositing the cash proceeds of their legitimate business. Karen Dec. ¶ 5; Randy Dec. ¶ 7. Doing business in cash is emphatically not a crime. *See* 31 U.S.C. § 5103 ("United States coins and currency . . . are legal tender for all debts, public

charges, taxes, and dues."). No possible interest of justice is served by taking money from Randy and Karen simply because they deposited their own hard-earned money into the bank.[7]

2. The Deterrent Effect Of The Law

The government's policy change likewise serves as definitive evidence that returning Randy and Karen's money would "not diminish the deterrent effect of the law." If forfeiture was necessary for deterrence, the IRS would presumably continue to seize property in such cases today. Given that the IRS has adopted a policy of forbearing from such forfeitures, the IRS has plainly concluded that there is no need for forfeiture in such cases to deter unlawful activity. And, indeed, the IRS Commissioner told Congress that the new policy prohibiting structuring seizures in legal-source cases would strike "the right balance between law enforcement and trying to protect taxpayers." Exhibit C at 26. The recent policy change definitively establishes that the government's interest in deterrence would not be advanced by keeping Randy and Karen's money.

And this makes good sense. Where individuals are not engaged in illegal activity, the IRS has no apparent interest in deterring deposits or withdrawals under $10,000. The act of depositing or withdrawing money from the bank is not itself harmful to society; there is nothing inherently dangerous or destructive about sub-$10,000 cash transactions. *See Ratzlaf v. United States*, 510 U.S. 135, 144 (1994) ("[C]urrency structuring is not inevitably nefarious.").

[7] This commonsense conclusion is bolstered by federal regulations, which make clear that the government has no real interest in receiving Currency Transaction Reports for legitimate businesses like Randy and Karen's. Under federal law, banks are not required to file Currency Transaction Reports for businesses that have maintained a bank account for two months, often engage in large cash transactions, and are registered to do business in the state. *See* 31 C.F.R. § 1020.315(b)(6). Had Randy and Karen been appropriately advised by their bank, they may very well have fit within this exception to federal currency transaction reporting requirements. If the government did not need to receive the reports *at all*, the "evasion" of the filing of the reports cannot possibly have caused any serious injury to the government.

Structuring is significant only because it provides a means for criminals to evade bank reporting laws. The government obviously has an interest in uncovering criminal behavior, and once such behavior has been uncovered the government may proceed under the structuring laws. But, in legal-source cases, there is no criminal behavior to deter.

Moreover, even if deterrence were desirable in legal-source cases, forfeitures are unlikely to achieve that result, as property owners in legal-source cases are likely to engage in structuring *only* if they are unaware of the possible penalties that could result. People who engage in structuring in legal-source cases are typically unaware that such activity is unlawful—or, at a minimum, are unaware of the consequences that such behavior can bring. People who are unware that structuring violates the law are unlikely to be deterred from engaging in structuring, no matter how harsh the penalty.

Once again, all of this is particularly true in Randy and Karen's case. Randy and Karen did not know that structuring was illegal. Randy Dec. ¶ 10; Karen Dec. ¶ 6. They also had no desire to hide anything from the United States government. Randy Dec. ¶ 7; Karen Dec. ¶ 5. Randy and Karen simply stumbled into this situation because they followed some bad advice from a bank teller. Randy Dec. ¶ 7; Karen Dec. ¶ 4. No interest in deterrence is served by punishing people who—like Randy and Karen—are not even aware that they are potentially breaking the law.

3. Hardship

Finally, to take $29,500 from Randy and Karen, when the IRS would not even subject Randy and Karen to *any* penalty if their conduct were uncovered today, is undoubtedly an "extreme hardship." Randy and Karen worked hard to earn their money, waking in the middle of the night every day to milk their cows, and then traveling in the early morning to sell their dairy

products at farmers' markets. *See, e.g.,* Randy Dec. ¶ 3. Apart from the act of depositing money in the bank, they have never been accused of doing *anything* wrong. For the government to take $29,500 of their hard-earned money simply because they sought to avoid what they believed to be unnecessary red tape is a punishment that defies common sense and finds no justification whatsoever in basic norms of justice. Such arbitrary punishment is a hardship that no American should have to bear.

B. Factors Listed In Governing DOJ Regulations Support Return Of All The Forfeited Money To Randy And Karen.

In addition to the general standard discussed above, DOJ regulations set forth a non-exclusive list of factors that become relevant where a petitioner was involved in the commission of the offense underlying the forfeiture. *See* 28 C.F.R. § 9.5(b)(2). These factors all support return of the forfeited money to Randy and Karen.

First, Randy and Karen have no prior criminal record, and there is no evidence of any similar conduct in the past. 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.A. Randy and Karen are not criminals. *See* Randy Dec. ¶ 9; Karen Dec. ¶ 5. They are hardworking entrepreneurs who earned the forfeited money tending to their cows and selling their products at farmers' markets. The government has never suggested that Randy and Karen are guilty of any offense other than depositing money in the bank, and in fact Randy and Karen are *not* guilty of any offense beyond making sub-$10,000 cash deposits.

Second, Randy and Karen's alleged violation "was minimal and was not part of a larger criminal scheme." 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.B. To the extent that Randy and Karen's cash deposits violated the structuring laws, that violation was minimal in nature. Randy and Karen were not seeking to keep anything secret from the IRS; they merely sought to avoid unspecified "paperwork" burdens. Randy Dec. ¶ 7; Karen Dec. ¶ 5. For

all they knew, these were *internal* paperwork requirements lacking any connection whatsoever to the IRS or the United States government. *Cf. United States v. $79,650.00 Seized From Bank of America Account*, No. 1:08-cv-01233, 2010 WL 1286037, at *4-5 (E.D. Va. Mar. 29, 2010) (denying summary judgment to the government in a structuring case because, although claimant admitted knowing that the bank had to fill out a form if he deposited more than $10,000, he did not know it was a government form). And, again, there is no "larger criminal scheme" in this case. In fact, there is no "criminal scheme" at all. Randy and Karen are dairy farmers, not criminal masterminds.[8]

Third, Randy and Karen have "cooperated with Federal, state, or local investigations." 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.C. At the time the government seized the money, it asked for bank records and other financial documents. Randy and Karen provided all that information willingly and without delay. Randy Dec. ¶ 12. Since that time, the government has never asked for additional information and—as far as Randy and Karen are aware—has conducted *no* further investigation of Randy and Karen's business. *Id.* Randy and Karen nevertheless stood ready to answer any questions from the IRS, and they remain ready to answer any reasonable requests for information from the agency today. There has never been *any* request from the IRS that Randy and Karen have not fully honored.

Fourth, and finally, "forfeiture . . . is not necessary to achieve the legitimate purposes of forfeiture." 28 C.F.R. § 9.5(b)(2); *see also* Internal Revenue Manual § 9.7.7.4.6.2.D. Forfeiture is legitimate only as a punishment for criminal behavior, which is precisely why the only legitimate

[8] Once again, this commonsense conclusion is bolstered by federal regulations providing that Currency Transaction Reports *are not required* for legitimate businesses like Randy and Karen's. *See supra* n. 7. If the currency transaction reporting system had worked as it was designed to work, the government still would not have received the reports that Randy and Karen were accused of "evading."

form of forfeiture is *criminal* (as opposed to civil) forfeiture. But, as the forfeiture complaint in this case made clear, Randy and Karen are not even suspected of a crime—unless one counts the act of depositing money in the bank as a "crime." *See* Exhibit J; *see also* Exhibit G (affidavit supporting seizure warrant). Randy and Karen run a legitimate dairy farm, and they deposited money earned through legitimate business activity. Randy Dec. ¶ 9; Karen Dec. ¶ 3. Taking money from hardworking small business owners, simply because they deposit their own hard-earned money in the bank, is not a "legitimate" purpose of forfeiture. This factor thus also supports the return of Randy and Karen's money.

C. IRS Guidelines For Mitigation Likewise Support Return Of The Forfeited Money To Randy And Karen.

IRS internal guidelines for mitigation likewise support return of all the forfeited money to Randy and Karen. Although this petition is properly directed to the DOJ under regulations governing petitions for remission or mitigation in civil judicial forfeiture cases, those same regulations direct the DOJ to solicit an initial recommendation from the seizing agency as to the disposition of the petition—and thus make clear that the standards of the seizing agency are relevant to the decision whether to grant relief. *See* 28 C.F.R. § 9.4(f).

IRS guidelines establish a base penalty of 10 percent of the entire amount involved in the structuring offense in cases where the structuring was a "[f]irst offense," where the money was from a legitimate source, and where the property owner was not criminally convicted. *See* Internal Revenue Manual Exhibit 9.7.7-5(II). All three factors are present in this case. Randy and Karen had never been admonished for structuring prior to this offense; the money was from Randy and Karen's legitimate business; and Randy and Karen were not criminally convicted of structuring and, apart from the act of structuring itself, were never accused of *any* crime.

From this 10 percent base penalty, the guidelines provide for reductions based on a variety of mitigating factors. *See* Internal Revenue Manual Exhibit 9.7.7-5(II)(B). Some factors call for a subtraction of 2 percent of the total amount of the structured transactions from the base penalty; some call for a subtraction of 3 percent; and others call for a subtraction of 9 percent. *Id.* Because Randy and Karen can establish mitigating circumstances adding up to more than the 10 percent base penalty, Randy and Karen can establish that the entire amount of the property should be returned.

First, Randy and Karen are entitled to a 3 percent reduction in the penalty based on the "[i]nexperience in banking matters" factor. Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(2). Although Randy and Karen own a business, they are hardly experienced in banking matters. *See* Randy Dec. ¶ 10; Karen Dec. ¶ 6. Their interaction with banks is limited to the role of a customer—primarily depositing and withdrawing money from their account. They have never had any reason to study federal banking regulations. And, prior to the seizure of their money, they never had any reason to be aware that structuring is a crime or that depositing money in the bank could put them in violation of the structuring law.

Second, Randy and Karen are entitled to a 2 percent reduction based on the "[c]ooperation with IRS officials" factor. Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(3). As explained above, Randy and Karen have cooperated with the IRS at every turn. Randy and Karen produced all the information requested by the government at the time of the seizure and have stood ready to produce any other information upon request. *See* Randy Dec. ¶ 12. Indeed, Randy and Karen remain willing to comply with any reasonable requests for information posed by law enforcement. There has never been any instance where Randy and Karen have failed to cooperate with IRS requests.

Third, and finally, Randy and Karen are entitled to up to a 9 percent reduction based on the catch-all "[h]umanitarian factor." Internal Revenue Manual Exhibit 9.7.7-5(II)(B)(5). The government took $29,500 of Randy and Karen's money, although they were never accused of any misconduct other than following the advice of a bank teller to keep cash deposits under $10,000. Randy and Karen worked hard—seven days a week, up well before the break of dawn—to earn that money. *See, e.g.,* Randy Dec. ¶ 3. They were forced to scramble to keep their business running after the money was seized. *See id.* ¶ 17; Karen Dec. ¶ 7. Now, the government recognizes that taking Randy and Karen's hard-earned money was a mistake. Under current DOJ and IRS policies, the seizure and forfeiture of Randy and Karen's money would never have been approved. Yet the government continues to hold their money simply because it seized the money *before* realizing the error of its ways.

To deprive Randy and Karen of tens of thousands of dollars that they could use to grow their business, simply because their case predated the government's policy change, is the essence of arbitrary punishment. To the government, which holds billions of dollars in the Treasury Forfeiture Fund, tens of thousands of dollars is perhaps a small sum. But Randy and Karen could put this money to good use to purchase additional land, expand their business, and secure the future for their farm and their grandchildren. *See* Randy Dec. ¶ 18; Karen Dec. ¶ 8. The ends of justice would be served by a decision to return the forfeited money to its lawful owners and to lift the unwarranted penalty that the government has imposed.

III. At The Very Minimum, The Government Should Return A Substantial Portion Of Randy And Karen's Money.

While the foregoing analysis of governing statutes and IRS internal policies demonstrates the appropriateness of returning *all* the money seized from Randy and Karen, at a minimum those same authorities support return of *some* of the money. *See* 28 C.F.R. § 9.5(b). The

government has authority to return any portion of the money that it thinks would be appropriate to further the interests of justice. 31 U.S.C. § 5321(c). DOJ regulations and internal authorities from the IRS make clear that, in this case, the appropriate portion to return is the entire amount that has been forfeited. But it would be impossible to read those authorities and conclude that Randy and Karen are entitled to return of *none* of the currency.

CONCLUSION

After Randy testified about his ordeal before the House subcommittee charged with oversight of the IRS, committee members from all sides of the political spectrum expressed outrage. Chairman Peter Roskam stated that Randy and others like him had "hand[ed] over thousands of fairly earned dollars to the IRS all without having done anything wrong," Exhibit C at 4, while Ranking Member John Lewis stated that he "want[ed] to apologize" for the government's treatment of Randy, *id.* at 93. The Commissioner of the IRS, meanwhile, testified that there was "no doubt" that Randy and others like him "have been aggrieved" and stated: "I would apologize for anyone—not just in this area—anyone who is not treated fairly." *Id.* at 56, 58. Now, Randy and Karen are asking for something more concrete than an apology. The government has authority to correct its mistake. The government should exercise that authority to give back the money that Randy and Karen worked so hard to earn.

Upon information and belief, I swear that the facts stated herein are true.

RESPECTFULLY SUBMITTED, this 16th day of July, 2015.

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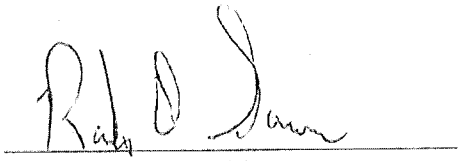
STATEMENT OF PETITIONERS

I hereby declare under penalty of perjury that Scott Bullock and Robert Everett Johnson have authority to represent me in this proceeding; that I have reviewed the petition; and that it is truthful and accurate in every respect.



Randy Sowers, Petitioner

Karen Sowers, Petitioner

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT A

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CRIMINAL INVESTIGATION

October 17, 2014

MEMORANDUM FOR SPECIAL AGENTS IN CHARGE
CRIMINAL INVESTIGATION

FROM Rebecca A. Sparkman
Director, Operations Policy and Support
Criminal Investigation SE:CI:OPS

SUBJECT IRS Structuring Investigation Policy Changes

The purpose of this memorandum is to set forth IRS-CI policy concerning seizure and forfeiture activities involving "legal source" structuring.

IRS-CI will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case has been approved at the Director of Field Operations (DFO) level. The policy involving seizure and forfeiture in "illegal source" structuring cases remains unchanged by this memorandum.

In cases where legal source income is involved in alleged structuring activity, consideration should be given to initiating a Title 26 criminal tax investigation. In certain circumstances, the structuring activity can be treated as an affirmative act of evasion under 26 U.S.C. § 7201,[1] evidence of willfulness, an overt act of conspiracy (18 U.S.C § 371), or it may support Title 31 violations. This policy update will ensure that CI continues to focus our limited investigative resources on identifying and investigating violations within our jurisdiction that closely align with CI's mission and key priorities.

Individuals who are structuring cash deposits or withdrawals are more often than not doing so in an attempt to conceal the existence and source of the funds from the U.S. Government. While the structuring activities violate 31 U.S.C. §5324, the activity should be treated as just an indicator that another violation of law might have occurred. Therefore, authorized investigative activities should be performed to determine the source of the funds and if there are other related violations of law that should be investigated prior to initiating a seizure of funds related to the criminal activities.

[1] *See United States v. Mounkes*, 204 F.3d 1024, 1030 (10th Cir. 2000)

IRS-CI continues to be committed to investigating criminal violations of the federal anti-money laundering and Bank Secrecy statutes. Our partnerships with state, local and county law enforcement agencies through IRS-CI led Financial Crimes Task Forces (FCTFs) provide CI with valuable resources to further the commitment to investigate violations of these laws. The primary focus of FCTFs is to conduct significant criminal investigations of anti-money laundering and Bank Secrecy violations occurring in their area of responsibility and related statutes.

The applicable Internal Revenue Manual sections, the Suspicious Activity Report Review Team, and the FCTF Standard Operating Procedures will be revised to include this guidance as soon as practical. If you have any questions regarding this policy, please contact Global Financial Crimes Director XXXXXXXXXXXXXXXXX.

cc: CI Senior Staff
CT Counsel

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT B

U.S. Department of Justice

Criminal Division

Asset Forfeiture and Money Laundering Section *Washington, D.C. 20530*

POLICY DIRECTIVE 15-3

TO: Heads of Department Components
United States Attorneys

FROM: M. Kendall Day, Chief MKD 3/3/15
Asset Forfeiture and Money
Laundering Section

SUBJECT: Guidance Regarding the Use of Asset Forfeiture Authorities in Connection with Structuring Offenses

Title 31, United States Code, Section 5324(a) prohibits evasion of certain currency transaction-reporting and record-keeping requirements, including structuring schemes. Generally speaking, structuring occurs when, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a domestic financial institution, the violator conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. On October 17, 2014, the Internal Revenue Service-Criminal Investigation (IRS-CI) issued guidance on how it will conduct seizures and forfeitures in its structuring cases, and specifically in what it calls "legal source" structuring cases. Pursuant to the IRS guidance, IRS-CI will not pursue seizure and forfeiture of funds associated only with "legal source" structuring unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

As part of the Department's ongoing review of the federal asset forfeiture program, the Department has conducted its own review of forfeiture in structuring cases, including analysis of the new IRS-CI policy. The guidance set forth in this memorandum, which is the result of that review, is intended to ensure that our investigative resources are appropriately and effectively allocated to address the most serious structuring offenses, consistent with Departmental priorities. The guidance applies to all federal seizures for civil or criminal forfeiture based on a violation of the structuring statute, except those occurring after an indictment or other criminal charging instrument has been filed.[1]

[1] These guidelines apply to all structuring activity whether it constitutes "imperfect structuring" chargeable under 31 U.S.C. § 5324(a)(1) or "perfect structuring" chargeable under 31 U.S.C. § 5324(a)(3). *See Charging Imperfect Structuring: 31 U.S.C. § 5324(a)(1) or (a)(3) or Both?*, Money Laundering Monitor, at 1 (Oct.-Dec. 2014) (available at AFMLS Online).

1. Link to Prior or Anticipated Criminal Activity

If no criminal charge has been filed and a prosecutor has not obtained the approval identified below, a prosecutor shall not move to seize structured funds unless there is probable cause that the structured funds were generated by unlawful activity or that the structured funds were intended for use in, or to conceal or promote, ongoing or anticipated unlawful activity. For these purposes, "unlawful activity" includes instances in which the investigation revealed no known legitimate source for the funds being structured. Also for these purposes, the term "anticipated unlawful activity" does not include future Title 26 offenses. The basis for linking the structured funds to additional unlawful activity must receive appropriate supervisory approval and be memorialized in the prosecutor's records.[2]

Where the requirements of the above paragraph are not satisfied, unless criminal charges are filed, a warrant to seize structured funds may be sought from the court only upon approval from an appropriate official, as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority.[3]

- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney's Office, approval must be obtained from the Chief of the Asset Forfeiture and Money Laundering Section (AFMLS). The Chief of AFMLS may not delegate this approval authority.

The U.S. Attorney or Chief of AFMLS may grant approval if there is a compelling law enforcement reason to seek a warrant, including, but not limited to, reasons such as: serial evasion of the reporting or record keeping requirements; the causing of domestic financial institutions to file false or incomplete reports; and violations committed, or aided and abetted, by persons who are owners, officers, directors or employees of domestic financial institutions.

If the U.S. Attorney or Chief of AFMLS approves the warrant, the prosecutor must send a completed "Structuring Warrant Notification Form" to AFMLS by e-mail at AFMLS.Structuring@usdoj.gov. A copy of that form is attached.

These requirements are effective immediately. For any case in which seizure was effected prior to the issuance of this memorandum, the forfeiture may continue so long as it otherwise comports with all other applicable law and Department policy.

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[2] In order to avoid prematurely revealing the existence of the investigation of the additional unlawful activity to the investigation's targets, there is no requirement that the evidence linking the structured funds to the additional unlawful activity be memorialized in the seizure warrant application.

[3] Although this authority is ordinarily non-delegable, if the U.S. Attorney is recused from a matter or absent from the office, the U.S. Attorney may designate an Acting United States Attorney to exercise this authority, in the manner prescribed by regulation. *See* 28 C.F.R. § 0.136.

2. No Intent to Structure

There may be instances in which a prosecutor properly obtains a seizure warrant but subsequently determines that there is insufficient admissible evidence to prevail at either civil or criminal trial for violations of the structuring statute or another federal crime for which forfeiture of the seized assets is authorized. In such cases, within seven (7) days of reaching this conclusion, the prosecutor must direct the seizing agency to return the full amount of the seized money. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

3. 150-Day Deadline

Within 150 days of seizure based on structuring, if a prosecutor has not obtained the approval discussed below, a prosecutor must either file a criminal indictment or a civil complaint against the asset.[4] The criminal charge or civil complaint can be based on an offense other than structuring. If no criminal charge or civil complaint is filed within 150 days of seizure, then the prosecutor must direct the seizing agency to return the full amount of the seized money to the person from whom it was seized by no later than the close of the 150-day period. Once directed, the seizing agency will promptly initiate the process to return the seized funds.

With the written consent of the claimant, the prosecutor can extend the 150-day deadline by 60 days. Further extensions, even with consent of the claimant, are not allowed, unless the prosecutor has obtained the approval discussed below.

An exception to this requirement is permissible only upon approval from an appropriate official as follows:

- For AUSAs, approval must be obtained from their respective U.S. Attorney. The U.S. Attorney may not delegate this approval authority, except as discussed in footnote 3, *supra*.

- For Criminal Division trial attorneys or other Department components not partnering with a U.S. Attorney's Office, approval must be obtained from the Chief of AFMLS. The Chief of AFMLS may not delegate this approval authority.

If additional evidence becomes available after the seized money has been returned, an indictment or complaint can still be filed.

4. Settlement

Settlements to forfeit and/or return a portion of any funds involved in a structuring investigation, civil action, or prosecution, must comply with the requirements set forth in the *Asset Forfeiture Policy Manual* and the *United States Attorneys' Manual*. *See Asset Forfeiture*

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[4] This deadline does not apply to administrative cases governed by the independent time limits specified by the Civil Asset Forfeiture Reform Act.

Policy Manual (2013), Chap. 3; *United States Attorneys' Manual* § 9-113.000 *et seq*. In addition, settlements must be in writing, include all material terms, and be signed by a federal prosecutor. Informal settlements, including those negotiated between law enforcement and private parties, are expressly prohibited.

This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion, and does not alter in any way the Department's authority to enforce federal law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of 31 U.S.C. § 5324(a). This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution.

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT C

RPTR MAAR

EDTR CRYSTAL

PROTECTING SMALL BUSINESS FROM IRS ABUSE

Wednesday, February 11, 2015

House of Representatives,

Subcommittee on Oversight,

Committee on Ways and Means,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room B-318, Rayburn House Office Building, Hon. Peter Roskam [chairman of the subcommittee] presiding.

Chairman Roskam. Now the hearing will come to order. And welcome to the Oversight Subcommittee on protecting small businesses from IRS abuse with IRS Commissioner John Koskinen on the first panel. And on the second panel, we will hear from Mr. Sowers, Mr. Hirsch, and Mr. Clyde, all small businesses who have had their assets seized by the IRS. In addition, we will hear from Mr. Johnson, a resident expert in this area of the law.

We are here to exam the IRS' use and abuse of its civil asset forfeiture authority. And what is it exactly? Under current law, federal agencies like the IRS can seize people's assets without any proof of wrongdoing. Now, this law was supposed to stop criminal enterprises and recover ill-gotten gains, but the IRS has used it to seize the bank accounts of people suspected of structuring, that is, of making cash deposits worth less than $10,000 to avoid reporting requirements.

This is a crime that most folks have never heard of. The small business people will tell you it casts a pretty wide net and it is catching a lot of innocent people. It is catching a Mexican restaurant owner, a gas station owner, dairy farmers. Many small business people then have had to fight expensive court battles to get even a portion of their money back, even though they didn't do anything wrong.

These small businesses keep getting caught in the snares largely because they are just that, they are small. They do a lot of transactions in cash because, believe it or not, we are

still a very cash-driven economy. And in a typical year, American consumers do more than a trillion dollars in cash transactions. And under the Bank Secrecy Act, it is illegal to structure or split up transactions in order to avoid a requirement to report those worth more than $10,000. To be clear, it makes it a crime to fail to file a report on certain transactions.

Take an example. Say I am a restaurant owner and I take $8,000 to the bank on Friday and $2,000 on Monday simply because I don't like to keep a lot of cash in my register. I am not structuring. But if I do it because the bank teller says I can avoid filling out forms if deposits are smaller than $10,000, then I am guilty even if I don't know it is a crime. In either case, it may look like I am trying to avoid the reporting requirement, and that is enough for the bank to file a Suspicious Activity Report.

At that point, the IRS can file a warrant and say it has probable cause to believe that assets are involved in a crime and then it can seize the account. That is it. The IRS doesn't have to give notice to the account holder for seizing the assets, and the IRS doesn't have to prove that the person is actually guilty of anything, just that the account probably is involved in structuring.

And after the IRS seizes the assets, the account holder isn't entitled to any sort of expedited hearing. So even if he did absolutely nothing wrong, it can literally take years of legal

proceedings for the account holder to get some or all of his assets back, and many people simply can't afford a long, drawn-out fight. So what do they do? They settle, handing over thousands of fairly earned dollars to the IRS all without having done anything wrong.

We are going to hear from some of those victims today, and I know that there are many others out there who wanted to be here, like Carole Hinders, a restaurant owner in Iowa, Mark Zaniewski, a gas station owner in Michigan, but they couldn't take time away because of family and business needs. But we have received their statements for the record.

[The information follows:]

******** COMMITTEE INSERT ********

Chairman Roskam. We also learned yesterday that the Treasury Inspector General for Tax Administration plans an audit of the IRS' practices in this area, so this inquiry will be forthcoming.

And for the witnesses who traveled here to tell your stories, thank you for your time. We know that as small business owners you are not drawing a salary here while you testify.

We are also looking forward to hearing from Commissioner Koskinen who I hope will be able for explain how this has been going on and what the IRS is doing to stop it.

With that, I would like to yield to the ranking member for his opening statement.

[The statement of Chairman Roskam follows:]

******** COMMITTEE INSERT ********.

Mr. Lewis. Thank you very much, Mr. Chairman, for holding this hearing on the Internal Revenue Service. I am very pleased that we have the Commissioner with us today. I also thank the witnesses on the second panel for testifying today.

[Audio gap.]

The taxpayers came to our attention through press reports at the end of last year. We were concerned that in many of the press reports --

[Audio gap.]

The taxpayers were small businesses that made cash deposits from daily operation. We also were concerned that these taxpayers did not have a right to request a hearing in court within a reasonable period of time after their assets were seized.

I am glad that the agency took action last October. The new IRS policy only allows the agents to seize assets in certain cases. I look forward to hearing more about this change today.

In closing, Mr. Chairman, I would like to state that I am very concerned about the full effect of the agency's budget cuts on taxpayer service and enforcement. I think that we can all agree that American taxpayers deserve the best possible assistance. In the last year, the agency's funding was reduced by nearly $350 million. It is now at the lowest level of funding since fiscal year 2008. The growing gap between the agency's increased workload and the shrinking budget has led the National Taxpayer Advocate to state that the declining quality of taxpayer service

is the most serious problem facing the agency.

Mr. Chairman, I said in the past and I say it again today, it is impossible to get blood from a turnip. We can do better and we must do better. Thank you. And I yield back.

Chairman Roskam. Thank you, Mr. Lewis.

[The statement of Mr. Lewis follows:]

******** COMMITTEE INSERT ********

Chairman Roskam. Commissioner Koskinen, thank you for your time today and for joining us. The committee has received your written statement and it will be made part of the formal hearing record. You have 5 minutes to deliver your remarks, and you may begin whenever you are ready.

STATEMENT OF THE HONORABLE JOHN KOSKINEN, COMMISSIONER, INTERNAL REVENUE SERVICE, WASHINGTON, D.C.

Mr. Koskinen. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for the opportunity to testify here today about an important subject.

Chairman Roskam. Commissioner, could you pull the mike a little closer to you?

Mr. Koskinen. Sure. How is that?

The IRS has sole jurisdiction to investigate criminal violations related to federal tax crimes. In addition, the IRS works together with various federal law enforcement agencies to combat other serious financial crimes, including money laundering, Bank Secrecy Act violations, and terrorist financing. In these efforts, we strive for a balanced approach that takes into account the need for fairness and respect for the rights of individuals under the law.

The ongoing battle against financial crimes has been helped by passage of laws that provide law enforcement with tools to

uncover hidden criminal activities. One of the most significant laws is the Bank Secrecy Act of 1970 which, as the chairman noted, requires financial institutions to report on individuals who engage in cash transactions exceeding $10,000. These and other similar reports constitute a robust set of data widely used by law enforcement agencies to uncover illegal activities both domestically and around the world.

To circumvent these reporting requirements, individuals sometimes engage in structuring where they intentionally manipulate cash transactions to fall below the $10,000 reporting threshold. Structuring may occur for any number of reasons. Individuals may want to conceal cash generated from illegal activities, such as drug dealing. Or the cash may come from legal sources, but the person is trying to hide it to evade taxes. Whatever the reason, the law is clear, it is a crime to structure cash transactions for the purpose of evading the reporting requirement.

Under the law, the IRS has the authority in structuring cases to investigate criminally and seize the assets involved in the structuring. But the law also includes procedures we must follow to safeguard the rights of individuals and ensure the seizure action is appropriate. Before an action can go forward, IRS agents must first prepare a seizure warrant affidavit that is reviewed by the appropriate U.S. attorney's office. The warrant then is presented to a federal judge who approves or denies it.

If the judge authorizes the warrant, only then can the seizure and forfeiture proceedings take place.

After reviewing our activities last year, the IRS announced in October that it would focus resources on cases that are more closely aligned with our strategic priorities. Specifically, the IRS will no longer pursue the seizure and forfeiture of funds associated solely with legal structuring cases or legal source structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved beyond the approvals from the U.S. attorney and the judge by a senior headquarter's executive at the IRS.

While the act of structuring, whether the funds are from a legal or illegal source, is against the law, IRS special agents, henceforth, will view the act as simply an indicator of whether more serious crimes may be occurring. This ensures that the IRS continues to focus its limited investigative resources on identifying and investigating tax violations within its jurisdictions that closely align with the IRS missions and key priorities.

No one should conclude from this change that the IRS is backing away from enforcing the laws written by Congress by appropriately investigating both the source of funds and the purpose of the structuring when these cases arise. When the evidence indicates criminal wrongdoing has occurred, structuring will still be investigated and prosecuted where appropriate,

often together with other crimes, such as tax evasion and money laundering.

We recognize that seizure and forfeiture are powerful law enforcement tools and must be administered in a fair and appropriate manner. The IRS understands and embraces the fact that we have a duty not only to uphold the law, but to protect the rights of individuals as well. We believe that our policy change will help ensure consistency in how IRS structuring investigations and related seizures are conducted and will also ensure fairness for taxpayers. In short, if a taxpayers is not violating the law and engaged in illegal sourcing, they have nothing to fear with regard to the seizure of their assets.

This concludes my statement. I would be happy to take your questions.

Chairman Roskam. Thank you, Commissioner.

[The statement of Mr. Koskinen follows:]

******** INSERT 1-1 ********

Chairman Roskam. I will first recognize Mr. Marchant on the majority side, and I intend to ask my questions at the end.

Mr. Marchant. Thank you, Mr. Chairman.

Welcome, Commissioner. I was Monday in my district and held a meeting of about 50 people and thought we were going to have a very nice lunch. As it turns out, I was the lunch.

Mr. Koskinen. I know that feeling.

Mr. Marchant. And as much as I tried to talk about any other subject that we were working on in Congress, this group wanted to talk about the IRS. So as much as we may have thought the whole Lois Lerner event and the events of last year have passed, they have not in the minds of our constituents.

Today we are here to talk about abuse, we feel like it is an abuse of small business owners. Last year, a woman from Iowa, her name is Sue Martinek, came to our committee and reported to us that the IRS had targeted her pro-life group for extra scrutiny before it got its tax-exempt status. She even told us that her group was asked to tell the IRS about what they prayed about at their prayer meetings before the meeting.

Now we hear about another Iowa woman who has been targeted by the IRS for doing nothing wrong. Unfortunately, Carole Hinders, she can't be with us today. She has an adult child that is sick and requires that she be with her. And she did not really have the money to travel down here from Iowa to tell her story. But she would like to tell it. This is Carole here on the screen.

She owns a Mexican food restaurant. I guess with all the Texans coming up here for the presidential election that Mexican food is a popular item in Iowa.

Carole owned her small business and she has owned it for 38 years. For 38 years, she has only accepted cash payments. And for 38 years, she has regularly gone to the bank and made deposits so that she did not keep large amounts of cash on hand.

In August of 2013, with no warning, no letter, no prompting, her bank account for $33,000 was frozen, and the IRS informed her that she was structuring or was being suspected of structuring. It took her almost a year and a half to get her money back. And even so, she had to close her restaurant because she just could not afford to continue operating.

Why would it take a year and a half to get her money back, Commissioner?

Mr. Koskinen. It shouldn't take a year and a half. There is a limited, unfortunately, I think, too limited period of time for anyone whose assets have been seized to come directly to the U.S. attorney and the IRS and administratively make a claim. That timeframe is less than 45 days. So what happens generally is people make their claim in the legal proceedings, at which point we lose control of it, it becomes a legal case. And in the courts, it takes much longer than it would otherwise. But there is no reason --

Mr. Marchant. Once they seize that account, does the IRS

agent have any burden of proof that they must provide to the person that the money has been seized, or his or her attorney or their accountant, is there any burden of proof that they have to immediately provide to the taxpayer to justify the account being frozen?

Mr. Koskinen. As noted earlier, we have to, an IRS agent has to have the matter reviewed by the U.S. attorney's office and a judge has to find that there is probable cause that there has been a criminal violation before the seizure takes place. Once the asset is seized, if it goes into the judicial proceeding -- which I say takes place very quickly, there is a limited time in which you can do that and most people simply go to court -- once there, then the government, represented by the Justice Department, has to prove by a preponderance of the evidence that the seizure was appropriate, that it was, in fact, the result of a violation of the criminal law.

Mr. Marchant. So when does the burden to determine whether the money was seized lawfully, I mean whether it was lawfully earned or not, when does that burden of proof have to be shown? Does it have to be shown to the judge before the money is seized or is it proved in a court case afterwards?

Mr. Koskinen. We have to show probable cause to a judge before the seizure. And then in the court case, the government has to prove by a preponderance of the evidence that, in fact, the seizure was appropriate.

Mr. Marchant. Thank you, Commissioner.

Thank you.

Chairman Roskam. Mr. Lewis is recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Mr. Commissioner, thank you for being here today, and thank you for your great and good work. Can you tell us when did the new policy come into place.

Mr. Koskinen. Pardon?

Mr. Lewis. When did the new policy --

Mr. Koskinen. The new policy, we reviewed the matter during last year. And in October, we instituted the new policy that if there was not evidence of illegal sourcing for the funding, forfeiture would not be taken.

Mr. Lewis. Why did the IRS change its policy?

Mr. Koskinen. We started looking at it earlier last year because it turned out there was no uniform policy across the country. Different U.S. attorney's offices had different proceedings and different judges responded differently. In some cases, if there was not illegal sourcing, a seizure would not be allowed. In other cases, if there was no evidence of illegal sourcing, the seizure could still go forward. And after reviewing it, we decided the better policy, to some extent making sure that taxpayers get appropriately protected, the better policy if we are going to have a standard would be that we would only have asset seizures when there was evidence of criminal

sourcing, a source of criminality for the funds themselves. The review took several months. In October, we made that policy announcement.

Mr. Lewis. Could you list for us some of the examples of exceptional circumstances?

Mr. Koskinen. An exceptional circumstance would be, without illegal sourcing, would be large volumes of transactions. The case of $8,000 on a Friday and $2,000 on a Monday would not be that. But if every day someone was magically showing up with $8,000 or $9,000 regularly during the course of a week and that took place --

Mr. Lewis. So if there is some pattern?

Mr. Koskinen. If there is some long-term pattern. And, again, I would stress that that will not be a decision made by an agent in the field. That will only be a decision made by a senior executive at the IRS in our Criminal Investigation Division.

We do not expect that to happen often. But it would be where there is a unique circumstance, where there is a regular pattern of violations and it is clear that while we can't tell initially what the source of those fundings is, whether it is illegal or not, the fact that it is occurring every day over a period of time would be a significant change and an exceptional circumstance from the cases that we are talking about here today.

Mr. Lewis. Mr. Commissioner, you heard me say that I am

deeply concerned about how the budget cuts have affected the IRS in this filing season. Will you tell us what impact the budget cuts are having?

Mr. Koskinen. Well, the impact is of great concern to us, is on both sides of what I call the compliance coin. On the one hand, we now have 5,000 fewer revenue agents, officers, and criminal investigators. So our enforcement of many crimes, tax evasion, collection is down.

But equally significant and important to overall compliance rates is that because we have 13,000 fewer people, headed towards having 15,000 or 16,000 fewer, we simply don't have enough people to answer the phone. So our level of customer service in this, a very complicated filing season is the worst it has been in years. And the people who care most about that are the IRS employees who want to provide information and support to taxpayers.

But the level of our service in this filing season, which is going very well, I am delighted to report, thanks to the good work of our employees, the level of service is still below 50 percent. That means your chances of getting through to a live assister are less than 50 percent. And that is just a miserable level of service and one that we don't think taxpayers deserve.

And there is nothing we can do. We have been as efficient as we can. We have moved as many people to the Web site as we can. We have apps if you want to know about your refund, if you want to get transcripts, if you want to actually make a payment,

you can do that all online. We are trying to be as efficient as we can and move as many people there as we can, but the net result is we still have far more people calling than we are able to handle appropriately.

Mr. Lewis. Thank you, Mr. Commissioner.

And I yield back, Mr. Chairman.

Chairman Roskam. Thank you, Mr. Lewis.

Mr. Kelly is recognized.

Mr. Kelly. Thank you, Mr. Chairman.

Mr. Koskinen, good to see you.

You know, in my life, running a small business and then trying to comply with everything that we have to do, one of the things that I have always worried about is -- and you made reference to your working with less money and it is making it harder for you to serve people. The fact that the Tax Code is so big requires having more people to try to help people navigate it.

As a small business person, and we talked a little bit about Ms. Hinder, so $33,000 you seized from her. And maybe that is not that much to the IRS. But there is another person that will appear on the panel, $900,000.

In my business, in my business, having access to capital is critical. So when somebody can seize those assets based on their interpretation or their belief that somehow you have been helping somebody launder money -- I have always related having cash in my store to having blood in my body. Without that cash,

you are dead.

So when the IRS does it, whether it is a seizure or an audit, but when you can seize somebody's assets based on somebody saying, you know what, I think these people are involved in something, you can kill them as a person, as an entity, as a business. Is that not true?

Mr. Koskinen. That is true. But we don't do it just thinking about it.

Mr. Kelly. No, no, no. Listen, it is solely, you are the judge and the jury when you decide to go after these folks.

Mr. Koskinen. That is not true.

Mr. Kelly. It is true.

Mr. Koskinen. No, it isn't.

Mr. Kelly. Commissioner, you and I have met before. You and I have met before. You told me at one time the definition that you look at when it comes to taxpayers, those that want to pay tax and those who do not want to pay tax. I would tell you that in the private sector there is nothing more chilling than any kind of communication from the IRS.

First of all, we don't have access to capital. Once you seize those accounts, how would I go to my lender and say, you know what, they seized my bank accounts, I still want to keep my business open, I haven't been found guilty of anything but it is under suspicion.

Now, I understand you walked us through how that works. But

the reality of it is, for Carole Hinders, who is she going to get to fight that battle for her? How is she going to stay open when you have seized her accounts? And these are the exact people that we are looking for to keep the country going forward. These are the people that supply all the coal for the furnace that heats the whole country.

I don't understand this. I really don't. How can you be guilty on a suspicion? This flies in the face of everything we are as a country. Have you ever been in that position where somebody could come in and seize your assets? It is a yes or no. If it hasn't happened to you, it hasn't happen to you.

Mr. Koskinen. I am sure we are all in that position.

Mr. Kelly. No, no, no. But have you actually been in it where somebody seized your assets because they think you may have been guilty of some wrongdoing?

Mr. Koskinen. No.

Mr. Kelly. Okay. Would you think it was an overreach if somebody had that ability to do that to you?

Mr. Koskinen. If they could do it on their own and without any evidence that I had done anything wrong, I think it would be --

Mr. Kelly. No, no, no. That is not it. They haven't been found guilty of anything yet. This is on the suspicion they may have done something wrong.

Mr. Koskinen. As you say, I think it is important for the

record to know we don't make that decision by ourselves. It takes the U.S. attorney and a federal judge to agree that there is probable cause.

Mr. Kelly. I understand. But it is not the due process of law that we have. As individuals in this country, citizens are protected from an overreach by a government that can find them guilty without ever having it. The suspicion of it is one thing. The ability to shut down a business or a person, limit their access to capital, and put them in a position. If you have ever had to sit across from a lender and try to explain who you are and where you are and why you need them, they say, all your assets have been seized, is that correct? And you say, yeah, they have, but. No buts, we can't help you.

Mr. Koskinen. Right. And I think it is an important issue.

Mr. Kelly. It is not important. I have got to tell you it is far beyond important. Important is dismissive. It is frickin' critical. We are killing these people on a suspicion that they may have done something wrong. This flies in the face of everything this country was built on from day one. And if are going to sit there and tell me that somehow you went through a process that allowed you to seize assets of people who are getting up every morning, putting their feet out over the bed, going to work to put a roof over the heads of their children, food on the table, clothes on their backs, and getting ready for the future, but that is okay because, see, we went through a process that

allowed us to seize those assets. So we are going to find out if they are guilty or not.

And how long does that process take? How long would it take before I would find out if I am still allowed to be in business because the IRS says, you may be guilty of something, I am going to shut you down. What is the average time?

Mr. Koskinen. I don't know what the average time is.

Mr. Kelly. Okay. I will tell you what, you would if you were in business and somebody did that to you. I got to tell you, access to capital, access to cash, the same as having access to keep your body running when you run out of blood. It is incredible that this organization can do that on a suspicion of wrongdoing, shut somebody down, seize their assets, and put them in a position where they can't possibly survive. You talk about waterboarding, this is waterboarding at its worst.

Thank you. And I yield back.

Chairman Roskam. Mr. Rangel is recognized.

Mr. Rangel. May the record indicate that I have the same amount of emotion that Mr. Kelly does if certainly something like this has happened. Let's see whether I can defend our country and the agency in any way possible.

First of all, under this new policy change, nothing like this could probably happen again?

Mr. Koskinen. Our hope is and our plan is and our expectation thus far is that nothing will happen like this.

Mr. Rangel. Second, under the existing law, there is nothing in the existing law that says there has to be criminal intent, the law?

Mr. Koskinen. Actually the law passed by the Congress says that you don't have to have a criminal intent to violate the law. You simply have to be not providing information as required by the law.

Mr. Rangel. And so the judges and the assistant U.S. attorney said that if taxpayers, if there is no evidence of illegal sources or anything, still they would go through the process merely because the law said it was before you changed the policy?

Mr. Koskinen. The policy was that it is a violation of the law to structure your assets and your deposits. And if you have structured your deposits under the law, it is a violation.

Mr. Rangel. And structured means that a consistency that is below $10,000?

Mr. Koskinen. Correct.

Mr. Rangel. And from that, you infer that you can seize someone's property without showing any evidence that they intended to violate the law, that was the policy?

Mr. Koskinen. That was the policy. That is the law actually. You have to have an intent to avoid the reporting requirements. You don't necessarily have to have an intent to --

Mr. Rangel. So you are trying to say that it is the Congress that enacted this law. That just doesn't make any sense at all

that you should do this to anybody, anybody that has no criminal intent and for whatever reason wants to structure their deposits in a bank and there is no evidence of wrongdoing. That law to me is unconstitutional, unreasonable, and stupid. So the only way that you can do this is by having tax reform, I would think. Do you have any other ways to change this besides changing the policy?

Mr. Koskinen. Well, as I say, we have changed the policy from our standpoint. Historically only in a third of the cases of investigations were there ever seizures to begin with, and the average of those seizures was well over $100,000. But the policy would say and does say and has been in effect since last fall that if there is no evidence of criminal sourcing --

Mr. Rangel. That is good and it makes me feel good. I hope it makes Mr. Kelly feel a little better.

This never should have happened in the first place is what I am saying. And I hope you would agree that whether or not it was within the law or not, it is wrong without any criminal evidence to seize somebody's property merely because it falls within the four corners of the law because the law doesn't make any sense, there is nothing wrong in doing this. I am a former assistant U.S. attorney. Every case I have seen is people buying luxury cars, expensive jewelry, and a vendor putting in deposits of over $9,900 dollars, a bunch of crooks.

Mr. Koskinen. Yes.

Mr. Rangel. Now we find a bunch of innocent people doing the same thing for nonillegal purposes and you are enforcing bad law.

Mr. Koskinen. And we are actually making it clear that if you haven't done anything illegal --

Mr. Rangel. Well, you are making it clear now, Commissioner. But common sense and decency would say when the Congress screws up, we expect you people to come back to us and say this is not working. You have done this in policy. And there has to be some way that we can tell the people that have been victims of poor judgment that we regret that this happened. So let's move on and agree that we should reform the tax system.

Thank you. I yield back the balance of my time.

Chairman Roskam. Thank you, Mr. Rangel.

Mr. Meehan is recognized.

Mr. Meehan. Thank you, Chairman. Thank you, Director, for being here today.

You identified that you spoke to The New York Times and changed this policy publicly. What were the reasons for the changing of the policy?

Mr. Koskinen. The changing of the policy, as I noted, earlier last year, as we began to look into the situation, it was clear that there was no single policy and that if we were presenting evidence in some jurisdictions to U.S. attorneys and courts there would be a seizure, in other jurisdictions, there

wouldn't. So we looked at the entire question of how this law is applied and came up with the decision that the right balance between law enforcement and trying to protect taxpayers was when there was no evidence that the funds were from illegal sources there would be no seizure.

Mr. Meehan. So that is the inconsistency you are trying to say that existed?

Mr. Koskinen. We decided we needed to have a standard policy at the IRS in when we would request seizures, and the policy would be we would not request a seizure if there was no evidence of criminal sourcing.

Mr. Meehan. Do you think there were abuses of this policy in the cases that you oversaw?

Mr. Koskinen. I am not familiar with individual cases, but I take Mr. Kelly's and everybody's concern that if a business has legitimate reasons for depositing cash regularly in amounts that avoid otherwise the Bank Secrecy Act, if they have got legitimate reasons for that, then they should not be subject to seizures. And that is our policy.

Mr. Meehan. Because, I mean, I can see the value in a program like this as a former prosecutor. But you can also see the ease with which this can be manipulated to get ends that are -- because it is an easier way to go.

Probable cause, you mentioned this a couple of times, what is the underlying probable cause.

Mr. Koskinen. The underlying probable cause at this point would be we have evidence that there is criminal sourcing involved.

Mr. Meehan. That is. So now it is going to be criminal sourcing. When we did these before, the probable cause, you know, you said --

Mr. Koskinen. Probably cause before would have been --

Mr. Meehan. Just the simple act of structuring?

Mr. Koskinen. Structuring, exactly.

Mr. Meehan. Okay, alone. So this does not tie back. Now we are going to make sure that it is a two-step process, that it includes at the initial determination that there has to be some kind of evidence presented to the judge and by the U.S. attorney before there will be a seizure that will be initiated?

Mr. Koskinen. That is correct.

Mr. Meehan. Okay. I tried to figure out where these -- are you aware in 2012 -- of course for the statistics that I have seen, there have been five times as many structuring-related seizures as there were in 2005, five times as many. Half of the total were for less than $34,000. Does that look to you like the kind of big drug-related or terrorist-related incident that we are trying to prevent?

Mr. Koskinen. The average of the seizures in the evidence, the data I have, the average is well over $100,000.

Mr. Meehan. That is the average because you have some big

seizures and I get you. But half the people are less than $34,000.

Mr. Koskinen. And under this policy, if that $34,000 had no indication it was coming from criminal violations, there would be no seizure.

I would note for the record, 60 percent of the cases when there is a seizure nobody shows up. Which means that in 60 percent of the cases there are criminals who don't even want to see the light of day and are happy to give up the money. And part of the reason for the seizure is to try to, in effect, undercut the ability of organized crime, drug dealers and terrorists --

Mr. Meehan. But 80 percent of these cases were civil cases. They weren't criminal, 80 percent were civil.

Mr. Koskinen. Yes. Because to have a criminal case, you have to have a criminal defendant. And, as you know, in drug cases, in terrorist financing cases and other times, oftentimes we can't get the individual. So we are stuck with the civil procedure and forfeiture, which is against the asset.

Mr. Meehan. What do you mean we can't get the guy so we are stuck with the civil? I mean, this is due process. This is America.

Mr. Koskinen. We will seize the asset in many cases and the owner of that asset will disappear, will not show up. Sixty percent of the cases, the owner of the asset does not show up. That means in 60 percent of the cases one could surmise that they had a good reason for not showing up, that they, in fact, did

not want to subject themselves to further legal enforcement.

Mr. Meehan. We are going to hear from Mr. Clyde later. I went through some of his testimony. And in the course of it, he did show up. He showed up numerous times because they were being leveraged, a $900,000 seizure of his business was negotiated down numerous times, which by the final time the IRS came to him and said you will settle for $109,000.

Mr. Koskinen. The IRS did not do that. The negotiations on settlement, once it goes to court, are within the realm of the Justice Department and the U.S. attorney. The only time we settle is if in that window of administrative proceedings, before you have to go to court, you come to see us, you will settle with us. And it is a handful of cases.

Mr. Meehan. So you are putting this on the U.S. attorney. That may be. Here is my problem with this because, again, we are using the system. And this is going to be his testimony. I read the testimony. He said they came back and they offered to settle for only $109,000, and they reminded me this case could easily go criminal against me personally during discovery.

Now, you know it is unethical to leverage a civil case by threatening a criminal prosecution.

Mr. Koskinen. That is correct.

Mr. Meehan. That is correct.

Mr. Koskinen. And I don't think that is an IRS agent that did that.

Mr. Meehan. Is Mr. Clyde lying when he is testifying that this happened to him?

Mr. Koskinen. Does he specify that it was an IRS agent that told him that?

Mr. Meehan. He specifies that he was leveraged that if he did not settle for $109,000 this could be a criminal case.

Mr. Koskinen. It is exactly as you say. We would not threaten him. And I don't think that is an IRS agent.

Mr. Meehan. Thank you, Mr. Koskinen. I appreciate it.

Chairman Roskam. Mr. Crowley is recognized.

Mr. Crowley. I think the big distinction then, Commissioner, would be whether it was the prosecutor or the IRS agent, agent of the IRS who was making that innuendo, which is, I think, a very valid point.

Commissioner, welcome. But I think you recognize by the angst on both sides of the aisle that this is a bipartisan issue of concern of overreach by the IRS. And while we haven't officially heard from the witnesses on panel two, I have read their testimony, it is horrifying to me as an American.

I think most Americans, if not all Americans, who read those stories about the IRS, as well as the U.S. attorney and federal judges who have the ability to seize Americans' bank assets for no legitimate reason, all the while never charging them with a crime. That policy robbed hard-working people of their cash without any proof of crime. And whether you are Democrat or

Republican, green, purple, red, or blue, it is wrong.

The people before us on panel two are victims. They are not criminals. We all recognize the IRS is a powerful agency. And at times, that power is justified to crack down on what Mr. Meehan was speaking about in terms of terror financing or drug laundering or tax evasion itself. But that power must be measured and used appropriately to get to criminals and not trap innocent American citizens.

That is why I hope that these civil asset forfeitures against people who committed no crime appears to be something of the past. Could you explain the changes you undertook as Commissioner on civil asset forfeiture?

Mr. Koskinen. As I noted, the changes since I have been there, we looked at reports that had come in about varying policies across the country, reviewed the entire policy, and decided that the appropriate policy was if we didn't have evidence of criminal sourcing for the funding there would not be a seizure. And there have been cases, some jurisdictions where that was already the policy. Other jurisdictions, it was not the policy and there were seizures. And I am sure some of the people you will hear from were in those jurisdictions.

We decided the right policy was to have a uniform policy and not have seizures unless there is evidence that you, in fact, were involved in criminal activities. We will continue to investigate, as we will, evidence, but we will actually proceed,

and in some cases it has turned out to be a very good development of the policy because instead of simply relying on a seizure to begin with, we have actually uncovered with further investigation more criminal activity.

So the policy decision was to have a uniform policy and to make this decision that it would be uniform, that if you weren't engaged and there was no evidence you were engaged in criminal activities and the source of funds was from criminal activities, you would not be at risk of a forfeiture.

Mr. Crowley. I do hope that that policy, as you said, is effective. And if not, I think the Congress will continue, we will continue to have oversight regardless.

I would like to get your thoughts on the bipartisan legislation written by Sandy Levin, the ranking member of the committee, to allow effected taxpayers the right to a probable cause hearing within 14 days or have the IRS return the seized funds. What are your thoughts on that?

Mr. Koskinen. As I say, I think the ability to come in, in an administrative way, without having to hire a lawyer and go to court, that timeframe under the law is in the range of 30 days. And I think that is too short. I think that we ought to give people the chance to come in, before they have to hire a lawyer and go to court, to make their case. As I say, hopefully we won't have these cases going forward. And so I have no problem as a general matter with making sure people --

Mr. Crowley. More a matter of time.

Mr. Koskinen. My concern is whether 14 days is going to be too short even for the taxpayer. But if it were some reasonably short period of time, I think that taxpayers ought to have a chance to show up. As I say, 60 percent of them historically, even under the old policy, didn't show up, but that was an indicator of what they were about. But I agree totally that these are important matters. It is important to make sure that innocent taxpayers are not dragged into a system inadvertently. And if they, even with our policy, if they think they have been wrongly included, they should have a prompt way to be able to raise that issue.

Mr. Crowley. I appreciate it, Mr. Chairman. I have limited time.

Like many of my constituents, I read with disgust and shock the stories reporting the IRS rehired a number of former employees who had troubling work records during their previous stint at the IRS. Please tell me that these stories are incorrect, that they have not been rehired.

Mr. Koskinen. Historically, in the 2009 to 2012 area, there were a handful of people with prior employment problems, primarily seasonal employees -- we hire 8,000 to 10,000 seasonals a year -- who had prior issues. We have agreed with the IG's report on this, and I have had meetings in the last few weeks to make sure that we look at very carefully, particularly those who have been willful violators of the Tax Code, to ensure that we consider

that before any hiring decision is made. And so the handful of cases the IG found I think will not occur. And those were a handful out of the 73,000 hired over those several years.

Mr. Crowley. Mr. Chairman, let me just say for the record that I appreciate the response by the Commissioner. But I do think that more investigation of this is warranted. And I would associate myself with your letter dated February 6 asking about current hiring practices at the IRS. And with that, I yield back the balance of my time.

Mr. Koskinen. And we are responding and we will respond promptly to that letter.

Mr. Crowley. Thank you, Mr. Commissioner.

Chairman Roskam. Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

A few specific questions about the new policy. One, the new policy that is dated, what, October of 2014 --

Mr. Koskinen. October, yeah, 2014.

Mr. Holding. October 17.

Mr. Koskinen. The date is actually October 17, yes.

Mr. Holding. Okay. Is it retroactive to cases that were in the works pending beforehand?

Mr. Koskinen. No. It is not retroactive in the sense that if there are cases before that, they are in the judicial process, and they will be resolved however the judicial process would resolve them.

Mr. Holding. Right. So there could be plenty of legally sourced structuring cases prior to the date of your new policy. Do you think it is fair that people who are prior to your policy are being treated differently to folks subsequent to your policy?

Mr. Koskinen. Well, I think that, as I say, our hope is going forward no one runs into this problem.

Mr. Holding. But is it fair to the people who happen to have been caught in the web before you changed the policy?

Mr. Koskinen. Well, as I say, at this point, they are, as noted, and it is unfortunate if it takes that long, but they are in a process that allows them through the courts to raise their challenges and their defenses.

Mr. Holding. The U.S. attorney could step in and withdraw the case.

Mr. Koskinen. They could do that.

Mr. Holding. There is plenty of precedent for that. The crack resentencing guidelines, they decided, you know, on a department basis to apply these things retroactively. Would you advocate applying your policy retroactively.

Mr. Koskinen. I always try to be careful not to tell another agency what their policy ought to be. But it is, I think, appropriate for the Justice Department to consider that.

Mr. Holding. Well, you are telling them what their policy ought to be with your new policy.

Mr. Koskinen. I was going to make that point earlier. I

should stress there are a wide range of federal agencies, the Drug Enforcement Agency, the Justice Department, the FBI, and others who have seizure authority. Our policy, all we can do is make a policy for the Internal Revenue Service. My understanding is the Justice Department is looking at our policy in terms of applying it itself in other cases. But I can't tell you that our policy will be the policy other agencies follow. It is just the policy we think is right, that draws the right balance.

Mr. Holding. To follow up on one of your answers to Mr. Meehan, are you saying that under the new policy that you have to aver that we have probable cause to believe that an illegal act is taking place other than the act of structuring?

Mr. Koskinen. Yes.

Mr. Holding. Okay. You sure about that?

Mr. Koskinen. That is what I am advised by the people who run the Criminal Investigation Division.

Mr. Holding. I have taken a look, the staff pulled for me a case from North Carolina, from my former prosecutorial district, after your policy change. And I have read through the affidavit and the associated documents. There is no allegation of illegal activity other than the act of structuring. And I believe if you looked at cases, there has been no change in practice of alleging some illegal act.

Mr. Koskinen. If that case exists, then it is not following the policy I have been advised. I had lengthy meetings with the

senior leadership of our Criminal Investigation Division which handles this and have been assured that that is the policy, that people have been trained and advised about it. So if somebody is not following the policy --

Mr. Holding. Do you know how your policy --

Mr. Koskinen. Pardon?

Mr. Holding. Do you know how you policy is being communicated to the U.S. attorney's offices.

Mr. Koskinen. The U.S. attorney isn't the one that is making the decision for us. We present the case --

Mr. Holding. Well, the U.S. attorney is the one who takes it to court for you. I mean, that is your gatekeeper to getting due process.

Mr. Koskinen. Right. And so what we have done is had the policy -- it has been a public policy -- people, we have announced it, it has been in the press. We would not go to the U.S. attorney under this policy unless we had the case that fit the criteria.

Mr. Holding. So do you think that your new policy creates a situation where if I am a claimant, I am reading through the affidavit against the thing, the sum of money, and it does not aver a criminal act on my part that I have, that I can go to the judge and say this is an insufficient affidavit here, it doesn't allege any criminal activity other than the act of structuring.

Mr. Koskinen. My understanding is that private citizens should have the ability to do that. Our policy is that we would

not --

Mr. Holding. So you have created a defense, your policy creates a defense, is what you are saying?

Mr. Koskinen. Yes.

Mr. Holding. How do you anticipate that the --

Mr. Koskinen. I guess I should answer to be careful. If you are structuring to avoid the reporting requirement, it is still a crime.

Mr. Holding. I understand that. But what you are saying, under your new policy --

Mr. Koskinen. Under our policy, we are not going to seize --

Mr. Holding. -- I have a defense.

Mr. Koskinen. To the seizure --

Mr. Holding. -- to that seizure --

Mr. Koskinen. -- that we have not provided any evidence --

Mr. Holding. -- by saying that you haven't alleged, you haven't presented any probable cause that there is an underlying criminal act on my part other than structuring.

Mr. Koskinen. Structuring, that is correct. That is our policy.

Mr. Holding. All right. Mr, Chairman, I yield back.

Chairman Roskam. Mr. Smith is recognized.

Mr. Smith. Thank you, Mr. Chairman.

Commissioner, I would like to start out reading the IRS mission statement. It says that the IRS' mission is to provide

America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all. Your mission is not to enforce all laws, it is to enforce tax laws, correct?

Mr. Koskinen. Correct. Although we do cooperate on task forces with drug dealing and others at the request of other agencies.

Mr. Smith. You don't enforce drug laws, you cooperate.

Mr. Koskinen. We cooperate.

Mr. Smith. You enforce tax laws.

Mr. Koskinen. We enforce tax laws.

Mr. Smith. Not banking laws?

Mr. Koskinen. Banking laws to the extent that bank security, if there are laws that provide us or require us to, in fact, be aware of violations of the law. But basically our primary function, as I said, we are the only agency --

Mr. Smith. What does that mean?

Mr. Koskinen. -- that enforces tax laws.

Mr. Smith. So you don't enforce banking laws? You just look at banking laws?

Mr. Koskinen. Yes. We are aware of banking laws. We are on task forces because we are a law enforcement agency. We have law enforcement powers. And we participate in joint task forces at the request of other agencies because our agents are very good at tracking money.

Mr. Smith. Okay.

Mr. Koskinen. We probably are the best people to deal with complicated financial structures of anybody in the government.

Mr. Smith. All right.

Mr. Koskinen. So U.S. attorneys are forever asking us to be involved in cases.

Mr. Smith. I get it.

I have looked at the Treasury Forfeiture Fund Accountability Report for 2013, and it appears that the IRS cases that the report touts are some that are related to your mission, such as tax evasion and unlawful tax shelter cases. But structuring payments is not a tax crime, correct, it is a banking law?

Mr. Koskinen. It is a banking law, the Bank Secrecy Act, correct.

Mr. Smith. Okay. So how often do you find evasion, tax evasion cases from structuring cases?

Mr. Koskinen. I can't give you a number. But any number of people are in business structuring their deposits so we don't get reports of how much cash they have. The highest level of underreporting in the tax gap, which I will testify about this afternoon, is small and medium-sized businesses where we have no other third-party reporting historically.

Mr. Smith. So you have no number?

Mr. Koskinen. I have no numbers about what percentage of the cases we are dealing with are tax evasion, other than that

is the primary purpose of our activities.

Mr. Smith. So the primary purpose of your activities is looking at structuring to find tax evasion, but you have no idea of what amount of number those cases are, is that what you are saying?

Mr. Koskinen. Which ones turns out to be tax evasion cases as opposed to drug cases or terrorism cases, no, because we actually are involved in those cases as well. But I can find out if we can get you that data, and we would be happy to provide it.

Mr. Smith. I think that would be data the committee would like.

Mr. Koskinen. We would be delighted to get you the data about how the cases break down.

Mr. Smith. Okay. So is the IRS devoting any time to enforcing banking laws at all?

Mr. Koskinen. Yes. As I say, we participate at the request particularly of U.S. attorneys and the Tax Division of the Justice Department and others in a range of cases. We are involved in money laundering cases, we have been involved in drug cases, we have been involved in terrorist financing cases at the request of various agencies because we have a very skillful and qualified set of criminal investigators.

Mr. Smith. So you have been involved in some drug cases?

Mr. Koskinen. Yes.

Mr. Smith. What is your involvement in any structuring cases in the State of Colorado?

Mr. Koskinen. I don't have that data.

Mr. Smith. I would be very interested and I think the committee would be interested to see if the federal law is being enforced under the structuring in the IRS Code.

Mr. Koskinen. I would be happy to. Again, the data would show last year we had 146, the last fiscal year, 146 seizures. So it is not as if we have thousands of these cases. But I would be delighted to get you the data to the extent we have it on Colorado.

Mr. Smith. Out of those 146 cases, were any in the State of Colorado?

Mr. Koskinen. That I don't know. But I will get you the information.

Mr. Smith. I would like to have that.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. Representative Noem.

Mrs. Noem. Commissioner, it is important to set goals for an agency. I believe that it is important. Do you believe that that is important, to have goals as well?

Mr. Koskinen. Yes.

Mrs. Noem. I have been reading through your Forfeiture Fund annual report, and it is interesting to me that the IRS has set its goals based on the number of seizures, based on the size of seizures, and based on the amount of money in seizures.

Mr. Koskinen. That is not a goal of the IRS. In fact, the law prohibits us to have goals tied to actually collections. So none of our employees are measured by the dollars they collect.

Mrs. Noem. Well, that is the concern that I have, because based on my evaluation of the report and the fund is that that is what the goals of the IRS are. And that concerns me if you are going to be basing it --

Mr. Koskinen. That is a report from the Treasury Department. That is not an IRS fund. We do not control that fund.

Mrs. Noem. But the data would be the same. I mean, the data indicates --

Mr. Koskinen. We have volumes of data, some of which I am going to provide to this committee, about the number of cases, the amount of seizures. But those are not goals that are measured for performance of our agents. Those are the results of our

activities.

Mrs. Noem. So could you clarify for me then does the IRS have any goals that would indicate it is going after lawfully earned money?

Mr. Koskinen. We have no goals at all that would tie anybody's performance, including the agency's performance, to collections under any of those activities.

Mrs. Noem. Are your agents motivated at all by goals set by the agency to put points on the board?

Mr. Koskinen. None at all. It is illegal for us to have goals that cause any agent and any IRS employee anywhere in the organization to have a goal tied to collections.

Mrs. Noem. Is part of their evaluation for doing their job based on any kind of dollars of seizures that they have produced, by seizures that they have been a part of, or the size of those seizures? Is that a part of their evaluation as their work as an agent?

Mr. Koskinen. That is a very important question. I am glad you asked it. It is never a part of their evaluation. We are across the board prohibited from, whether it is a revenue agent, a collection agent, somebody sending you a notice, we are prohibited from having anybody rewarded on the basis of the dollars they collect. That is important for taxpayers to understand.

Mrs. Noem. So even if an agent is in a situation where they

have seized an amount of dollars but yet they settled for less, that is not going to be a part of their evaluation as to doing their job duties?

Mr. Koskinen. A, that settlement is not an IRS settlement. B, even if it were, it would not be part of their evaluation.

Mrs. Noem. Okay.

Mr. Koskinen. We settle cases. We have revenue agents negotiating with taxpayers across the country. What their settlements are is never toted up in terms of performance and never measured in terms of performance.

Mrs. Noem. Your Criminal Investigation Division has field offices, correct?

Mr. Koskinen. Across the country.

Mrs. Noem. Are they evaluated based on what kind of seizures they have participated in and investigated in?

Mr. Koskinen. Absolutely not.

Mrs. Noem. How are they evaluated?

Mr. Koskinen. They are evaluated on a set of normal performance measures in terms of their activities.

Mrs. Noem. So if they are not performing well and they are not getting very many seizures or aren't producing very many seizures, is that reflective on the work that they are doing and are they then motivated to go after easy cases or easy seizures?

Mr. Koskinen. You have to understand the seizure investigations are about 5 percent of the work of the Criminal

Investigation Division and about a third of those result in seizures. So in two-thirds of our investigations there is no seizure. And the investigations totally are about 5 percent of their activity.

So we are involved with identity theft, tracing criminals. We have thrown 2,000 people in jail for, thanks to cooperation with the Justice Department who prosecutes those cases, for identity theft. So the vast majority of their time is not spent on seizures or on those investigations.

Mrs. Noem. See, here is what concerns me about your new policy, is because it says that there could be exceptional circumstances that would change the policy if that was necessary. So if they are short on goals, if there are not many seizures happening, it could easily be declared that there are exceptional circumstances that could be utilized to raise those number of seizures and the amount of dollars that would be captured.

Mr. Koskinen. The number of seizures is not a performance goal. So they have no incentive to do that. The second point to remember is no agent and no field office has the ability to make that determination. It is made by a senior executive at headquarters in the Criminal Investigation Division to make sure that they really are exceptional circumstances to change the policy.

Mrs. Noem. And is that written policy that every agent and every member of the Criminal Investigation Division team would

know and be very clear of?

Mr. Koskinen. Every agent has been advised about that, it is being put into our Revenue Manual that everybody follows. Once that policy was initiated last fall, it was distributed and shared throughout the agency. Every agent should be aware of that policy.

Mrs. Noem. So to your knowledge, there has been no evaluation processes that have been gone through where seizures were discussed or talked about or even the settlements that resulted from those seizures.

Mr. Koskinen. Settlements and dollar. As I say, it is illegal and I think it is appropriately illegal for us to measure anybody's performance by their collection activity.

Mrs. Noem. Thank you, Mr. Commissioner.

I yield back.

RPTR ZAMORA

EDTR SECKMAN

[11:01 a.m.]

Mrs. Noem. I yield back.

Chairman Roskam. Mr. Johnson is recognized.

Mr. Johnson of Texas. Thank you, Mr. Chairman.

Thank you for letting me join you today.

Mr. Commissioner, welcome. I am here to try to give voice to my angry constituents, who are angry over the President's unconstitutional Executive amnesty. And here is the truth of the matter: Obama's Executive amnesty isn't just about immigration; it is about taxes also. And that is what I want to ask you about today.

This is what the President had to say back in November when he announced his Executive amnesty: Quote, "Now, here is the thing, we expect people who live in this country to play by the rules."

The President later on said that among the requirements for getting his amnesty is, quote, "you are willing to pay your fair share of taxes."

Mr. Commissioner, I have got some questions regarding the Earned Income Tax Credit, a refundable tax credit that can result in thousands of dollars in cash back from the IRS. First question, isn't it true that in order to claim the EITC, the tax filer,

along with the dependents, must provide a Social Security number, yes or no?

Mr. Koskinen. That is correct.

Mr. Johnson of Texas. So, in other words, no number, no EITC?

Mr. Koskinen. That is also correct.

Mr. Johnson of Texas. And just to confirm, if you are here illegally in the United States, you can't get a Social Security number; is that true or false?

Mr. Koskinen. That is also true, but you can file taxes, which hundreds of thousands of illegal immigrants do.

Mr. Johnson of Texas. Isn't it another requirement of the EITC that income must be earned, yes or no?

Mr. Koskinen. Yes.

Mr. Johnson of Texas. So, in other words, one needs to work in order to be eligible for EITC. So I think we have made it clear that the EITC is only for those who can legally work for the United States. But isn't it true that Obama's Executive amnesty will allow some who have been here illegally to get Social Security numbers? Yes or no?

Mr. Koskinen. They can do that, but the law -- EITC and the law in general about working is we encourage -- the law encourages and our process encourages illegal immigrants to pay taxes. And as I say, we have almost 700,000 ITINs, as they are called, out there, and people illegally in the country have been paying taxes for some time.

Mr. Johnson of Texas. But with the Social Security number, they can claim EITC?

Mr. Koskinen. That is correct.

Mr. Johnson of Texas. Okay. Now, I heard you say last week that an illegal who gets a Social Security number, thanks to Obama's Executive amnesty, can actually claim EITC for years in which he was illegal by filing amended returns. Is that correct?

Mr. Koskinen. That is correct. They would have to have been working in those years. As you noted, you can only get the EITC if you are working. The law doesn't say "legally working." The law simply says it is tied to people working. So if you have not worked in the past, you won't be eligible for EITC, whether you got a Social Security number or not.

Mr. Johnson of Texas. Well, say such an individual gets a Social Security number in February of this year, what is the maximum Earned Income Tax Credit that this individual can get if he files his return, including amended returns, as per the statute of limitations, by April 15?

Mr. Koskinen. If you are a single person, the maximum you can get is in the range of about $600. The maximum you can get if you are a family with three children or more is close to $6,000. So if you are an individual worker, you would get $600 this year. And if you had worked for the previous 3 years, you could file an amended return and get another $1,800.

Mr. Johnson of Texas. Well, Joint Tax tells us that

individual could get a total of $23,800 for the year 2012 through 2014.

Mr. Koskinen. You would have to be married, have more than three children. And if you were filing an amended return and had worked for those 3 years, you would be able to get that amount.

Mr. Johnson of Texas. Well, the truth is, I say thanks to Obama's amnesty, illegals will be getting thousands of dollars from the IRS. And I feel like that is kind of outrageous, and it is wrong. It is not fair. It is not right.

So let me make it clear, I represent hardworking, law-abiding Texas taxpayers and elsewhere in my district. I took an oath to support and defend the Constitution, and I think these amnesty rewards -- and that is what they are -- need to be stopped.

Thank you, Mr. Chairman.

Mr. Koskinen. Thank you.

Chairman Roskam. Commissioner, you mentioned to Mr. Holding that the new policy involved a defense. Did you mean a legal defense when you said that?

Mr. Koskinen. Well, what I meant was -- you know, I am not a practicing lawyer; I haven't been for some time -- is that our policy is that if there is not evidence of illegal sourcing, we cannot establish, will not try to establish probable cause. So a --

Chairman Roskam. I understand that. So, but just to be clear, that gives the IRS all the ability to make the initiative.

In other words, a defendant is not able, based on that policy statement, able to come in and assert, Hey, the New York Times reported that the IRS isn't going to do this anymore. Do you follow me? So it is not an actual defense. It is a discretion.

Mr. Koskinen. That is a good point. And as I tried to make clear as well, if the structuring has taken place, it is a violation of the law. We are simply saying that we are not going to go after an asset seizure if there is no indication of illegal activity. But the law still says that if you are consciously trying to avoid having a bank file above $10,000, what is called an currency transaction report, if you are trying to avoid that, that is a violation of the law that Congress has passed. We are simply saying, if there is no legal activities, we are not seizing your assets in that case.

Chairman Roskam. So will you be amending the Internal Revenue Manual to reflect that?

Mr. Koskinen. Yes, we have already instructed the agents, but we are going to change the Internal Revenue Manual and try to make sure across the country that that is a uniform policy and uniformly applied.

Chairman Roskam. What is the timing on that, on the change to the Internal Revenue Manual?

Mr. Koskinen. I saw some place an expectation that it is going to take years. I mean, it takes us -- in fact, if it is not in the IRM, it will be there very quickly. Changing the

manual, it does not take forever.

Chairman Roskam. Okay. So you would expect that done in 2015, for example?

Mr. Koskinen. Certainly, well before the end of this quarter, if it isn't already done.

Chairman Roskam. Excellent.

One of the things that I think Mr. Weber said at the time was for the change was an argument about an allocation of resources. So if, theoretically, if the IRS were to get all the resources that it was requesting, I mean, that suggests that they could maybe go back to the legal source structuring. Can you assure us that that is not going to happen?

Mr. Koskinen. I can assure that we have no intention of going back to seizing assets where there is legal source structuring.

Chairman Roskam. Okay. I want to contrast, to follow up on Mr. Kelly's line of inquiry a little bit, and that is to really highlight this power relationship and how it has unique in the seizure situation and contrast it with an audit, for example. You know, if a taxpayer gets notice from the IRS that there is an audit, it is a different process. Can you walk through the taxpayer protections that someone has for an audit that they don't have in a seizure, for example?

Mr. Koskinen. Well, as I say, in the seizure, we should not forget, while it takes too long sometimes, there is a court process that is available to a taxpayer immediately. So they have the

protections of the legal protection of the legal service and the court process. The fact, in some cases, it may take too long, I think, is an appropriate concern, but it is not as if they are out there without the ability to immediately go to court and make their case.

But in the audit, to get to your point, we will send you a notice if we find there is a problem. I would stress that we do that on the basis of computerized analysis and matchings. We will send you a notice and say, Hey, we think there is an issue here. You then can write us back and say, yep, I agree and here and it is over, or you will say, nope, that is fine, and we will then get two or three correspondences by letter.

As I said, if you hear from us for the first time by phone, you are not hearing from us. The phone scams going on and people making threats over the phone from the IRS are just that, scams.

Chairman Roskam. But to that point, I mean, the audit is for a discrete period of time, isn't it?

Mr. Koskinen. It is usually for a given year, and it is about a specific issue. We will then, if we can't by correspondence do that, we will then have a Revenue agent or officer will show up and set a meeting with you.

Chairman Roskam. My point is, there is a lot more certainty. There is certainty as it relates to what is the subject of this inquiry? What is the duration of the inquiry? I can prepare for this. And, you know, you still have -- the taxpayer in this case

would still have access to all their resources and everything until it is ultimately disposed of.

Mr. Koskinen. Exactly. And if they disagree with us when we come to a final assessment, they can go through our appeals process and then they can go to court. So there are --

Chairman Roskam. So you can understand then how somebody feels fundamentally different about an IRS inquiry that looks and feels different. The seizure is fundamentally different. All the power is with the IRS. All the power to come in and say, There is something going on.

And I think part of what I want to draw your attention to -- and it was in your own testimony. In your written testimony, you said the purpose of these sorts of efforts is to disrupt and dismantle criminal enterprises. I mean --

Mr. Koskinen. Correct.

Chairman Roskam. -- without any question, there is nobody on this panel that is going to quarrel with the use of government power to disrupt criminal enterprises. And yet, the witnesses that are going to come after you today are not criminals. They didn't do anything remotely related to the type of enterprise that you were citing in your testimony.

I am going to read to you from congressional testimony from the Department of Justice Head of Asset Forfeiture, the Asset Forfeiture Fund. He said this about the forfeiture law: Forfeiture undeniably provides both a deterrent against crime

and a measure of punishment for the criminal. Many criminals fear the loss of their vacation homes, fancy cars, businesses, and bloated bank accounts far more than the prospect of a jail sentence.

But take, you know, Mrs. Hinder's story. There is nothing remotely related to that type of criminal activity in Mrs. Hinder's story, or in the witnesses that we are going to hear from today, Mr. Clyde or Mr. Hirsch or Mr. Sowers. So you have an opportunity here before these people. Would you, on behalf of the IRS, be willing to apologize to them for the way in which they have been treated and working forward, even reengaging with Mr. Holding's inquiry about doing your best to influence the U.S. attorneys in these cases? But would you be willing to apologize to these people on behalf of the IRS?

Mr. Koskinen. Well, I am not allowed to know any of the details of individual cases, which is appropriate, so I can't talk about individual cases. I can assure you --

Chairman Roskam. But you have notice about who our witnesses are. So I am not asking you to disclose anything, but you know their stories are public and they have been aggrieved. There is no question, right?

Mr. Koskinen. There is no doubt about that, and I regret -- we take, as the mission statement says, very seriously our responsibility to taxpayers. The IRS does have a lot of enforcement powers. Even when you get a letter from us, it is

not a fun day in your life, and we try to take and balance that as much as we can. We pulled together early last year a taxpayer bill of rights to try to let taxpayers know --

Chairman Roskam. But, I mean, just so we are clear --

Mr. Koskinen. So my sense is, going forward under this policy, we should not people in the circumstances of the witnesses following us. And that is the goal for the policy. To the extent that people have gotten wrapped up in this system and it has taken too long to resolve it, I regret that. That is a problem with the system. The question was asked, shouldn't there be a way for people able, however they got there, to come in quickly? Fourteen days may be a little short, but there ought to be a way efficiently for people to be able to come in and make their claim.

As I say, 60 percent of the people just disappear who are the criminal types who we are chasing. But even with the policy, I do think that we ought to make sure that there is a way for people efficiently and quickly to be able to say, Well, okay, there is an allegation of criminal issues or, in fact, if some agent doesn't follow the policy, to be able to come in in a reasonable period of time and be able to make their case without hiring lawyers, without waiting for a year or 2 --

Chairman Roskam. Mr. Commissioner --

Mr. Koskinen. -- are out of the question.

Chairman Roskam. The IRS grabbed these taxpayers by their throat and squeezed them and squeezed them and squeezed them

without mercy and nearly ruined them and made their lives miserable. Would you be willing today on behalf of the IRS to apologize to those taxpayers who were so abused?

Mr. Koskinen. Anyone who actually was not engaged in structuring, was not engaged in processing and laundering illegally gained funds who ended up stuck in the system, some of it beyond our control, I think, deserve an apology.

Chairman Roskam. And would that apology come today from you, the Commissioner of the IRS, to them?

Mr. Koskinen. I would apologize for anyone -- not just in this area -- anyone who is not treated fairly under the Code I apologize to. Our goal is to make sure that taxpayers in all circumstances are treated fairly; they are treated the same way. It goes back to the issues about determinations for (c)4 cases. I have said from the start, I apologized there for anybody who got caught up in those delays.

Taxpayers have to be comfortable they are all going to get treated fairly, the same way as anybody else, no matter who they are, what organization they belong to, who they voted for in the last election. If you hear from us or if you are dealing with us, you should be comfortable you are going to be treated the same way and fairly as everybody else.

And to the extent that the system makes mistakes, we should recognize those. And I am sorry the mistakes happened, if they happened, and I am happy to apologize to say if taxpayers have

gotten themselves into a situation that is not their fault, they are not consciously structuring and avoiding taxes -- there are a lot of people out there structuring to avoid letting us know what they earned. If they paid their taxes, they weren't doing anything consciously illegal and they got wrapped up in the system, that was a mistake and I apologize for that.

Chairman Roskam. So, to be clear, it is your intention to have the new policy reduced to writing and part of the manual within the next quarter?

Mr. Koskinen. It will be by the end of this quarter, and as I say, we have instructed agents already. This is a policy that has not been under -- you know, quietly done. It has been in the press. We have talked to our offices. Again, with Congressman Holding, if somebody is not following that policy, that is a mistake. And while we don't hold people and measure their progress by how much they collect, we do measure their progress by following our policies. We have terminated a large number of employees every year who don't follow the policies and procedures because we take them very seriously.

Chairman Roskam. Once it is in the manual, the new policy, for example, would it be within the discretion of the next IRS Commissioner? Let's say that that person had a different disposition than you, would they have the authority to go back and revisit that and say, Look, we are going to move back into this legal-source approach?

Mr. Koskinen. You could do that.

Chairman Roskam. So that would require a change in the statute to remedy against that?

Mr. Koskinen. You have got me for the next 3 years, and then, thereafter, you might need to deal with the statute.

Chairman Roskam. I just want to follow up on one thing that you mentioned to Mr. Meehan, and that was, you said that we don't settle. We, the IRS, are not involved in the settlement process.

Mr. Koskinen. Unless you come in in that short administrative period.

Chairman Roskam. So what is that time period?

Mr. Koskinen. Somebody will tell me, but it is about 30 or 35 days. The statute is set up so you can come in administratively to the U.S. attorney and the IRS. Otherwise, it goes -- you file a claim in court. A large number of people go straight to the court if they are going to do that.

The number of cases in 3 years, I asked about that, I think we have had seven who showed up in that timeframe making the case. And, in fact, in five of them, it turned out there was evidence that there was a criminal violation, and so there was no settlement. So the discussions about people settling their cases and giving up large amounts are discussions that don't take place with the IRS as a general matter.

Chairman Roskam. Commissioner, I think you have heard from both sides of the aisle here and you have heard a great deal of

concern. The stories that we are going to hear in the subsequent panel -- and I know you have another commitment and you are not able to stay -- but I would commend you to have your staff summarize those stories in their actual accounts, because the agency that you are now tasked with heading, you are now tasked with leading, has basically come off like Inspector Javert -- you know what I mean -- with very little flexibility, very little concern and, as Mr. Rangel said, you know, looking within the four corners of the document without looking at the totality of the situation.

So I appreciate the exchange today and your willingness to come and spend time with the subcommittee, and we look forward to continuing a dialogue with you in the future.

Mr. Koskinen. Well, I appreciate it, and I appreciate the discussion. As I said, this is an important matter. We take it seriously. I think the concerns are legitimate and appropriate. It is part of what drove us to the policy that we will continue to follow and deal with. And I think taxpayers, as I say, again, your point is they need to feel they are going to get treated fairly and appropriately.

And somebody early on noted, I do distinguish -- and we do as an agency -- if you are trying to become compliant, across the board, we are anxious to work with you. You don't have to hire somebody off late-night TV. We are going to try to work with you. It is the people who are consciously deciding they are going to cheat, they are going to avoid taxes, they are going to

participate in criminal ventures that we should be applying our resources against, and we are trying to make sure that that is the division that is made.

And so we are, as I say, we have a taxpayer bill of rights we went out of our way to provide to taxpayers to make sure that they understand that they are an important part of our process and we take their rights very seriously.

So I appreciate the discussion and the conversation.

Chairman Roskam. Thank you, Commissioner, for appearing before us today.

Members are advised that they may submit written questions to be answered later in writing.

Those questions and your answers would be made part of the formal record of today's hearing, Commissioner.

And as the Commissioner knows, I wrote seeking information about the IRS' contract with CGI. Thanks for the response we received on Monday, and I note that there are a number of items that are missing, including the documents requested. Would you and your staff be willing to work with us to satisfy the document request?

Mr. Koskinen. Yes, in fact, we hope to satisfy without any further work. It just takes a little longer. And I wanted to get a response back to you quickly. And we will get you all of those documents, and we will make sure that your staff are comfortable that they have got everything you asked for.

Chairman Roskam. Thank you.

We will now turn to our second panel.

Thank you, Commissioner.

Mr. Koskinen. Thank you.

Mr. Rangel. I want to thank you so much for bringing up these things that happen to innocent people. It seems as though that Congress gave them the authority to do these vicious things against people who never intended to violate the law. So, even though your question is, could another Commissioner change it, I think maybe on the suspension calendar, we could correct this and make certain that nobody without criminal intent be subject to this type of behavior. But I want to congratulate you for bringing it up.

Chairman Roskam. Thank you. I think that there is a lot of interest, Mr. Rangel, on this issue across the spectrum. And I am committed to working with you and others to make this right.

Mr. Sowers, Mr. Hirsch, Mr. Clyde, and Mr. Johnson, thank you for your time today. The committee has received your written statement and it will be made part of the formal hearing record. You will be recognized in sequential order, and you have 5 minutes to deliver your oral remarks.

Mr. Sowers, you may begin when you are ready.

STATEMENT OF RANDY SOWERS, OWNER, SOUTH MOUNTAIN CREAMERY, MIDDLETOWN, MARYLAND

Mr. Sowers. Good morning, Mr. Chairman, members of the committee --

Chairman Roskam. Mr. Sowers, why don't you pull that mike a little bit closer to you. And is the light on down below?

Mr. Sowers. Okay. It is on.

Good morning, Mr. Chairman, members of the committee, and thank you for inviting me this morning to testify. It gets me out of the cold. Two months working in the cold, it is kind of nice being warm a little bit.

My name is Randy Sowers, and I am a dairy farmer by trade. My wife of 40 years is here with me today. We started farming in 1981. Our parents weren't farmers. We started on our own. We had one -- or two children. One of them is still on the farm with us.

We did rent a farm in Frederick County and, later on, in 1987, got to buy that farm. Farming is a tough business to be in and many a time almost to the verge of not being able to make it. But we are here. Twenty years after we started, we invested $1 million and built a processing plant. We process milk and home deliver it to more than 8,000 customers in the Greater Washington

area.

So that brings us to why we had this cash we were depositing, because to promote ourselves, we would do farmers markets. That got us out there, give people samples, sold them our products, told them who we were. And we got a lot of cash at the time. We were doing five or six markets a week. In the beginning, the cash just got deposited kind of with the rest of the income from our business.

This year -- it was 4 years ago, I think, I am not sure about the date, but -- and we are vertically integrated. We do everything from start to finish. All of our animals we raise ourselves. We produce all of the milk, the meat, beef, pork, whatever we sell, and distribute to the people. But this year -- or 4 years ago, my wife went to the bank one day, and she had $12,000 in cash because we do a festival. So we had a little bit of extra cash that week. And when she went to deposit it, the teller told her, Well, next time, just keep it under $10,000, and I don't have to fill out a form. So that is what she did. Not that it was normally more than 10. I mean, it was in that neighborhood, but she has to keep cash on hand for those five markets to have, you know, money to give people when we make change. So that is why it didn't all get deposited, and most of the time, it wouldn't have been over $10,000.

But the markets we do now, we leave at 3 in the morning and go, but that is actually a late time for us because we usually

get up 12:30 every morning and milk. And we have both been up milking cows every day since the 1st of November. So a 12-hour day for us is a short day. Anyway, we had the Treasury Department show up one day. And I thought one of these days, they would probably show up and want to know where I was getting the cash.

I never thought about it. Our lawyer was there, and he had just left. I tried to call him back, and he didn't come back. So I didn't think it was a problem, and I just talked to these people. And they did as me questions. The two agents were pretty good. I didn't have a problem with those guys. I think they saw right away we weren't criminals, and they pretty much said that.

But he said, you know, we took your money. I said, what? Yeah. We seized your money. And, you know, I was really taken aback by that. I couldn't believe, you know, they would just come in and take my money with no prior notice. And we thought it was going to be easy to remedy this thing because we gave them what they needed. I mean, my wife wrote down every week what we got from the farmers markets, and that is how we reported it. And we turned that in. That is what they wanted. They wanted some other things, and we turned it in right away.

But it seemed like when my lawyer talked to the Justice Department that they thought, too, it wouldn't be a big problem, that we would settle this thing and, you know, he would throw a number out and we would throw a number out. And I was down at my neighbor's doing a job one day, and I got a call from a guy

from Baltimore City Paper. And he wanted to ask me questions about this case because he saw it come out of the docks in Baltimore.

And I said, Well, my lawyer don't want me to talk to anybody about this. But he said, Well, I am going to do the story. It don't look good on your part, so it is up to you whether you want to tell me the story. I was itching to tell somebody the story anyway. So I told him the whole thing, and he did a beautiful job in the paper of explaining what had happened.

Well, it seemed to be after that that my lawyer was talking to the guy from the Justice Department and things had changed then. He said since, you know, I went to the press, then we were different than most people, and he was going to, you know -- we were going to have to pay what he wanted, and there wasn't going to be any question about that.

So we finally settled for $29,000. I mean, they took 66, and actually they took some more they weren't supposed to take, but that is where it ended. And we thought it was done. But after that, they did send IRS out to talk to my accountant, asking him different questions that we didn't, you know, understand. And my accountant said that they told him that he shouldn't tell me that they had contacted him.

So I thought the government was supposed to protect me. I didn't think they were supposed to come out and try to put me out of business, because that is what they could have done easy enough. And we are just hardworking farmers. I mean, we don't

have time to be criminals. We have got a thousand animals to take care of. And, you know, we have to take care of them. And that is what we do. And we love doing it. That is why we do it. We wouldn't do it if we didn't love it. It is too tough a job.

So I think the Government ought to give my money back. And I want to thank my lawyers that did help and took a little bit of the pain away. I mean, it was kind of tough sometimes getting some sleep when you know they could charge you with a felon -- as felons, and some people have been charged with that when they fault them.

Chairman Roskam. Well, thank you, Mr. Sowers. That is very, very helpful and we appreciate it. And I know that our members will have a number of questions for you and further inquire.

Mr. Sowers. Thanks a lot.

[The statement of Mr. Sowers follows:]

******** INSERT 2-1 ********

Chairman Roskam. Mr. Hirsch.

STATEMENT OF JEFF HIRSCH, OWNER, BI-COUNTY DISTRIBUTORS, RONKONKOMA, NEW YORK

Mr. Hirsch. Good morning, Chairman, and members of the committee. My name is Jeff Hirsch, and I am the owner of with Bi-County Distributors with two of my brothers. We sell candy, tobacco goods, and paper goods. On May 2012, we went to the bank that morning, and the teller said that our account was frozen. Me and my two brothers didn't know what was going on. We made phone calls. And, finally, we got a letter later that day stating our account was seized by the IRS.

So we made phone calls and we called this Detective Kearns that was on the letter, and we asked him, What Is going on? We are doing nothing wrong. And he said to contact an attorney because I asked him to come on down, take a look at my operation. And he wouldn't come down to take a look. So we contacted an attorney in New York City, and Mr. Potashnik, and he was working on the case for 2 years.

And he was getting frustrated because he kept making phone calls. They gave him the runaround. We met with them twice with this district attorney. And it just looked like they were fishing for anything they could. And there was nothing there. So he advised me to hire a forensic accountant. So we did. We hired

Baker Tilly in New York City, and they did our books for 2011 and half of 2012. And they came back with the clean bill of health. It was a 40-page report. And still they wouldn't give us back our money.

It was getting very frustrating. It has been 2 years and 9 months. We finally settled with them -- with the IRS -- January 20 of 2015. They are giving us back all our money. And, as of today, we haven't received it in the bank account. So we are still waiting.

But, in the meantime, they were just, in the 2 years 9 months, just giving us the runaround. And after 2 years, Mr. Potashnik just didn't know what to do anymore. And we found the Institute for Justice. And they handled our case.

It is an embarrassing moment when you have got to go to your vendors, and you ask them to extend you more credit for the week. And I have been in the business 27 years. So they all know me. They know what type of business we are running. They know we are honest people. So a couple of them have been helping us out for the 2 years and 9 months. And we still owe these people money. So the money that we are receiving from the Government will be going back to these vendors.

So I just hope that nobody in this country or person has to go through something like this. It is embarrassing. You really can't put a word for it. It has just been a long 2 years, almost 3. Thank you.

Chairman Roskam. Thank you, Mr. Hirsch.

[The statement of Mr. Hirsch follows:]

******** INSERT 2-2 ********

Chairman Roskam. Mr. Clyde.

STATEMENT OF ANDREW CLYDE, CEO, CLYDE ARMORY, BOGART, GEORGIA

Mr. Clyde. Thank you, Chairman, Honorable Members of Congress, thank you for the invitation to tell my story. I am Andrew Clyde. I own Clyde Armory, which is a small Federally licensed firearms store owned in Athens, Georgia. On Friday, April 12, 2013, two IRS agents showed up at my door and served me with a seizure warrant saying that they had already taken $940,313 from my company's bank account that morning, which was most of what I had.

I started Clyde Armory in my home in 1991. I worked hard and put in long hours to grow the company. I hired my first employee in 2002, and today we have 25 employees. I have been blessed to live the American dream. In 2003, I made my first combat deployment to Iraq as a Navy Reserve, and those employees carried the business while I served.

In 2004, I obtained my first insurance policy. That policy had a $10,000 cap for covering my loss of cash outside the business. To date, my insurance policy has the same $10,000 cap. To reduce risk, my company policy on carrying cash to the bank mirrors my insurance policy.

In late 2012, the President proposed new gun laws. During

the following 5 months, we experienced incredible sales with much of it being in cash. That meant we took in over $1 million in cash. We also helped my company policy of not depositing more than $10,000 in cash in the bank at any one time. At the IRS agent's deposition, he acknowledged that there was no floor for a structured transaction. That meant any deposit under $10,000 could be considered structuring. For us, it was as low as $1,628.

When the agents visited me, I had no idea what the term "structuring" even meant, and I had no knowledge that there was a law that prohibited structuring. The agents educated me on structuring and also told me that it was a felony -- a felony. Yet, if they were right, I would lose everything I had worked for because you cannot have a gun business and have a felony.

The seizure had the potential to devastate me. The timing was 3 days before April 15, when my 2012 taxes and 2013 estimated taxes were due. After I had paid both tax bills and my next employee payroll, I had no money left to run my business. By the grace of Almighty God, I was able to borrow $80,000 from my banker at Wells Fargo to keep my business alive. I immediately canceled the product orders that I could and also canceled our new computer system. If the business did not survive, then neither would my employee's jobs. And they had families too.

At the initial meeting with the Government, which was 6 days later, my accountant and attorney showed them that this was all legal money and properly reported. But the Government already

knew the money was clean, but that didn't matter because in their interpretation of the law, it makes no distinction between legal or illegal cash. And the Government wasn't going to give it back, not at least without their cut.

On May 7, in an email to my attorney, the Government said, and I quote, "I have authority to resolve this case by forfeiting $325,000 to the United States and returning the balance to your client. This offer to resolve the matter already takes into consideration Mr. Clyde's contention that the cash was legitimately earned and that appropriate withholdings were made, two matters that we will not challenge."

Despite acknowledging in writing the cash was legitimate, the Government still attempted coercive tactics saying that I could be criminally prosecuted for the misdeed. They also said that if a suit was filed, it could ruin my reputation in the community; and that if anything was found out during discovery, it could easily change to a personal criminal case against me. The clear intent was to force me to cave, and I refused.

Again, by the grace of God, we got a hearing on July 22, and the judge exercised creativity to force the Government to return $440,000 of my funds. While the amount allowed me to immediately buy inventory for the hunting season, it was not a long-term fix. I needed the remaining $500,000; 3 days before the trial, I forfeited $50,000 to settle the case. It was my tactical retreat so I could live to fight another day.

I did not serve three combat tours in Iraq only to come home and be extorted by my Government's use of civil forfeiture laws, but that is what I feel they have done to me and I need you to stop it from happening to anyone else. When I asked the U.S. attorney why he was doing this, his response was, I am just following the law. So he laid the responsibility right at the feet of Congress. So I am here to ask you to change the law and prevent them from ever going after legal-source money again and then restore those of us who have been abused.

Honorable Members of Congress, you are our last remaining line of battle. Thank you for the invitation to tell my story.

Chairman Roskam. Thank you, Mr. Clyde.

[The statement of Mr. Clyde follows:]

******** INSERT 2-3 ********

Chairman Roskam. Mr. Johnson.

STATEMENT OF ROBERT JOHNSON, ATTORNEY, INSTITUTE FOR JUSTICE, ARLINGTON, VIRGINIA

Mr. Johnson. Thank you, Chairman Roskam, Ranking Member Lewis, and members of the subcommittee. Thank you for inviting me to testify today about the IRS' use of civil forfeiture to take money from honest, hardworking, small-business owners. Nothing I can say can speak as powerfully as the stories of the other members of the panel, but I want to begin by putting their stories in some context based on information that we received from the IRS through a Freedom of Information Act request.

Between 2005 and 2012, the IRS seized money under the structuring laws in 2,500 cases. The IRS seized $242 million from Americans under the structuring laws. And a the third of cases, the IRS reported that it suspected no criminal activity other than the mere act of making sub-$10,000 cash transactions.

Now, the Commissioner referred, in his testimony, to protections that are available by law, but those protections are less robust in practice than the Commissioner may believe. It is true that before money can be seized, it is necessary for a law enforcement officer to fill out an affidavit. And this affidavit is often filled out by local law enforcement officers working as part of joint task forces with the IRS. They are

exercising Federal law enforcement activity, a law enforcement authority that has been delegated to them by the IRS, but these are local police officers filling out these affidavits.

And what they will allege in the affidavit is a mere pattern of sub-$10,000 deposits, and that is the only information that is in the affidavit. The mere fact that there is a pattern of sub-$10,000 deposits over a period of time. Before bringing that affidavit to court to seize property, they give no warning to the property owner. There is no notice that the property may be seized. And there is no meaningful investigation that is conducted to determine if there might be some legitimate business practice explaining that pattern of sub-$10,000 deposits.

Now, when that warrant application was brought to a magistrate judge, that is an ex parte proceeding, meaning that there is no opportunity for the property owner to present a defense to explain why they might be depositing money in the bank in amounts under $10,000. In many cases, people have all kinds of reasons that they are depositing money in the bank in those small amounts.

It may be the case that there is an insurance policy that only covers up to $10,000. Or, in many cases, people simply are told by their own banks that sub-$10,000 deposits are easier for the bank; they avoid paperwork burdens. Banks may even close people's accounts if they make frequent deposits over $10,000 because that creates a burden for the bank. So there is no serious

investigation to determine whether those explanations may be present, and there is no opportunity to present that defense at the hearing before the seizure.

Finally, once the seizure has happened, property owners simply must wait. The law does establish deadlines: 30 days -- 60 days to file an administrative hearing, and then 30 days after that, you can file a claim. But those deadlines are routinely disregarded because the law provides no meaningful enforcement mechanism to ensure that they are actually followed, because if the Government doesn't follow them, although it is required to return the property debts without prejudice to take in property again at a later time.

The reality, as a result of this, is that property owners simply are forced to settle. Some statistics that underlie those facts. Of the $242 million seized between 2005 and 2012, $116 million of that was not forfeited by the IRS. What that means is that the IRS is seizing substantial amounts of money that it ultimately cannot justify keeping.

The Commissioner also mentioned the policy change. I think it is important to underscore that that policy change includes this loophole for exceptional circumstances. And the Commissioner made clear that it will be considered exceptional if there is a pattern of deposits over a long period of time. And that is something that we see in almost all of these cases. So almost every case here today, I think every case here today

would qualify as exceptional under that new policy.

I thank you for inviting me to testify and welcome your questions.

Chairman Roskam. Thank you, Mr. Johnson.

[The statement of Mr. Johnson follows:]

******** INSERT 2-4 ********

Chairman Roskam. On the majority side, we will go to Mr. Marchant.

Mr. Marchant. Thank you, and thank you for traveling to Washington today and sharing your story, each one of you.

I think what I would like to do, many of you have already discussed some of these facts in your opening statement, but if you would go down the line, starting with Mr. Clyde, and answer the following questions: How much money did the IRS take from you? How much did you get back? How long did it take you to get it back? How much money did you spend on lawyers and accountants?

Mr. Clyde. Okay, sir, they took $940,313 from me. It took me right at 5 months to finally get it back. At the 4-month mark, we had a judicial hearing, and I got $440,000 back. And then, right before the trial, because the judge gave me an expedited trial because that was the only way he could get me money back was through an expedited trial, 3 days before the trial I gave up $50,000 to get my other $450,000 back. It cost me, including the forfeiture, the $50,000 forfeiture, in pre-tax income, it cost me $149,336 to defend myself.

Mr. Marchant. Okay. Thank you.

Mr. Hirsch.

Mr. Hirsch. They took $446,000 out of the bank. It took us 2 years, 9 months to get it back, and we are still waiting to get it back. We settled with them. We didn't have to give them anything because we did nothing wrong. We proved that.

And what was the last?

Mr. Crowley. How much did it cost you?

Mr. Hirsch. It cost us, between accounting and lawyer fees, about $60,000 and also we had to break a $50,000 CD to keep the business running, and we had to lower our inventory so we could keep this business still going.

Mr. Marchant. Thank you.

Mr. Sowers.

Mr. Sowers. They took around $62,000, but at the time, they told me that I could use that account and nothing would happen to it. But my wife had made another deposit of $5,000 after that, and the bank sent that to them too, so I guess it was actually $67,000. I don't think it took much more than 4 or 5 months to get it back. I don't remember. It has been 4 years ago.

At that time of year, our sales are down in our home delivery businesses and we are putting out crops. So it was kind of tough not having it. But people know me. In farming, sometimes they will hold off for their money. So we did all right on that one.

My lawyer I have on a retainer anyway. So he pretty much had to do the work because we already paid him. Anyway, our accountant, I am sure he charged me for what he did, which wasn't much because we had the information they needed to show what cash we actually were taking and we weren't evading taxes or anything like that.

Mr. Marchant. So did each one of you, just the mechanics

of this, you then had to go set up another operating account in your bank. You couldn't continue to operate that account. Did they close your physical bank account down or just take the money out of it?

Mr. Clyde. They just took the money, sir.

Mr. Marchant. So you could immediately go back to that same account and continue to do business out of that same account?

Mr. Clyde. That is correct, we could.

Mr. Marchant. And the same with all of you?

Mr. Hirsch. Same.

Mr. Sowers. Actually, the account we were depositing money in was in a different bank than we normally use, and for some reason, that summer, it seemed like we were doing a little bit better. And we were trying to put some money back. So we were putting it in that account trying to, you know, hide it a little bit. So it wasn't our main account. If it would have been, we would have been out of business because there was probably $168,000 to $200,000 on that account, which we pay employees and everything else out of it. So it actually was good that they --

Mr. Marchant. Were you given assurances by the IRS that you could go back and continue to make deposits and they would not be back a week later or a month later to do exactly the same thing?

Mr. Clyde. No, sir, I had no assurances of that. In fact, I asked them that that exact question: What prevents you from doing this? Nothing.

Mr. Marchant. So it was very disruptive to your business --

Mr. Clyde. Incredibly.

Mr. Marchant. -- to your psyche, to know that you --

Mr. Clyde. Yes, sir.

Mr. Marchant. In fact, a lot of people would respond exactly the opposite and then try to arrange things where they could not find the money and seize it, which seems to be very counterproductive.

Mr. Clyde. Uh-huh.

Mr. Marchant. Thank you, Mr. Chairman.

Chairman Roskam. With leave of Mr. Lewis, we will go to Mr. Crowley.

Mr. Crowley. Thank you, Mr. Chairman.

Thank you, Mr. Lewis.

Firstly, let me say that I have great empathy for all of you and what you have gone through.

And, Mr. Hirsch, I was going to offer to interpret for you for my colleagues, given that wonderful New York accent. You seemed to have pulled it off on your own.

In your testimony, you made reference to the fact that the IRS began an auditing of your business in the middle of your dispute with the IRS. Is that correct?

Mr. Hirsch. Yes. When we were trying to settle this, the 2011 case, in July 2014, they decided to audit my 2012 books, which they already knew that half the year was already done through

the forensic accountant that came out with the clean bill of health. So it is like a little salt in the wound. And we are still going through that today, and everything looks like it is going good on it.

Mr. Crowley. So the audit is continuing? In other words, the IRS continues to audit you --

Mr. Hirsch. Yes.

Mr. Crowley. -- even though they have come to settle with you, they indicated to you they are going to return to you the moneys that they took from you, correct?

Mr. Hirsch. Right. So they are auditing the next year, so it was 2011, they took, you know, the money they took. So 2012 is the audit right now.

Mr. Crowley. I thought it was an interesting question what my colleague asked, and I had a similar question, that was the expense that it cost you. In other words, you said it was about $60,000?

Mr. Hirsch. Yes.

Mr. Crowley. Overall, including in terms of the CD lost and the penalties paid and the attorneys' fees?

Mr. Hirsch. That was without CD.

Mr. Crowley. Attorneys' fees?

Mr. Hirsch. The attorneys' fees and the accountant feeds came to about $60,000. And then there was the loss of the CD, which was $50,000.

Mr. Crowley. And you had to lower your inventory, and that had an affect on your business itself?

Mr. Hirsch. Yes, it made it work a little harder. We put in a 12-hour day right now. So instead of 12 hours --

Mr. Crowley. It affected your profits and your ability to employee people?

Mr. Hirsch. Yes. We have a part-timer. So it is me, my two brothers, and a part-timer, four of us.

Mr. Crowley. In regards to what you said the IRS took and what they have agreed to repay you, you have yet to receive that money back. Is that correct?

Mr. Hirsch. Right.

Mr. Crowley. Have they given you any indication of what date you ought to expect receiving that money back?

Mr. Hirsch. No, not --

Mr. Crowley. So really, in theory, they have indicated they are going to give you money back, but they still hold onto that money?

Mr. Hirsch. Right.

Mr. Crowley. And you are not receiving any interest, nor is the company receiving interest, on the money they are holding from you right now?

Mr. Hirsch. No, we had to sign an agreement with them that we wouldn't collect any interest on it.

Mr. Crowley. Okay. I think that is something of interest

as well, I think, to the committee as well.

As I said, I have empathy for you all.

Mr. Sowers, my in-laws are from Montana. You remind me very much of folks, the farming family, the ranching family, you remind me very much of those folks as well. You describe the work as hard, arduous. It is something you love, and it is what keeps you going. So I appreciate what you do, what the American farmers do for your country. I don't think you, nor any of the gentlemen before us today, deserve to be treated by your Government, by the IRS, in the way in which you have been.

I think, Mr. Chairman, we should also look at the possibility of when someone who is innocently accused and moneys are wrongfully withheld and it has been adjudicated and the IRS has been found without cause to having held their resources, that the responsibility ought to be on the Government to pay not only back the resources withheld with interest but also any legal fees that those individuals went through because that in and of itself can decimate a small business -- as the gentleman, Mr. Clyde from Georgia, had mentioned, the ability to make payroll, the ability to do everything one has to do to maintain a business. That is something I think we should be looking at as well in terms of any legislation moving forward. I would be happy to work with you on that as well.

And I thank the gentleman for yielding me the time.

Thank you, all.

Chairman Roskam. That is a great point, and, you know, the irony is the IRS charges interest.

Mr. Kelly is recognized.

Mr. Kelly. I thank the chairman.

I thank you all for appearing.

Mr. Sowers, you look like a lot of the people I represent back in western Pennsylvania.

And, Mr. Clyde, I hear the way you are talking about what happened to you and Mr. Hirsch. There is a family called the Logan brothers that did the same type of business in my town. They have all passed, but they were very big in our town because they just constantly reinvested in the community and did a lot of things from a charitable standpoint.

But I think the real story here today is how it affected you as an American citizen. You have been violated by your government in something that you have trusted in all your life and thought to be true. All of a sudden, you find out that those same people are the people now that are coming in. I think sometimes the confusion is, who do we represent? I do not represent the United States Government. I represent 705,687 people from Pennsylvania's District Three. I don't know if they are Republicans, Democrats, independents or people saying, I don't care, just leave me alone.

I have watched you. The Harpster family up near State College does what you do. I have got so many people that do what

you do. I am an automobile guy. And one of the things I went through was having a dealership taken from me by the Government, not because I couldn't meet the standards, not because I didn't have the money, but because they decided to do that. They cost me $60,000 and over a year of not being able to sleep and then going through Cash for Clunkers while the Government was holding $700,000 of my money.

But they said, Well, we will get it to you when we can get it to you. That was all money that I had to use to pay off my lender because the product that I sold was collateral and had to be paid in full. Just from your experience, wouldn't you like to just sit across from somebody or somebody that comes in from the Government that talks to you that has actually walked in your shoes, as opposed to saying, Look, I am just following the law?

I mean, this is an incredible violation of you as an American citizen. And I get tired of people come in from Government agencies saying, Oh, listen, you don't understand how it goes. I said, I do understand how it goes; you don't.

After what you have been through. And you have talked about how much money you lost, but what about your loss of faith in the Government?

Mr. Sowers. Loss of what?

Mr. Kelly. Faith and belief.

Mr. Sowers. I don't deposit cash in the bank anymore. I won't.

Mr. Kelly. You, Mr. Sowers, if you came in -- people that I represent back home, they will come in and buy a car and say, you know what, Kelly, talked to the wife, we can afford about $225, $230 a month. What would I have to put down to keep that payment there? God help me if I say to them, you know what, you have got to put down about $12,000 in cash. They will say, so if I put down $12,000, I can save about two and a quarter, two and a half? Yeah, you can do that.

You know what I have just helped them do? I am involved in a structuring. By you coming to me and telling me what you can afford and me telling you, I got to say, Hey, listen, you know what, Sowers, you kind of do what you want, you know where the payment is. And I can't tell you this at the time. If you come in and you give me a check for $10,000 or give me cash for $12,000 or whatever it is that you give me and I put it toward the deal to structure a deal that makes sense for you and the missus. To meet all your obligations, I have got to file this form 8300, which is affectionately called -- this is incredible -- a suspicious transaction.

I am going to tell the United States Government, I have got a dairy farmer who wanted to keep his payment down and I didn't really tell him, I told him, you know, at some point, I probably have to report this, but I have got almost a year to do it. But you go ahead if you want to do it, but I can't say that I helped you with. I mean, I don't know that the general public understands

what it is, and listen, I have been in front of Mr. Koskinen before. If you have never been in that person's shoes, you have no idea -- between sleepless nights and wondering about how you are going to meet your obligations.

Now, you were all able to go to your lenders. Why did they extend your credit? Because they knew you. Isn't it amazing that the people you do business with every day know you and trust you but your own government does not and is willing to shut you down because of a suspicious transaction.

Mr. Clyde. Yes, sir, that is correct.

Mr. Kelly. Absolutely incredible. What I go back to is I think the main loss here is the loss of faith and trust we have in a form of government that is the gold standard for the world, but yet we are violating our own citizens on an everyday basis and asking them to say, Hey, listen, still believe in me, still believe in me, still believe in me. You have got to feel like David going against Goliath. And you talk about how -- but you know what, Mr. Goliath, the IRS has unlimited resources to fight you.

Mr. Clyde. Yes, sir.

Mr. Kelly. You are limited by what you can do. So when they say, Listen, we are going to work with you on this -- what you had to settle for, you had to give up money to get them off your back. You know why? Because as soon as it starts, the meter is running. And I have dealt with a lot of great lawyers who have

helped me through a lot of great problems, but it has always been at my expense; their time, my money.

I applaud you for coming. You know, most people won't do what your doing. In fact, my son is back home running the dealership right now. He says, "For God's sake, Dad, quit talking about the IRS. Next thing is they are going to be in here." And I say, Hey, Brandan, if they come in, that is okay. We will still fight them tooth or nail. I had to fight to get the damn dealership back from the Government to begin with, and we already were meeting all the expectations.

So I know what you are doing. I know who you are fighting. I know where your hearts are. I thank you for coming here today. You are truly brave people, and you are the real patriots. Thank you.

Chairman Roskam. Ranking Member Lewis is recognized.

Mr. Lewis. Thank you, Mr. Chairman.

Mr. Chairman, I want to thank all of the witnesses for being here today. Thank you, as a previous speaker said, for being courageous and being very brave to be here. I know you are taking time from your work. You are hard-working and very busy people.

Mr. Clyde, I see that you are from the great State of Georgia.

Mr. Clyde. Yes, sir.

Mr. Lewis. I want to welcome you. You are from a great city, Athens, where the University of Georgia is located.

Mr. Sowers, I know you are a great farmer. I grew up on a

farm. I am very sympathetic to the predicament you find yourself. I grew up on a farm that my father bought in 1944 when I was only 4 years old, but I remember. They bought 110 acres of land for $300, and we still own that land today. It was very hard work grabbing peanuts, picking cotton, pulling corn. And I used to fall behind when I was out there picking the cotton and gathering the peanuts. And my mother would have said, Boy, you are falling behind. And I would have said, This is hard work. And she would have said, Boy, hard work never killed anybody. I said, Well, it is about to kill me.

Now, also, on the farm, it was my responsibility to care for the chickens. And I fell in love with raising chickens. And as a little boy, I wanted to be a minister. So, from time to time, with the help of my brothers and sisters and cousins, we would gather all of our chickens together in the chicken yard. And my brothers and sisters and cousins would line the outside of the chicken yard, and I would start speaking or preaching to the chickens.

And so I am interested in knowing, did you raise any chickens?

Mr. Sowers. I have 17,000.

Mr. Lewis. My God. That is a very large congregation. I know you don't try to baptize any of those.

Mr. Sowers. Maybe. Chickens are certified humane, free-range, everything everybody wants.

RPTR MAAR

EDTR SECKMAN

Mr. Lewis. That is wonderful. And let me just ask you, has anyone from the IRS, except for today, has anyone, Mr. Clyde, Mr. Hirsh, Mr. Sowers, ever said I'm sorry, we made a mistake, we made a blunder?

Mr. Sowers. As I said, the two agents that showed up, I think they were apologizing a little bit. They knew what was coming down the line and even though they knew there was no intent. But they said now that it is this far, it has got to go the rest of the way. They didn't say they were sorry. But I think they were, you know, they knew what I was going to have to go through.

Mr. Lewis. Mr. Hirsch?

Mr. Hirsch. No, no one ever said they were sorry to us.

Mr. Lewis. Mr. Clyde?

Mr. Clyde. No, sir. No one ever said they were sorry to me.

Mr. Lewis. Well, as one Member of Congress and a member of this committee, I want to apologize to you for what the, a piece of my government, what the IRS did to you. I wish you well.

I don't have any questions, Mr. Chairman.

Chairman Roskam. Thank you.

Mr. Meehan is recognized.

Mr. Meehan. A new appreciation for the foul conduct of the

IRS, I guess.

Mr. Clyde, I was sort of struck by your testimony. You have served our Nation in the Armed Forces. You took how many tours overseas?

Mr. Clyde. Three combat tours, sir.

Mr. Meehan. Do you have family, Mr. Clyde?

Mr. Clyde. I am single. But, yes, I have family, a mom and dad.

Mr. Meehan. So you left family back here operating the business while you were overseas?

Mr. Clyde. Actually, it was just my employees that operated my business.

Mr. Meehan. When you returned and you took this position and then you identified what went on with you, when the IRS agents came to speak to you and the U.S. attorney's representative came to speak to you, you described that you were leveraged in your negotiations.

Mr. Clyde. Oh, yes, sir.

Mr. Meehan. Can you explain to me what they said to you?

Mr. Clyde. Yes, sir. They told me that -- in fact, it is in the court transcripts -- they said that discovery hadn't been made yet. Okay. And if they found anything in discovery, that it could easily transition from a civil forfeiture case to a criminal case against me. And that came at least twice, after the first -- well, after each offer actually -- the first offer

of taking only $325,000 as a forfeiture and then the second offer after the judge made them, forced them to give back 440 to me -- then the IRS offered to settle now only for $109,000 this time -- both times the comment was made, And if we find anything else in discovery -- because discovery hadn't happened yet -- that we will, we can go against you criminally. Absolutely.

Mr. Meehan. Did you feel like a criminal?

Mr. Clyde. They made me feel like a criminal. But there is no way I am a criminal.

Mr. Meehan. If you resolved the case, did you have a concern that there may have been people that believed you were a criminal?

Mr. Clyde. Absolutely. Yes, sir.

Mr. Meehan. Did you ever talk to anybody in a supervisory capacity when you were being leveraged in that manner in the U.S. Attorney's Office about their demands that you consider that implication and resolve the case?

Mr. Clyde. The only contact we had with the U.S. Attorney's Office was through the assistant, one of the assistant or really two of the assistant U.S. attorneys.

Mr. Meehan. Well, it is reprehensible activity, Mr. Clyde. It is a violation of the code of ethics to be calling you a criminal to leverage a civil proceeding. And they did you wrong.

But, Mr. Johnson, you have walked through this process with numerous of these people. As an attorney who understands, what

needs to be proven in a circumstance like this to suggest that somebody has violated the structuring crime?

Mr. Johnson. Well, I think that is an important question because the law really does demand something more than a mere pattern of deposits. The structuring law applies to people who have a purpose of evading the bank reporting requirements established by the Bank Secrecy Act. And I don't think anybody on this panel had that purpose. I don't think anybody on this panel actually violated the law. Yet the IRS is pursuing them anyway.

It is true that the structuring law contains very few protections for property owners and can sweep up people who do not know that it is illegal to try to hide something from the Government and are hiding something simply because they don't want --

Mr. Meehan. So there is no mens rea, so to speak. It is just this is a strict construction of the fact that you just did this act. They don't have to demonstrate that you were trying to elude some oversight by virtue of doing it?

Mr. Johnson. The people who get swept up by the structuring law who actually may be guilty of structuring but who most people would say have done nothing wrong are people who simply don't want the Government knowing what they are up to. And most people would say that is not a crime. But under the structuring law, that actually is a crime. And these people have no idea that they

are potentially breaking the law. But, again, the people on this panel, that is not even their case. These are people who literally didn't even want to hide anything from the Government.

Mr. Meehan. Mr. Chairman, I have just a couple quick questions I would like to get a response to just so we can create a record. There is something called the Civil Asset Forfeiture Reform Act. It requires a response within 60 days. From your experience, does that happen?

Mr. Johnson. No. In my experience, the Government routinely disregards the deadline set by the Civil Asset Forfeiture Reform Act.

Mr. Meehan. Notwithstanding that there is a law that requires that that be done within 60 days, the enforcement act?

Mr. Johnson. Yes. The problem is that the law simply does not provide any penalty for the Government if it disregards those deadlines because any penalty that is provided is simply toothless.

Mr. Meehan. The law contemplates hardship hearings in circumstances in which it is available to individuals that are targeted under certain structuring laws, are those available to somebody who deals exclusively in cash?

Mr. Johnson. No.

Mr. Meehan. So you may have a circumstance in which, again, the hardship opportunity is not available to you because you run a cash business?

Mr. Johnson. Right. That is absolutely right. The hardship hearing would be available for any kind of noncash seizure, for most kinds of noncash seizures. But the law specifically says that there is no hardship hearing available if you are --the money, if it was cash that was seized.

Mr. Meehan. Certain procedures here have been identified by the IRS Commissioner in which he said he has told prosecutors and others that they may not bring these cases. But we have seen evidence that affidavits don't necessarily have to come exclusively from Federal prosecutors. They may come from State police officers. They may come from local police officers, is that accurate?

Mr. Johnson. That is accurate. And I think another important point to make is that those local, State and local officers have a financial incentive in the enforcement of the law because under what is called equitable sharing, 80 percent of the money that is seized by the Federal Government can be returned to local law enforcement agencies.

Mr. Meehan. Do you have secure a conviction to get the cash?

Mr. Johnson. No.

Mr. Meehan. Mr. Chairman, thank you.

Chairman Roskam. Mr. Holding.

Mr. Holding. Thank you, Mr. Chairman.

I want to thank the witnesses for being here to tell your story. It is incredibly important that the people know.

Mr. Johnson, right now if the IRS seizes your client's money, you can't get into court immediately to fight the seizure, correct?

Mr. Johnson. That is right. People have to wait months or even years. In Jeff's case, the Government held his money for over 2 and a half years and never gave him any hearing before any judge.

Mr. Holding. I was doing a little calculation, 974 days. That is a long time.

Mr. Hirsch. A long time.

Mr. Holding. And they still haven't given it back to you?

Mr. Hirsch. No, not yet.

Mr. Holding. Last year, former Chairman Camp and Ranking Member Levin introduced a bill that would allow people whose assets have been seized to contest the seizure on an expedited basis within 2 weeks. I am sure the victims here today would have wanted to be able to go to court in that expedited manner and contest their seizure.

So you, Mr. Johnson, as an attorney, representing folks who are in this predicament, do you think this would be an improvement over the current procedure?

Mr. Johnson. I think it would absolutely be a major improvement to allow people the opportunity for a prompt hearing, both to contest the seizure and also to present evidence of hardship.

Mr. Holding. And also, per the Commissioner, perhaps evidence that an illegal act hasn't been -- a predicate illegal act -- hadn't been committed under his new policy.

Mr. Johnson. I think it is important that the policy be codified into law so that it would actually be a defense in such a proceeding. As it stands, as the members of the commission have noted, it is simply a discretionary matter with the IRS. Also, as I was saying earlier, the exception for exceptional cases is so broad that it really makes the policy potentially meaningless in practice.

Mr. Holding. So, in addition to codifying that affirmative defense, can you think of some other ways that the law should be reformed in order to protect against abuses by the IRS of folks such as we have here today?

Mr. Johnson. I think one of the most important reforms that could be made would be to eliminate the profit motive that is inherent in civil forfeiture. When the IRS seizes money, that money goes into a dedicated fund that is then available to the IRS without any congressional appropriation, to fund law enforcement expenses.

What this means is that the IRS is seizing money from innocent Americans and it is using that same money to fund additional seizures. This creates a clear incentive for abuse by the IRS. And, at the same time, through equitable sharing, that money can also go to local and State officers who are involved in the

seizure, giving those officers a profit incentive as well. So I think that eliminating that profit incentive would be a major step toward reforming this area of the law.

Mr. Holding. We should point out that the majority of seizures are from criminals at the end of the day. What we need to protect against are these instances when the IRS or another form of law enforcement overreaches and ends up catching within a web people who haven't done anything wrong.

Mr. Johnson. I think that is true. Although I would again emphasize that of the $242 million that was seized by the IRS under the structuring law, $116 million -- so almost half -- was never forfeited. And what that suggests is that IRS is seizing substantial sums that it ultimately can't justify keeping in a court of law.

Mr. Holding. Mr. Chairman, I yield back.

Chairman Roskam. Mr. Smith.

Mr. Smith. Mr. Johnson, just real quick, in the Institute for Justice that was released in a report just recently said 59 percent of the seizure cases were actually valid I guess. So what I am interested in is in the other 41 percent. Do you have statistics showing how fast the 41 percent was returned in a timeline or anything like that?

Mr. Johnson. We don't have statistics on how long it takes for the IRS to give people back their money. But I think that, just based on experience, it can take a very long amount of time.

In cases that we have litigated at the Institute for Justice, it took Jeff 32 months to get his property back. Carole Hinders, it took 18 months. For Mark Zaniewski, who owns a service station in Michigan, it took 8 months. And for Terry Dehko, who owns a supermarket, also in Michigan, it took 11 months. So we are talking about months, if not years, in which business owners are forced to go without working the capital for their business. These are months or years that people simply may not have, which is why so many of these cases end up settling.

Mr. Smith. Could you put a number on how many businesses have been shut down because of the IRS' actions?

Mr. Johnson. I just don't have that information. But I think that it is probably substantial.

Mr. Smith. Thank you, Mr. Chairman.

Chairman Roskam. Ms. Noem.

Mrs. Noem. Mr. Sowers, you are a man after my own heart. I spent my life in farming. But we did crops and cattle, beef cattle. So you work harder than we do. Dairy cattle are a lot of work. So I appreciate you taking the time to be here. And I am glad to see your family is in business with you. I was completely formed by all the hours I spent working alongside of my dad. And that is a blessing to have.

But, Mr. Johnson, I just wanted to ask you a couple of quick questions. Do you believe that the IRS' new policy is good enough?

Mr. Johnson. No. I don't believe that it is good enough.

And I say that for a number of reasons. One is that the policy contains this loophole for exceptional circumstances. And previously what I would have said is that is troublingly undefined. After the Commissioner's testimony today, I would say that the actual meat that he put on the bones of that exception is even more troubling. He said that a long-term pattern of sub-$10,000 deposits would be considered an exceptional circumstance. But that really is the norm in structuring cases. When people have reasons to deposit under $10,000 because, for instance, they have an insurance policy that covers only up to $10,000, that is something that they will do over a long period of time. And there is nothing exceptional about that.

I think it is also important to note that the policy only covers the IRS. And as the Commissioner stated, there are other agencies that enforce the structuring laws. And those agencies are not bound. So I think it is very important that that policy be codified into law to bind the IRS fully without any exception for, quote, "exceptional cases" and to bind other agencies as well.

Mrs. Noem. I agree. And do you believe it should be retroactive?

Mr. Johnson. I absolutely believe it should be retroactive, yes.

Mrs. Noem. How far back do you think it should go?

Mr. Johnson. You know, I think it could go back to the

beginning of these kinds of cases. Forfeiture in structuring cases has only existed since 1992. So this has been around relatively recent.

Mrs. Noem. Thank you.

I yield back.

Chairman Roskam. Thank you very much.

Mr. Johnson, Ms. Noem inquired of the Commissioner in the earlier testimony regarding the motive of agents and so forth. And he was, you know, like, Look, don't worry, they are not motivated by some evaluation and so forth. But what you have testified to is something far more powerful, far more motivating, and far more insidious, that is, a profit motive. Could you highlight that?

Mr. Johnson. Absolutely. So when the IRS seizes money, that money goes into an account, the Treasury Forfeiture Fund. And that money is available to the IRS to fund their law enforcement activities by the Federal law. And so the IRS has access to this money that otherwise they would have to come to Congress and obtain appropriation. They might or might not be able to get that. Whereas if they seize the money, they can circumvent that entire process and build up their budget without having to come to Congress. And, obviously, that is incredibly attractive to the IRS. It is also a problem at the State and local level because of the equitable sharing process. You have local --

Chairman Roskam. How does that work, equitable sharing?

Mr. Johnson. Sure. So what equitable sharing is, it means when the Government seizes property and there is participation by State and local officers, as there generally is in structuring cases because these cases are investigated and pursued by joint task forces of State, local and Federal officials, then the State agencies that are involved can keep up to 80 percent of the money that is seized. And for a State and local law enforcement agency that may have difficulty otherwise getting access to Federal funds, that is an incredibly powerful incentive.

Chairman Roskam. Carole Hinders is one of your clients?

Mr. Johnson. Yes.

Chairman Roskam. I looked at the affidavit that was sworn out in her case. And I am amazed at how de minimis these claims are. So the person that swore out the affidavit says, I mean, they are asserting their expertise: My education includes a bachelor's degree in sociology from the University of Iowa. Hey, God bless the sociology majors. But you know what I am saying? I mean, there are other things, and I am obviously kind of over-characterizing this. But then there are these assertions about deposits that are -- they don't look nefarious at all. They look like this is normal business transactions.

You are familiar with this document I assume. Can you speak to that at all, how these, how do the affidavits strike you that you have seen? And then can you give a little bit more color

commentary on the ex parte communication? In other words, you are not able, the defendant in this case is not able to assert themselves at any time until there is a trial presumably.

Mr. Johnson. Right. So, unfortunately, I don't think that Carole Hinders' affidavit is all that unusual. And there are a couple things about it that you pointed out that I think are pretty common. One is that it is filled out by a member of State or local law enforcement, who may have very little real background in investigating these kinds of offenses. The Commissioner spoke about how the IRSCI is one of the most --

Chairman Roskam. Criminal Investigations.

Mr. Johnson. Right. Is one of the most respected investigative branches. But in the structuring area, really these cases are being investigated and pursued in most cases by State and local officials who may have very little background in this.

And then in terms of the barebones allegations, that is very common. What you see in these affidavits that are being brought before magistrates to justify the seizure is literally, here is my training, here is what the law says, and then here is a list of transactions taken from a bank statement, all of which are under $10,000, in some amount. And that is considered to be sufficient to give rise to probable cause, which is a very low standard, to then seize somebody's entire back account.

And, again, as you know, with the ex parte hearings, when

that warrant is brought before a judge, that affidavit is brought before a judge, there is no opportunity for the property owner to say, Hey, wait a minute.

Chairman Roskam. There is nobody else there, right?

Mr. Johnson. Yes. There is nobody else there. It is just the --

Chairman Roskam. Here is the paper, Your Honor. This is what I am asserting. I am a sociology major from Iowa.

Mr. Johnson. Exactly. What would be incredibly valuable, obviously, to any property owner would be an opportunity to say, Look, sure, there is a bunch of $10,000 deposits. But I have got an insurance policy. It only covers up to $10,000. Presented with that, what may look suspicious turns out to be just business as usual. But there is no opportunity for anybody to say that to the judge before the seizure occurs.

Chairman Roskam. In the Commissioner's testimony, Mr. Johnson, in his written testimony, he talked about a 93 percent conviction rate, which, you know, if you read that, you would think, at first blush, that is pretty impressive, 93 percent. We are in a 51 percent business as politicians. So 93 percent is a big number for us. But that doesn't really tell the whole story, does it?

Mr. Johnson. No. It absolutely doesn't. So of the seizures, the $242 million that was seized between 2005 and 2012, as I mentioned earlier, $116 million was never forfeited. That

certainly doesn't sound like a 93 percent rate. That is much closer to a 50 percent rate. In half of the cases between 2005 and 2012, some portion of the money ultimately wasn't forfeited. So, again, that means you are much closer to a 50 percent rate. Many of those cases are probably settlements. These cases aren't going to trial. So when he refers to the 93 percent rate, I imagine he is referring to cases that actually go to trial. Actually, in a third of all cases where money was seized for structuring between 2005 and 2012, none of the money was ultimately forfeited. So the IRS took the money, may have held it for months, years, and then ultimately determined, as they did with Jeff, Look, we don't actually have a real case here, we are going to have to give this money back. But, meanwhile, they have turned people's lives upside down, made their lives incredibly difficult for a long period, maybe even put businesses out of business.

Chairman Roskam. Mr. Hirsch, you haven't been able to get your money back, right?

Mr. Hirsch. Not yet.

Chairman Roskam. Why not?

Mr. Hirsch. We are still waiting. We settled with them January 20, 2015. And my lawyer right next to me was still -- they said they have up to 60 days to put it back into the account.

Chairman Roskam. And they just happen to have an audit interest now in you? You are such an interesting person and such an interesting business, that of all the fruited plain, of all

the businesses that are out there, they have said, Hey, let's see what those Hirsch brothers are up to, is that basically what you are dealing with now?

Mr. Hirsch. That is what we are dealing with now. And in the 27 years that we have been in business, we pay our taxes, do the right thing, and we never have been audited before.

Chairman Roskam. Never audited before. Now you have come under their scrutiny. You have won basically on this thing. You are going to get your money back. And in 27 years of business, they have never audited you. And now you are incredibly attractive to them. And they are all over you, is that right?

Mr. Hirsch. Right.

Chairman Roskam. Mr. Sowers, what happened, how did the Government react when you talked to the press?

Mr. Sowers. My lawyer talked to the guy from -- I guess he is a, what do they say, prosecuting these cases, the prosecutor. And they gave us the $29,000 settlement number. And then my lawyer says, Well, we think that is a little high. We are thinking about $5,000. And then he said, Well, you know, that is not in the cards anymore because your client talked to the press. And now we are going to have to do something different.

But actually, they told us -- and I asked my lawyer about that this morning, and I am sure it came up -- if we would have went to trial, they would have went after the whole $360,000 that I had deposited in that account over that 32 weeks. So that was

another scare tactic to say, Okay, you want to go against us? We will just take it all and not $29,000.

Chairman Roskam. So they are upping the ante because you talked to the press?

Mr. Sower. That is what we figured. We do have a --

Chairman Roskam. It is not complicated. I don't think your calculation is off.

Mr. Sower. We actually have an email from him to my lawyers stating that.

Chairman Roskam. Really?

Mr. Sowers. Yes.

Chairman Roskam. Who was that from?

Mr. Johnson. I believe it is from Stefan Cassella, that's the U.S. attorney.

Mr. Sowers. Yes.

Chairman Roskam. And he disclosed? Tell me about the email. What was the nature of the email?

Mr. Sowers. There should be a copy here of it somewhere.

Mr. Johnson. It is an email from Stefan Cassella, who I believe was an assistant U.S. attorney at the time. And there is an email below it from David Watt, who was Mr. Sowers' attorney, who says that, I think we can still wrap this up before you leave on your trip. My client is still troubled by the, quote, "acknowledge language," referring to some language in the proposed settlement, since he believes he is admitting there was

reasonable cause to seize the money. In the meantime, I have obtained a settlement in the Taylor Produce case, which is attached. And it is very similar to Sowers' case. And there is no such language in that settlement.

So he says, We would be satisfied with the exact same language from the Taylor case. Why can't we just do what was done in the Taylor case?

And Mr. Cassella's response to that is, Mr. Taylor did not give an interview to the press.

Chairman Roskam. I would ask unanimous consent to insert that into the record. And can you provide that to the committee?

Mr. Johnson. Yes.

[The information follows:]

******** COMMITTEE INSERT ********

Chairman Roskam. Mr. Johnson, just quickly, your client Mark Zaniewski in Michigan had an experience. Can you just give us a nutshell basically what his journey was quickly?

Mr. Johnson. Absolutely. It is truly shocking what happened to him. He had about $30,000 seized by the IRS. He owns a service station in Michigan. The IRS seized his money because he was depositing it under $10,000 because he simply would deposit whenever he got up to an amount that he thought was enough cash to deposit. Sometimes he would deposit under. Sometimes it was over $10,000.

The IRS takes his money. He says to them, I have vendors who are going to be taking money out of my bank account; what do I do to prevent the checks from cashing?

They said, Well, it is not really our problem. We are not closing the account. If you want to keep using it, that is fine.

So he says, Okay, well, I am going to put more money in it.

They said, Okay, that's fine.

So he goes to his sister-in-law, he gets a 10,000-dollar loan from his sister-in-law. He also deposits credit card receipts into the account, money that is not even cash receipts. He deposits this into the accounts, another $30,000.

The IRS then comes back and seizes that money as well. And what they said to him was, Now that we have all of this money, we would be happy to agree to a settlement agreement under which we will return the money that we seized the second time if you

let us keep the money that we seized the first time.

Chairman Roskam. So they are basically saying, Hey, you messed up, you trusted us?

Mr. Johnson. And we are going to leverage that to make you settle.

Chairman. Roskam. And the same thing happened to you, Mr. Sowers, wasn't that right? The $62,000 and then the subsequent $5,000?

Mr. Sower. Yes. And that account had stuff coming off of it. And the bank was sending me letters saying or calling me and saying, Look, this thing needs money put in it.

And I said, Well, you know what happened, you all know what happened. But it didn't seem like anybody at PNC Bank knew what had happened. And I never did find out from PNC. And they finally closed the account on their own, not because I wanted it closed, but they closed it. So we had to transfer all that stuff to other accounts.

Chairman Roskam. I want to thank our second panel.

For those of you who have walked this journey, we are very regretful that we have had to have this hearing. But we are glad that we have a forum that we can tell this type of story.

It is this committee's job on a bipartisan basis to expose abuse of the Federal Government. When the Federal Government abuses its citizens, that is the interest of this subcommittee in particular. And you have our commitment on a bipartisan basis

to do everything that we can to stand up for you.

I will note that everybody hates lawyers until they need lawyers, you know what I am saying? Just saying. But there is a poignancy, and I just want to close with this, we have heard other witnesses in the past who have come in and have testified before the whole committee on similar situations, not with structuring, but where they have been abused.

And I have been inspired by those witnesses. We hear from a lot of people. We will hear from think tank people and we will hear from professional people and smart people and this people and that people. But what really gets my attention and inspires me is people who have kept faith in their country when they perceive that their country was not keeping faith with them. And that is what you have done. You have kept faith with your country because you realized this isn't the way this is supposed to be. This isn't the way -- this isn't why I was deployed. This isn't what I was standing up for. This isn't the hard work of putting together a family business. This isn't working with my wife and creating this business over a period of time. It is not supposed to be this way. And you were faithful. And now what is happening is your country is kind of trying to come over the hilltop and try to rescue you and be a part of fixing this.

So your willingness to stand up, your willingness to be sophisticated and smart about how you have done it, and your willingness to share with us your story means now you are handing

something off to us. And that responsibility is not lost on any member of this committee. I know I speak for my friend, the ranking member, Mr. Lewis, you have our assurance that we are going to do everything that we can to make sure that this is something that we put a stop to and that the Internal Revenue Service recognizes that it is a creature of Congress and it is responsible to the American public. The public delegates their authority to us, and then we delegate the authority to the IRS. And if they are operating outside of that delegated authority, they are going to deal with it.

So thank you all.

And Members are reminded that they have the requisite period of time to supplement the record today.

With that, the committee is adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT D

DECLARATION OF RANDY SOWERS
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION

I, RANDY SOWERS, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Maryland. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. Along with my wife, Karen, I have owned and operated a dairy farm in Frederick County, Maryland, for the last thirty-four years. Karen and I were both born in Frederick County; we both had grandparents who were farmers in Frederick County; and we met while participating in a local 4-H program. We opened our farm in 1981, when we purchased our first one hundred cows, and we bought the land where the creamery is located in 1987. For the first ten years, we primarily lived off Karen's income as a teacher, but in the 1990s the farm began to turn a profit. We put up our first chicken house in 1990, and Karen was able to quit her job as a teacher.

3. Karen and I work practically around the clock to care for our animals. Every night, Karen and I go to sleep early and then wake up around midnight to milk the cows. We work through the night, until 4:30 or 5:00 a.m., and then we go back to sleep for a few hours before beginning our day. Our cows never take days off, so we repeat the same routine seven days a week and rarely take vacations.

4. In 2000, after years of selling through middlemen, Karen and I decided to open our own distribution company, called "South Mountain Creamery." South Mountain Creamery delivers milk and other dairy products directly to consumers throughout large parts of Maryland, Virginia, and the District of Columbia. Because we sell directly, our customers know where their milk comes from and can even come visit the farm to see how the animals are treated. Area schoolchildren also come to the farm to see the animals and even feed milk to young calves, and

kids also can see a live video feed of our cows on the Animal Planet website. In 2011, our chicken farming operation was certified humane by Humane Farm Animal Care.

5. For years, Karen and I have sold our products at farmers' markets. At some points we have sold at as many as seven markets, but we currently only sell at two. One market is held on Saturdays, and the other is held on Sundays. Both are held in Baltimore. To get to a market, Karen and I pack up our truck and leave the farm by 4:30 a.m. for the drive into the city. We sell at farmers' markets because it is another way to get our products to potential customers and because it helps us spread the word about South Mountain Creamery.

6. Karen and I do significant business in cash, and as a result we often have cash to deposit in the bank. Customers at farmers' markets typically pay in cash. And when we sell milk or other dairy products to visitors at our farm, those are cash sales as well. Sometimes we have less than $10,000 to deposit, but sometimes we have more than $10,000 cash to deposit.

7. It is my understanding from Karen that, after one particularly busy weekend in spring 2011, a bank teller told Karen that cash deposits over $10,000 would require "paperwork." Karen told me about this conversation later that same day. I understand that Karen kept the size of cash deposits under $10,000 following that conversation in order to avoid red tape at the bank. Neither Karen nor I have any interest in keeping information from the IRS. We run a legitimate business, and we always pay our taxes in full.

8. On February 29, 2012, two government agents came out to the farm to notify me that the government had seized the farm's entire bank account—over $60,000. The agents were apologetic in their manner and told me that they did not believe that Karen and I were criminals. However, the agents explained that a judge had already issued a warrant for the seizure of the bank account, and they said that they had no choice but to carry through with the seizure. In

addition, the agents served me with a criminal grand jury subpoena. I was shocked that the government would even consider bringing criminal charges when I had done nothing wrong.

9. The money that the government seized was all related to our lawful dairy farm business. None of the money in the account was derived from or intended for use in unlawful activity. Karen and I are dairy farmers, not criminals, and we have never been engaged in *any* criminal activity. Apart from a few tickets for not wearing a seatbelt, I have never had any trouble with the law.

10. Before the government took my money, I had no idea that depositing money in the bank could even potentially be a crime. I had never heard of the offense of "structuring," and I was not aware of federal bank reporting requirements or laws relating to the evasion of those requirements. And, before my money was taken, I never had any reason to study federal banking regulations. Other than as a customer, I have no experience with the banking system.

11. I contacted Dave Watt, who is the attorney for South Mountain Creamery, the same day that the government agents visited my farm. Mr. Watt reached out to Stephan Cassella, the Assistant United States Attorney responsible for the seizure, in an attempt to resolve the case. Mr. Watt also enlisted the help of Paul Kamenar, an attorney experienced in federal civil and criminal enforcement, and Mr. Kamenar provided additional advice and assistance during negotiations with Mr. Cassella.

12. The grand jury subpoena served on me by the government requested that we provide access to various financial documents, including bank records. Karen and I fully complied with that request through our attorney. We also would have been willing to comply with any other reasonable requests for information from the government, although the government made no additional requests.

13. In April 2012, a reporter from *The City Paper* in Baltimore called me for comment about the seizure. The reporter told me that he had learned about the seizure through public court filings. I had not intended to seek out publicity, but when the reporter said that he was running the story whether I commented or not I decided to give my side of the story to make sure that people got the full picture. I told the reporter the truth, which was that Karen and I had no idea that we were even potentially violating the law when we deposited our money in the bank.

14. Mr. Cassella filed a formal forfeiture complaint the very next day after that article ran in *The City Paper*. I understand that Mr. Cassella also informed my attorney, Mr. Watt, that a forfeiture of $29,500 was now his final settlement offer. It was my understanding that I would have to settle the case on less favorable terms because I had exercised my First Amendment right to speak to the press.

15. When Mr. Cassella indicated that he was not open to further negotiation, I felt that I had little choice but to accept his offer. If I agreed to Mr. Cassella's terms, I would forfeit $29,500 but would recover $33,436. On the other hand, if I refused the offer I would have to go to court to fight for my money. A judicial proceeding would be expensive, and the cost to pay an attorney to litigate the case almost certainly would have exceeded the amount at issue. Indeed, even without going to court, I had already started to incur legal costs in connection with the seizure. There is no question that, had I gone to court, those costs would have been far larger. In the meantime, I also needed whatever funds I could recover for my farming operation. For me to go to court to fight the seizure simply would not have been a rational business decision.

16. In weighing the government's offer, I also had to consider the possibility that the government would attempt to seize additional money or even pursue criminal charges. The IRS

agents who came to the farm told me that the judge who approved the seizure had given them authority to take anything up to $243,455—the amount of cash deposited in the account over a period of eight months. In addition, the agents served me with a criminal grand jury subpoena. I was concerned that the government might take additional money or file criminal charges if I did not agree to Mr. Cassella's demands.

17. The money the government took was money that we were planning to use to keep our business running. We planned to use the money to pay for seeds, fertilizer, and other supplies to grow our crops to feed our animals. After the government took the money, we had to work to put together additional funds to meet those expenses. We were able to find the money that we needed to keep the business going, but it was money that we otherwise could have used to pay off debt or make other investments to grow our business.

18. Karen and I have plans to buy additional land for our farm. That additional acreage would make it possible for us to reduce our use of fertilizers and genetically modified crops, which in turn would allow us to sell our products to a wider market. If the government were to return our money, we would use it to help pursue that dream.

19. I still find it difficult to believe that what happened to me could happen in America. I strongly believe that nobody should have their entire bank account taken by the government simply because of how they deposited their money in the bank. I have continued speaking to the press about my ordeal in the years following the forfeiture because it is important to me to make sure that people know what is going on and to ensure that the law is changed so that nobody else will be subject to the same injustice.

20. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

21. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.

Randy Sowers

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT E

DECLARATION OF KAREN SOWERS
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION

I, KAREN SOWERS, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Maryland. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. Along with my husband, Randy Sowers, I own and operate a dairy farm in Frederick County, Maryland. Randy and I have always been interested in farming. We met while participating in a 4-H program and we opened our farm together in 1981.

3. One of my jobs on the farm is to handle bank deposits. We do a great deal of business in cash, mostly at farmers' markets, and so I often deposit large amounts of cash in the bank. Generally the amount of cash that we have to deposit is under $10,000, but on occasion the amount of cash that we have to deposit is over $10,000. All of the cash that I deposit in the bank comes from our dairy farm business.

4. After one particularly busy weekend in spring 2011, during which we held a special event at our farm to sell our dairy products as well as prepared food, I went to the bank with over $10,000 in cash to deposit. At that time, the bank teller told me that bank deposits over $10,000 would require "paperwork" by the bank. The teller indicated that this paperwork would be time-consuming for bank personnel, and she suggested that it would be easier if I could keep the size of deposits under $10,000. I never saw this paperwork and did not know what it consisted of. The teller said nothing at all about the IRS, and for all I knew she could have been concerned about internal bank paperwork with no connection at all to the federal government. I honestly was not concerned about the details. I just thought that, if it was easier for bank employees, it was no trouble for me to limit the size of my deposits. I generally keep cash on

hand to cover day-to-day expenses at the farm and to make change for customers at the farm or at farmers' markets, and it was easy for me to keep additional cash in reserve to limit the size of my cash deposits.

5. My intention in limiting the size of my deposits was to avoid red tape at the bank, not to hide anything from the IRS or any other federal government entity. Neither Randy nor I have any interest in keeping information from the IRS. We run a dairy farm—not a criminal enterprise—and we always pay our taxes in full.

6. Before the government seized the bank account, I had no idea that "structuring" laws existed or that depositing money in the bank could even potentially be a crime. I am by no means an expert in federal banking regulation; my experience with the banking system is limited to the role of a customer.

7. Having the government take our money was an incredibly difficult experience. I am very careful to never allow checks to bounce, but after the government seized our money we did have scheduled payments on the account that did not go through. The bank where we had maintained our account for over a decade closed the account without any prior notice. It was embarrassing to have to explain to creditors why payments did not go through, particularly as I worried that people would assume Randy and I must have done something wrong for the government to take our money. And, in fact, I did learn of several distressing rumors about Randy and me that circulated through our small, rural community. I was very nervous and stressed during that time, and that even caused me to suffer digestion problems.

8. Randy and I have long dreamed of purchasing additional land so that we can be sure that our grandchildren will be able to farm and our creamery will continue. In addition to the land we own, we currently rent land to grow food for our animals, and it is important for us to

own more land to secure the future of the farm. If we were to recover the money that was taken, we would use the money to help pursue that dream.

9. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated. I have had the assistance of counsel in preparing this declaration.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.

Karen Sowers

Karen Sowers

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT F

DECLARATION OF DAVID L. WATT, ESQ.
IN SUPPORT OF PETITION FOR REMISSION OR MITIGATION

I, DAVID L. WATT, declare under penalty of perjury that the following is true.

1. I am a citizen of the United States and resident of the State of Maryland. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. I am an attorney in Frederick County, Maryland, and for many years have provided legal assistance to Randy and Karen Sowers in connection with their business. Randy and Karen pay me a retainer for my services. I was counsel to Randy and Karen during the time of the seizure and forfeiture of their bank account in 2012.

3. After Randy was informed that the government had seized his bank account, on February 29, 2012, Randy reached out to me for my advice and assistance.

4. Because the seizure warrant identified Assistant United States Attorney Stefan D. Cassella as the responsible attorney, I contacted Mr. Cassella the following week to discuss the case. I explained to Mr. Cassella that my clients were not engaged in any unlawful activity, always fully reported their income on their tax returns, and had no idea that they were even potentially doing anything illegal when they deposited money in the bank. Mr. Cassella advised that the investigation would continue via the grand jury process, as Randy and Karen had been served with a grand jury subpoena requesting production of various financial documents. If the examination of those documents revealed nothing unlawful, however, Mr. Cassella stated that he expected the matter could be settled through negotiation. Specifically, Mr. Cassella stated that I would be able to offer a settlement amount below the entire sum that had been seized, that Mr.

Cassella would counter, and that we would then arrive at a negotiated settlement amount with no further legal action.

5. A short time after this conversation, Randy received a call from a reporter with *The City Paper* in Baltimore who had seen a copy of the seizure warrant on the court's docket. Randy gave a statement to the reporter.

6. On April 18, 2012, the same day that the article was published in *The City Paper*, I contacted Mr. Cassella to continue our discussions regarding settlement. Randy and Karen had provided the information requested by the grand jury subpoena, and I expected that Mr. Cassella would now be open to a favorable settlement. I told Mr. Cassella that my clients were willing to forfeit $5,000 to settle the matter.

7. Mr. Cassella rejected my $5,000 settlement offer out of hand and advised that we now had a "problem" because Randy had "spoken to the press." Mr. Cassella stated that, if he did not file a formal forfeiture complaint, people might believe that press coverage had influenced the government's handling of the case. In addition, Mr. Cassella stated that he was still open to a settlement, but that he was no longer willing to negotiate the forfeiture amount. Mr. Cassella stated that the amount of the forfeiture in any settlement would have to be $29,500.

8. On April 19, 2012, the day following this conversation, Mr. Cassella did in fact file a complaint seeking to forfeit the money seized from Randy and Karen's bank account.

9. I subsequently contacted Paul Kamenar, a Washington, D.C. attorney who has experience in federal civil and criminal enforcement matters, for advice and consultation.

10. With my clients' approval, I informed Mr. Cassella that we were willing to settle the case for a $29,500 forfeiture because my clients needed the funds for their farming operations and did not want to engage in lengthy and costly litigation. Mr. Cassella then provided us with a

draft settlement agreement, which, among other things, contained language that required my clients to acknowledge that the government had "reasonable cause" to initiate the case. In a series of email exchanges, I informed Mr. Cassella that the provision acknowledging the existence of "reasonable cause" was unacceptable, as it seemed to amount to a concession that my clients knowingly violated the law. Mr. Cassella insisted that this provision was standard in these kind of settlement agreements.

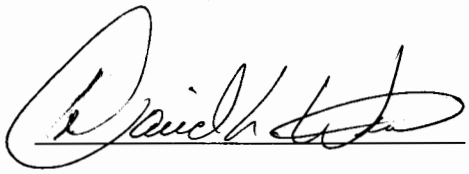
11. With the assistance of Paul Kamenar, I obtained other settlement agreements negotiated by Mr. Cassella, including one involving a similar case in which a farmer was accused of violating the structuring laws. I was surprised to see that this agreement did not contain any reference to "reasonable cause" to seize the forfeited money.

12. I emailed Mr. Cassella on May 29, 2012, to ask why my clients were being treated differently from this other farmer. Mr. Cassella replied, contrary to his earlier explanation that such language is standard, that "Mr. Taylor did not give an interview to the press."

13. The substance of this declaration is my own, and the statements in it are based on my own personal knowledge except where otherwise indicated.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 2015.



David L. Watt

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT G

LOGGED RECEIVED
MAR 15 2012
AT BALTIMORE
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND
BY DEPUTY

12-1105 SKG

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEIZURE WARRANT

I, Michael Aiosa ("your affiant"), a Federal Task Force Officer for the Internal Revenue Service, Criminal Investigation Division ("IRS-CID"), being duly sworn, deposes and states:

BACKGROUND

1. Your affiant is a Federal Task Force Officer ("TFO") with IRS-CID and has served in that capacity since October of 2010. Your affiant's official responsibilities include conducting investigations of possible criminal violations of the Bank Secrecy Act (Title 31, United States Code), the Money Laundering Control Act (Title 18, United States Code), and other related offenses. I am empowered by law to investigate and to execute search and seizure warrants, as well as make arrests, for offenses involving the structuring of currency deposits to evade the reporting requirements outlined in Title 31 of the United States Code.

2. While performing my duties, your affiant has participated in several investigations involving violations of Title 31 and Title 18 of the United States Code. Your affiant has participated in executing several search and seizure warrants related to these types of investigations.

3. Your affiant has successfully completed four training seminars conducted by the Department of the Treasury, the Internal Revenue Service, and the Department of Justice. The training included courses in criminal law, criminal investigative techniques, search and seizure warrants, financial investigative techniques, money laundering, accounting, and tax.

4. Prior to being detailed as a Federal TFO, your Affiant, has been a member of the Baltimore County Police Department since 1994. In May 2007, your Affiant was assigned to the Drug Enforcement Administration as a Task Force Officer until August 2010. In October 2010, your Affiant was assigned to the Internal Revenue Service as a Task Force Officer.

5. Your Affiant has made countless arrests for violations of the controlled dangerous substance laws, has been involved in the execution of numerous search warrants, and has been an Affiant or co- Affiant on more than 50 search and seizure warrants.

6. In my current assignment as a Task Force Officer, your Affiant has developed expertise in the review and analysis of financial information, including the analysis of bank records and monetary instruments.

7. Unless otherwise stated, the information in this affidavit is either personally known to your affiant or has been provided to your affiant by other law enforcement officers and/or is based on a review of various documents and records as more particularly described herein.

PROPERTY TO BE SEIZED

8. This affidavit is submitted in support of the Application made by the United States of America for a Seizure Warrant authorizing the seizure of United States currency totaling $243,455 contained in PNC bank account number 5595196112 held in the name of Randy Sowers and Karen Sowers. For the reasons stated herein, there is probable cause to believe that such monies are subject to seizure and forfeiture to the United States pursuant to 31 U.S.C. § 5317(c)(1) and (2), on the grounds that they constitute property involved in or traceable to cash deposits structured to avoid currency reporting requirements in violation of 31 U.S.C. § 5324(a)(1) and (3).

CURRENCY TRANSACTION REPORTS AND STRUCTURING

9. Title 31, U.S.C. § 5313 and 31 C.F.R. 1010 of the Bank Secrecy Act (BSA) require any financial institution that engages with a customer in a currency transaction (i.e., a deposit or withdrawal) in excess of $10,000 to report the transaction to the Internal Revenue Service on Department of the Treasury FinCEN Form 104, Currency Transaction Report ("CTR"). These regulations also require that multiple transactions be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, the same person, and they result in currency either received or disbursed by the financial institution totaling more than $10,000 during any one business day.

10. CTRs are often used by law enforcement to uncover a wide variety of illegal activities including narcotics trafficking, money laundering, and tax evasion. Many individuals involved in these illegal activities are aware of such reporting requirements and take active steps to attempt to cause financial institutions to fail to file CTRs. These active steps are often referred to as "smurfing" or "structuring."

11. As explained by the Fourth Circuit Court of Appeals in *United States v. Peterson*, 607 F.3d 975 (4th Cir. 2010), structuring can take several forms. Making multiple deposits of $10,000 or less into the same bank on the same day, with the total exceeding $10,000, is called "imperfect structuring" because the bank's obligation to file a CTR is triggered notwithstanding the customer's intent to evade it. Making multiple deposits into *different* banks on the same day, with no one deposit exceeding $10,000, but with the total being in excess of that amount, is called "perfect structuring" because no one bank has a duty to file a CTR. Imperfect structuring is a violation of 31 U.S.C. 5324(a)(1), and perfect structuring is a violation of 31 U.S.C. 5324(a)(3). *Peterson,* 607 F.3d at 981.

12. Not all structuring offenses involve breaking up sums in excess of $10,000 into smaller amounts on a single day. To the contrary, under 31 C.F.R. 1010.100(xx) a person may commit "serial structuring" if he or she deposits or withdraws

$10,000 or less each day over a period of several days (or longer) with the intent to evade the reporting requirement. Serial structuring is a violation of 31 U.S.C. 5324(a)(3). *Peterson*, 607 F.3d at 979. *See United States v. Van Allen,* 524 F.3d 814, 820-21 (7th Cir. 2008).

13. In order to establish a violation of 31 U.S.C. § 5324(a), the government must prove that a person structured or assisted in structuring, or attempted to structure or assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements of section 5313(a) or any regulation prescribed under such sections.

FACTS SUPPORTING PROBABLE CAUSE

14. RANDY SOWERS and KAREN SOWERS own and operate a dairy farm as well as a dairy product and food distribution company known as SOUTH MOUNTAIN CREAMERY located at 8305 Bolivar Road, Middletown Maryland 21769.

15. Records maintained by PNC reveal that account number 5595196112 in the name of RANDY SOWERS AND KAREN SOWERS (FARM ACCOUNT) was opened on February 27, 1984. The signature card dated February 27, 1984, lists the authorized signers as RANDY D. SOWERS and KAREN B. SOWERS. The account was originally opened at Farmers & Mechanics National Bank, Frederick MD. In June 2007 the account was converted to a PNC personnel checking account.

16. Based on the information outlined in this affidavit, as well as my training, knowledge, and experience, it is your affiant's belief that the cash deposited into PNC account number 5595196112 was acquired in amounts exceeding $10,000 and broken up into separate deposits in amounts less than $10,001, or was deposited in a series of transactions in amounts less than $10,001, in an attempt to evade triggering the CTR reporting requirement.

17. From May 16, 2011 through December 6, 2011, a total of 27 individual currency deposits totaling $243,455.00 were made into RANDY SOWERS and KAREN SOWERS PNC account. Attachment A is a schedule of the cash deposits made during this period of time and clearly shows the structured manner in which the deposits were made. A further analysis of RANDY SOWERS and KAREN SOWERS cash deposits from May 16, 2011 through December 6, 2011 reveals the following:

Of the 27 individual currency deposits that were made into the account,

i. $9,500-$10,000 was deposited 10 times
ii. $9,000-$9,499 was deposited 12 times
iii. $8,000-$8,999 was deposited 3 times

18. Attachment A reflects instances where cash was repeatedly deposited in amounts just below the CTR reporting requirement threshold (i.e. between $8,000 and $10,000). As mentioned in paragraph 12, such activity is often referred to as "serial structuring" and is a violation of Title 31 U.S.C. § 5324(a)(3) because by consistently keeping cash deposits just below the CTR reporting requirement of $10,001, and not depositing more than $10,000 in any one banking day, the bank did not have a duty to file a CTR. Taking such steps demonstrates knowledge of the $10,001 reporting requirement threshold and a concerted effort to keep cash deposits just below that amount.

APPLICABLE FORFEITURE PRINCIPLES

19. Based on my training and experience, I know that 31 U.S.C. § 5317(c) provides for the civil and criminal forfeiture of "any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy." I also know that the civil forfeiture of such property is governed by the procedures in 18 U.S.C. § 981, and that criminal forfeiture is governed by the procedures in 21 U.S.C. § 853.

20. Based on my training and experience, I know that in order to obtain a seizure warrant in a forfeiture case, the government has the initial burden of showing probable cause to believe that a substantial connection exists between the property and the criminal activity (in this case, violations of the currency transaction reporting requirements of 31 U.S.C. § 5324(a)(1) and (3)). *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. 248, 251 (E.D. Va. 1993). *See* 18 U.S.C. § 981(b); 21 U.S.C. 853(f). I am further advised that "probable cause" means simply a reasonable ground for belief that goes beyond mere suspicion but need not amount to prima facie proof. *United States v. One 1987 Mercedes Benz 300E*, 820 F. Supp. at 251-52. This standard requires courts to make a practical, common sense decision whether, given all the circumstances, a fair probability exists that the property to be forfeited was involved in or was the subject of a transaction violating 5324. Id. *See also United States v. Thomas*, 913 F.2d 1111, 1114 (4th Cir. 1990).

21. Based on my training and experience, I also know that pursuant to 31 U.S.C. § 5317(c), civil and criminal forfeiture is triggered by the structuring of cash deposits in violation of 31 U.S.C. § 5324(a)(1) and (3). To prove a violation of that statute, the Government is required to prove only that a currency transaction or series of currency transactions exceeding $10,000 was structured within the meaning of 31 C.F.R. 1010.100(xx), and that the person conducting the transaction intended to evade the currency reporting requirement. It is not necessary to show that the person knew that structuring was illegal. *United States v. Ismail*, 97 F.3d 50, 56 (4th Cir. 1996). Accordingly, this affidavit need only show probable cause to believe that the currency deposits into RANDY SOWERS and KAREN SOWERS

accounts were divided into amounts less than $10,001 and deposited with the intent to avoid the filing of CTRs.

22. Based on the information set forth in this affidavit, there is probable cause to believe that all of the deposits listed on Attachment A were part of a pattern of financial transactions conducted with the intent to evade the currency reporting requirements, and that accordingly, all of the funds involved in those offenses are subject to forfeiture pursuant to Section 5317(c). Accordingly, your affiant submits that there is probable cause to seize the following amounts from the following bank accounts:

    $243,455 in PNC Bank account number 5595196112, in the name of RANDY SOWERS and KAREN SOWERS.

23. Property subject to civil forfeiture may be seized pursuant to 18 U.S.C. § 981(b), and property subject to criminal forfeiture may be seized pursuant to 21 U.S.C. § 853(f). In cases where the Government is not certain at the time of the seizure if it will pursue civil or criminal forfeiture, courts may issue the seizure warrant under both statutes. *See United States v. Lewis*, 2006 WL 1579855, *4 (D. Minn. 2006). The probable cause showing is the same for Sections 981(b) and 853(f), except that the latter also requires a showing that a restraining order "may not be sufficient to assure the availability of the property for forfeiture."

24. Based on my training and experience, I know that restraining orders served on banks sometimes fail to preserve the property for forfeiture because the bank representative receiving the restraining order fails to put the necessary safeguards in place to freeze the money in time to prevent the account holder from accessing the funds electronically, or fails to notify the proper personnel as to the existence of the order, or the bank exercises its own right of setoff to satisfy an outstanding debt owed to the bank by the account holder. In contrast, where electronic funds are concerned, a seizure warrant guarantees that the funds will be in the Government's custody once the warrant is served. Moreover, I have contacted the bank and know that the current balance in the subject bank account is well below the amount reflected in the structured deposits, indicating that a large portion of the forfeitable property has already been taken from the account. *See United States v. Dupree,* 2011 WL 1004824, *12 (E.D.N.Y. Mar. 18, 2011) (the Government may satisfy § 853(f) by showing that some of the criminal proceeds deposited into a bank account have already been depleted because that illustrates that the funds not only could be moved, but that some of them already *have been* moved)."

CONCLUSION

25. Based on the foregoing, your affiant submits that there is probable cause to believe that the $243,455 in cash deposited into RANDY SOWERS and KAREN SOWERS account from May 16, 2011 to December 6, 2011, was structured in a

manner designed to evade the filing of a CTR, which is required for all cash transactions over $10,000. Based on the foregoing, your affiant further submits that the transactions were conducted with a domestic financial institution and are in violation of 31 U.S.C. § 5324(a)(1) and (3).

26. Wherefore, it is hereby requested that task Force Officers and Special Agents of the Internal Revenue Service be authorized to seize, pursuant to 18 U.S.C. § 981(b) and 21 U.S.C. § 853(f), $243,455 in PNC Bank account number 5595196112, in the name of RANDY SOWERS and KAREN SOWERS, as property involved in or traceable to deposits structured to avoid currency reporting requirements in violation of 31 U.S.C. § 5324(a)(1) and (3), which is subject to forfeiture to the United States pursuant to the provisions of 31 U.S.C. § 5317(c).

Michael Aiosa
Task Force Officer, IRS-CID

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27th day of February, 2012.

United States Magistrate Judge

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT H

UNITED STATES DISTRICT COURT

for the

District of Maryland

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: RANDY SOWERS an
KAREN SOWERS
t/a SOUTH MOUNTAIN CREAMERY
8305 BOLIVAR ROAD
MIDDLETOWN, MARYLAND 21769

USAO No. 2010R00861

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

THIS SUBPOENA IS FOR RECORDS ONLY-- PERSONAL APPEARANCE NOT REQUIRED.

Place: United States Courthouse 101 West Lombard St. Baltimore, MD 21201	Date and Time: April 3, 2012, 10:00 A.M.

You must also bring with you the following documents, electronically stored information, or objects *(blank if not applicable)*:
Please provide all records in your control, possession or custody relating to the source and later disbursement of $243,455 in U.S. Currency deposited into account number 5595196112 in the name of RANDY SOWERS and KAREN SOWERS (FARM ACCOUNT) at PNC Bank between May 1, 2011 and the present.

You have the right to present the records directly to the Grand Jury. If you choose to waive that right, you may present the records directly to AUSA Stafan D. Cassella, U.S. Attorney's Office, 36 S. Charles Street, Baltimore, MD 21201. Any questions, please call TFO Mike Aiosa, 443-506-9215.

CLERK OF COURT

Date: February 23, 2012

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Rod J. Rosenstein
U.S. Attorney
District of Maryland

Stefan D. Cassella
Assistant U.S. Attorney
36 S. Charles Street 4th Fl.
Baltimore, MD 21201
(410) 209-4800

TFO Mike Aiosa
443-506-9215

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT I

South Mountain Creamery's bank account seized as part of money-laundering crackdown

By Van Smith

APRIL 18, 2012

South Mountain Creamery, the Frederick County dairy farm and food-distribution company, is a fixture of Baltimore-area farmers markets, particularly the Waverly market on Saturdays or the one on Sundays, downtown under the Jones Falls Expressway. South Mountain co-owner Randy Sowers is now in the hot seat with the feds, because in late February, the Internal Revenue Service's Criminal Investigations Division (IRS-CID) used a federal anti-money-laundering statute to seize the contents of a PNC bank account Sowers says was the depository of cash earned by his company's farmers-market business.

Sowers has not been charged with a crime, and says he expects to learn soon whether or not he will be. As for getting his money back—nearly $70,000, a fraction of the nearly quarter-million dollars in cash deposits the feds say Sowers laundered between May and December last year—well, based on the experiences of others in his position, he'll likely not see it again, at least not all of it.

Baltimore County Police officer Michael Aiosa, who has been detailed as an IRS -CID task-force member since October 2010, signed the six-page affidavit used to get the seizure warrant to empty the account, of which Sowers and his daughter-in-law, Karen Sowers, are co-signatories. The affidavit says cash deposits were broken down into increments of under $10,001 each, causing PNC to not generate required "currency transaction reports" (CTRs) that financial institutions must file with regulators when they receive or disburse more than $10,000 in a single cash transaction. Under 31 U.S.C. 5324, federal law prohibits such conduct, which is called "structuring."

Sowers, who did not seek publicity about his predicament but spoke to a reporter after the search warrant in the court records came to City Paper's attention, says he deposited the cash he'd made in the increments in which it had been earned. If the deposited amounts often ended up being a little under $10,001, he explained, that's just the way it worked out and he no intention of breaking the law.

"We had no idea there was supposedly a law against it—we were just doing it the way we figured we were supposed to, making deposits every week," Sowers explains. "We weren't laundering money," he adds. "We're farmers, we struggle every day to pay bills. We don't know what else to do. Now we just feel like putting [our cash] in a can somewhere."

Sowers' attorney, David Watt, says his client "probably shouldn't have said anything" when contacted by City Paper, and declined to comment further, saying, "We don't want to act like we're trying to influence the goings-on" by talking with the press.

Historically, the anti-structuring statute has been used by prosecutors as an ancillary charge with other accusations of nefarious behavior, such as drug dealing or terrorism. And it still is. But over the last few years, prosecutors have started to use it more regularly as a standalone charge—an observation noted by defense attorneys that Maryland U.S. Attorney Rod Rosenstein confirms.

Syracuse University's Transactional Records Access Clearinghouse, a data center about federal court cases, reports that in fiscal year 2011 Maryland brought 14 of the nation's 99 structuring cases, making it the top state for such

prosecutions. Nationally, the numbers have been rising; the 2011 figures are up 8.8 percent from the year before and up 57.1 percent from five years ago.

Greater prosecutorial emphasis on enforcing the anti-structuring statute has resulted in a rise in money seizures, civil-forfeiture cases, and criminal charges against small businesses and the people who own them. Typical targets handle a lot of cash, and in Maryland gas stations, liquor stores, and used-car dealerships have landed in expensive trouble, losing money through seizures, criminal penalties, and legal bills.

South Mountain is not the first seasonal-produce market to find itself targeted for structuring recently. Taylor's Produce Stand, on the Eastern Shore, was stung last year after the feds seized about $90,000 from its bank accounts. In December, pursuant to a civil-forfeiture settlement agreement after no criminal charges were filed, the stand's owners got back about half of the seized money.

Two members of the defense bar who handle structuring cases, Gerard Martin and Steven Levin, both former Maryland assistant U.S. attorneys, say they have noticed the anti-structuring enforcement trend emerging in Maryland over the last several years.

"The emphasis is on basically seizing money, whether it is legally or illegally earned," Levin says. "It can lead to financial ruin for business owners, and there's a potential for abuse here by the government, where they use it basically as a means of seizing money, and I think we've seen that happen."

"South Mountain Creamery!" Martin exclaims when contacted by phone. "They're going after South Mountain Creamery! That's an icon. That's like going after mom and apple pie." Then he settles in to ruminate on the general trends, saying cases typically arise because financial institutions "are required to tell the government about it" when they suspect a pattern of structured cash deposits. Then, "the government gets a search warrant and takes every nickel out of the guy's bank account," Martin continues, adding that "structuring is generally an indication that there is something going wrong, but the government doesn't always find another crime," such as drug dealing or tax evasion.

"There are a lot of legitimate reasons why a liquor store or a gas station would be depositing $9,500 in cash a day," Martin says. "Sometimes the numbers just work out that way. But it is usually not an accident that it is happening."

Rosenstein says that anti-structuring efforts "are an increasing area of emphasis for the Justice Department, and there has been an influx of resources" to investigate and prosecute it. Thus, he says, "I'd be disappointed if there wasn't an uptick" in prosecutions, given the additional resources.

Post-Sept. 11 changes to banking laws, Rosenstein continues, have prompted financial institutions to report suspicious financial doings more vigilantly, and as a result, investigators and prosecutors now have "a treasure trove of information" about transactions, which provides them with "potential leads for finding criminal activities." Structuring is often a red flag for other crime since, Rosenstein says, "typically people who go through all those lengths" to make multiple cash deposits of just under $10,000, sometimes at multiple bank branches on the same day, are trying to hide something. But, he continues, "There's a possibility that somebody did it innocently, and we are always open to that."

Sowers spoke at length about being targeted for structuring. In essence, he thinks the government used an exotic legal gimmick to suck hard-earned money out of his business just as he's facing bills for hay and other spring-time expenses farmers incur—but he admits that, if there's a law against what he did, "well, it looks like we did break the law," even if he didn't mean to.

The seizure and the resulting legal limbo as he awaits the prosecutor's charging decision has "scared us to death," he says. And the banking headaches that resulted from an emptied account have been never-ending, including bounced checks, mucked-up automatic withdrawals, and the resulting overdraft fees.

"It makes me look bad," Sowers says.

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PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT J

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,

Plaintiff,

- against - Civil No. _____

62,936.04 in U.S. Currency,

Defendant.

----------X

VERIFIED COMPLAINT FOR FORFEITURE

Plaintiff, United States of America, by its attorneys, Rod Rosenstein, United States Attorney for the District of Maryland, and Stefan D. Cassella, Assistant U.S. Attorney, brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure:

NATURE OF THE ACTION

1. This is a civil forfeiture action against U.S. currency involved in violations of 31 U.S.C. § 5324(a) that is subject to forfeiture pursuant to 31 U.S.C. § 5317(c)(2).

THE DEFENDANTS IN REM

2. The defendant is $62,936.04 in U.S. Currency.

3. The defendant property was seized from PNC Bank account number ****6112 on or about February 28, 2012.

JURISDICTION AND VENUE

4. Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant property. This Court has jurisdiction over an action commenced by the United States

under 28 U.S.C. § 1345, over an action for forfeiture under 28 U.S.C. § 1355(a), and over this particular action under 31 U.S.C. § 5317(c)(2).

5. This Court has *in rem* jurisdiction over the defendant property under 28 U.S.C. 1355(b).

6. Venue is proper in this district pursuant to 28 U.S.C. §1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this district and pursuant to 28 U.S.C. § 1395 because the property is located in this district.

BASIS FOR FORFEITURE

7. The defendant currency is subject to forfeiture pursuant to 31 U.S.C. § 5317(c)(2) because is was involved in a violation of 31 U.S.C. § 5324(a)(3), which makes it an offense to structure currency transactions with a domestic financial institution for the purpose of evading the reporting requirements of section 5313 of Title 31, United States Code, and the regulations promulgated thereunder.

8. To the extent that it is necessary to do so, Plaintiff intends to rely on the provisions of 18 U.S.C. § 984 to establish that the defendant property is the property involved in the violation of 31 U.S.C. § 5324(a)(3) described below.

FACTS

9. Randy Sowers and Karen Sowers, dba South Mountain Creamery, 8305 Bolivar Road, Middletown, MD 21769, maintained account number ****6612 at PNC Bank. The account was designated as the "Farm Account."

9. Between May 6, 2011 and February 27, 2012, Randy and/or Karen Sowers deposited, or caused to be deposited, $295,220 in U.S. Currency, all in the form of cash, into the PNC Account in approximately 36 separate transactions, each in an amount just under $10,001.

10. As set forth in Attachment A, which is incorporated herein, the deposits were contemporaneous with the receipt of cash from sales at farmers' markets that occurred between May and November, 2011, except that on each occasion when the cash receipts from the farmers' market exceeded $10,000, less than $10,000 was deposited into the PNC account.

11. For example, cash sales totaling $12,176 on June 23, 25 and 26, 2011, were followed by a deposit of $9,300 on June 29. And cash sales of $12,785 on July 9, 2011 were followed by the deposit of $9,000 on July 11.

12. The holding back of cash receipts in excess of $10,000 indicates a knowledge of the Currency Transaction Reporting requirement and an intent to evade it.

13. During 2011, the Sowers received a total of $320,465 in cash sales from the farmers' markets. Because they held back cash receipts in excess of $10,000 when making weekly deposits, they had deposited only $237,455 in cash into the PNC Bank account by the end of the farmers' market season in November 2011.

14. The Sowers deposited this remaining cash in periodic deposits from December 6, 2011 through February 27, 2011, the day before the defendant currency was seized from the PNC Account pursuant to a seizure warrant issued by the district court. All of these deposits were made after receipts from farmers' market sales had ceased.

15. At the time of the seizure, the Sowers had deposited $295,220 of the $320,465 in farmers' market receipts, leaving a balance not-yet deposited of $25,245.

16. Randy Sowers was interviewed by Task Force Officer Michael Aiosa and Special Agent Tanisha Pryce on February 29, 2012. At that time, Sowers stated that during the farmers'

market "season," his weekly cash receipts were on the order of $12,000 to $14,000 per week, but that he kept his cash deposits under $10,000 intentionally so as not to "throw up red flags."

17. Sowers further stated that he was advised by a teller at the bank that the deposit of more than $10,000 in cash would lead to the filing of a form, and that he decided from that point forward not to make deposits in excess of $10,000.

18. Sowers further stated that as of the date of the interview he still had approximately $20,000 in cash remaining from the previous farmers' market season that he had not yet integrated into the banking system. This amount corresponds to the $25,245 difference between the amounts deposited as of February 27, 2012 and the $320,465 in cash receipts from the 2011 farmers' market season.

19. Based on the foregoing, there are sufficient facts to support a reasonable belief that the defendant funds were involved in an intentional scheme or plan to hold back cash receipts to amounts under $10,000 to evade the Currency Transaction Reporting requirement, and that such funds are therefore forfeitable to the United States pursuant to 31 U.S.C. § 5324(a)(3) and 5317(c).

WHEREFORE, the plaintiff prays that all persons who reasonably appear to be potential claimants with interests in the defendant property be cited to appear herein and answer the complaint; that the defendant property be forfeited and condemned to the United States of America; that upon Final Decree of Forfeiture, the Secretary of the Treasury dispose of the

defendant property according to law; and that the plaintiff have such other and further relief as this Court deems proper and just.

Dated: April 19, 2012

Respectfully submitted,

Rod J. Rosenstein
UNITED STATES ATTORNEY
District of Maryland

By: _____

Stefan D. Cassella
Assistant U.S. Attorney
36 South Charles Street
Fourth Floor
Baltimore, MD 21201
410 209-4986

VERIFICATION

I, Michael Aiosa, declare under penalty of perjury as provided by 28 U.S.C. § 1746, that the facts set forth in the foregoing Complaint for Forfeiture *in rem* are true and correct to the best of my knowledge and belief.

Michael Aiosa

Memo

DATE: April 19, 2012

TO: Deborah Trotter, IRS

FROM: Alan J. Pfeiffenberger
FSA Data Analyst

RE: U.S. v. $62,936.04 U.S. CURRENCY
Civil Action No. _____

CATS ID: 12-IRS-000512
IRS CASE #: 1000248776

The United States has filed a forfeiture action against **$62,936.04 U.S. CURRENCY.** A copy of the Complaint for Forfeiture is attached.

Notice of this seizure will be published at **www.forfeiture.gov** pursuant to Rule G of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims.

Thank you.

Attachment

IRS Case # 1000248776

Department of the Treasury

Federal Law Enforcement Agencies

PROCESS RECEIPT AND RETURN

PLAINTIFF **UNITED STATES OF AMERICA**	COURT CASE NUMBER
DEFENDANT **$62,936.04 U.S. Currency**	TYPE OF PROCESS **Verified Complaint in Rem**

SERVE AT	Name Of Individual, Company, Corporation, Etc. to Serve or Description of Property to Seize **12-IRS-000512 ~~~ 1000248776**
	Address (Street or RFD / Apt. # / City, State, and Zip Code)

Send NOTICE OF SERVICE copy to Requester: Alan J. Pfeiffenberger, Data Analyst U.S. Attorney's Office 36 S. Charles Street, 4th floor Baltimore, Maryland 21201	Number Of Process To Be Served In This Case.	
	Number Of Parties To Be Served In This Case.	
	Check Box If Service Is On USA	

SPECIAL INSTRUCTIONS or OTHER INFORMATION TO ASSIST IN EXPEDITING SERVICE (includes Business and Alternate Addresses, Phone Numbers, and Estimated Availability times.)

Arrest property. Fill in the date of arrest in this process receipt and return our copy.

Signature of Attorney or other Originator requesting service on behalf of [X]Plaintiff [ ]Defendant	Telephone No. (410) 209-4800	Date Apr 19, 2012
SIGNATURE OF PERSON ACCEPTING PROCESS:		Date

SPACE BELOW FOR USE OF TREASURY LAW ENFORCEMENT AGENCY

I acknowledge receipt for the Total # of Process Indicated.	District of Origin No. ____	District to Serve No. ____	SIGNATURE OF AUTHORIZED TREASURY AGENCY OFFICER:	Date

I hereby Certify and Return That I [ ] PERSONALLY SERVED, [ ] HAVE LEGAL EVIDENCE OF SERVICE, [ ] HAVE EXECUTED AS SHOWN IN "REMARKS", the Process Described on the Individual, Company, Corporation, Etc., At The Address Shown Above or at the Address Inserted Below.

[ ] I HEREBY CERTIFY AND RETURN THAT I AM UNABLE TO LOCATE THE INDIVIDUAL, COMPANY, CORPORATION, ETC. NAMED ABOVE.

NAME & TITLE of Individual Served If not shown above:	[ ] A Person of suitable age and discretion then residing in the defendant's usual place of abode.	
ADDRESS: (Complete only if different than shown above.)	Date of Service	Time of Service [ ] AM [ ] PM
	Signature, Title and Treasury Agency	

REMARKS:

TD F 90-22.48 (6/96)

Make (5) copies after form is signed. SEND ORIGINAL + 4 COPIES to TREASURY AGENCY. Retain Copy #5 for your file.

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2012 APR 19 PM 4: 13
CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

$62,936.04 U.S. Currency

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT **Frederick County**
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Rod J. Rosenstein, United States Attorney
Stefan D. Cassella, Assistant United States Attorney
United States Attorney's Office
36 S. Charles Street, 4th floor
Baltimore, Maryland 21201
(410) 209-4800

ATTORNEYS (IF KNOWN)

WDQ12CV1216

II. BASIS OF JURISDICTION (PLACE "X" IN ONE BOX ONLY)

[X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

	PTF	DEF		PTF	DEF
Citizen of This State	[]1	[]1	Incorporated or Principal Place	[]4	[]4
Citizen of Another State	[]2	[]2	Incorporated and Principal Place of Business in Another State	[]5	[]5
Citizen or Subject of a Foreign Cntry	[]3	[]3	Foreign Nation	[]6	[]6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

VERIFIED COMPLAINT FOR FORFEITURE

V. NATURE OF SUIT *(PLACE AN "X" IN ONE BOX ONLY)*

CONTRACT
[] 110 Insurance
[] 120 Marine
[] 130 Miller Act
[] 140 Negotiable Instrument
[] 150 Recovery of Overpayment & Enforcement of Judgment
[] 151 Medicare Act
[] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
[] 153 Recovery of Overpayment at Veteran's Benefits
[] 160 Stockholders' Suits
[] 190 Other Contract
[] 195 Contract Product Liability

TORTS

PERSONAL INJURY
[] 310 Airplane
[] 315 Airplane Product Liability
[] 320 Assault, Libel & Slander
[] 330 Federal Employers' Liability
[] 340 Marine
[] 345 Marine Product Liability
[] 350 Motor Vehicle
[] 355 Motor Vehicle Product Liability
[] 360 Other Personal Injury

PERSONAL INJURY
[] 362 Personal Injury Med. Malpractice
[] 365 Personal Injury Product Liability
[] 368 Asbestos Personal Injury Prod. Liab.

PERSONAL PROPERTY
[] 370 Other Fraud
[] 371 Truth in Lending
[] 380 Other Personal Property Damage
[] 385 Property Damage Prod. Product Liability

FORFEITURE/ PENALTY
[] 610 Agriculture
[] 620 Other Food & Drug
[] 625 Drug Related Seizure at Property 21 U.S.C. 881
[] 630 Liquor Laws
[] 640 R.R. & Truck
[] 650 Airline Regs.
[] 660 Occupational Safety/Health
[X] 690 Other

BANKRUPTCY
[] 422 Appeal 28 U.S.C. 158
[] 423 Withdrawal 28 U.S.C. 157

PROPERTY RIGHTS
[] 820 Copyrights
[] 830 Patent
[] 840 Trademark

LABOR
[] 710 Fair Labor Standards Act
[] 720 Labor/Mgmt Relations
[] 730 Labor/Mgmt. Reporting & Disclosure Act
[] 740 Railway Labor Act
[] 790 Other Labor Litigation
[] 791 Empl. Ret. Inc. Security Act

SOCIAL SECURITY
[] 861 HIA (1395ff)
[] 862 Black Lung(923)
[] 863 DIWC/DIWW (405(g))
[] 864 SSID Title XVI
[] 865 RSI (405(g))

FEDERAL TAX SUITS
[] 870 Taxes (U.S. Plaintiff or Defendant)
[] 871 IRS - Third Party 26 U.S.C. 7609

OTHER STATUES
[] 400 State Reapportionment
[] 410 Antitrust
[] 430 Banks and Banking
[] 450 Commerce/ICC Rates/etc
[] 460 Deportation
[] 470 Racketeer Influenced Corrupt Organizations
[] 810 Selective Service
[] 850 Securities/ Commodities/ Exchange
[] 875 Customer Challenge 12 U.S.C. 3140
[] 891 Agricultural Acts
[] 892 Economic Stabilization Act
[] 893 Environmental Matters
[] 894 Energy Allocation Act
[] 895 Freedom of Information Act
[] 900 Appeal of Fee Determ. Under Equal Access to Justice
[] 950 Constitutionality of State Statutes
[] 890 Other Statutory Actions

REAL PROPERTY
[] 210 Land Condemnation
[] 220 Foreclosure
[] 230 Rent Lease & Ejectment
[] 240 Torts to Land
[] 290 All Other Real Property

CIVIL RIGHTS
[] 441 Voting
[] 442 Employment
[] 443 Housing/Accommodations
[] 444 Welfare
[] 440 Other Civil Rights

PRISONER PETITION
[] 510 Motions to Vacate Sentence
Habeas Corpus:
[] 530 General
[] 535 Death Penalty
[] 540 Mandamus & Other
[] 550 Other (including 1983 Actions)

VI. ORIGIN
[X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Remanded from Appellate Court
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation
[] 7 Appeal to District Judge from Magistrate

VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION **DEMAND** **CHECK YES only if demanded in complaint:**
Request for Jury Trial: [] yes [X] no

VII. RELATED CASE(S) (See instructions):

Stefan D. Cassella, Assistant United States Attorney
DATE April 19, 2012 SIGNATURE OF ATTORNEY OF RECORD

SCassella

ATTACHMENT A
SCHEDULE OF CASH DEPOSITS FOR RANDY SOWERS & KAREN SOWERS
PNC ACCOUNT NO-[redacted]6112
April 26,2011 THROUGH February 27, 2012

DEPOSIT DATE	FARMERS MARKET CASH RECEIPTS	CASH DEPOSIT	ACCOUNT	TIME
Saturday, May 07, 2011	10,467.00			
Saturday, May 14, 2011	11,196.00			
Monday, May 16, 2011		9,520.00	6112	2:46 PM
Saturday, May 21, 2011	11,389.00			
Monday, May 23, 2011		8,695.00	6112	11:29 AM
Saturday, May 28, 2011	9,865.00			
Wednesday, June 01, 2011		9,000.00	6112	9:47 AM
Saturday, June 04, 2011	13,284.00			
Thursday, June 09, 2011	405.00			
Saturday, June 11, 2011	13,181.00			
Thursday, June 16, 2011	1,216.00			
Saturday, June 18, 2011	7,461.00			
Tuesday, June 21, 2011		9,500.00	6112	2:02 PM
Thursday, June 23, 2011	875.00			
Saturday, June 25, 2011	8,301.00			
Sunday, June 26, 2011	5,000.00			
Wednesday, June 29, 2011		9,300.00	6112	2:43 PM
Saturday, July 02, 2011	8,901.00			
Friday, July 08, 2011		9,720.00	6112	1:14 PM
Saturday, July 09, 2011	12,785.00			
Monday, July 11, 2011		9,000.00	6112	1:37 PM
Saturday, July 16, 2011	12,259.00			
Monday, July 18, 2011		9,000.00	6112	2:15 PM
Saturday, July 23, 2011	12,922.00			
Saturday, July 30, 2011	11,512.00			
Wednesday, August 03, 2011		9,000.00	6112	11:57 AM
Saturday, August 06, 2011	12,805.00			
Monday, August 08, 2011		8,800.00	6112	10:55 AM
Thursday, August 11, 2011		9,900.00	6112	2:52 PM
Saturday, August 13, 2011	12,452.00			
Friday, August 19, 2011		9,900.00	6112	9:39 AM
Saturday, August 20, 2011	13,704.00			

ATTACHMENT A
SCHEDULE OF CASH DEPOSITS FOR RANDY SOWERS & KAREN SOWERS
PNC ACCOUNT NO. [redacted]6112
April 26,2011 THROUGH February 27, 2012

DEPOSIT DATE	FARMERS MARKET CASH RECEIPTS	CASH DEPOSIT	ACCOUNT	TIME
Monday, August 22, 2011		9,000.00	6112	11:30 AM
Saturday, August 27, 2011	7,671.00			
Monday, August 29, 2011		9,000.00	6112	UNK
Saturday, September 03, 2011	12,824.00			
Saturday, September 10, 2011	12,547.00			
Monday, September 12, 2011		9,500.00	6112	12:09 PM
Saturday, September 17, 2011	12,837.00			
Monday, September 19, 2011		9,940.00	6112	12:26 PM
Friday, September 23, 2011		9,400.00	6112	10:36 AM
Saturday, September 24, 2011	12,912.00			
Wednesday, September 28, 2011		9,000.00	6112	10:44 AM
Saturday, October 01, 2011	7,472.00			
Monday, October 03, 2011		9,200.00	6112	2:29 PM
Saturday, October 08, 2011	12,033.00			
Wednesday, October 12, 2011		9,500.00	6112	9:45 AM
Saturday, October 15, 2011	5,203.00			
Monday, October 17, 2011		10,000.00	6112	3:08 PM
Saturday, October 22, 2011	11,081.00			
Monday, October 24, 2011		9,000.00	6112	2:15 PM
Saturday, October 29, 2011	6,677.00			
Saturday, November 05, 2011	8,220.00			
Monday, November 07, 2011		9,680.00	6112	10:14 AM
Saturday, November 12, 2011	3,775.00			
Monday, November 14, 2011		9,000.00	6112	11:26 AM
Saturday, November 19, 2011	8,528.00			
Monday, November 21, 2011		8,150.00	6112	2:29 PM
Saturday, November 26, 2011	8,705.00			
Monday, November 28, 2011		5,750.00	6112	10:33 AM
Tuesday, December 06, 2011		6,000.00	6112	10:27 AM
Tuesday, December 13, 2011		4,400.00	6112	1:40 PM
Tuesday, December 27, 2011		10,000.00	6112	1:44 PM
Tuesday, January 03, 2012		5,000.00	6112	1:59 PM
Thursday, January 12, 2012		2,000.00	6112	1:52 PM

ATTACHMENT A
SCHEDULE OF CASH DEPOSITS FOR RANDY SOWERS & KAREN SOWERS
PNC ACCOUNT NO.[redacted]6112
April 26,2011 THROUGH February 27, 2012

DEPOSIT DATE	FARMERS MARKET CASH RECEIPTS	CASH DEPOSIT	ACCOUNT	TIME
Tuesday, January 17, 2012		4,000.00	6112	10:45 AM
Monday, January 30, 2012		4,000.00	6112	10:54 AM
Monday, February 13, 2012		6,345.00	6112	2:00 PM
Wednesday, February 22, 2012		6,020.00	6112	10:30 AM
Monday, February 27, 2012		10,000.00	6112	11:19 AM
	320,465.00	295,220.00		

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT K

From: Cassella, Stefan (USAMD) [mailto:Stefan.Cassella@usdoj.gov]
Sent: Tuesday, May 29, 2012 2:06 PM
To: David L. Watt, Esq.
Subject: RE: Settlement Agreement

Mr. Taylor did not give an interview to the press.

Stef

Stefan D. Cassella
Assistant U.S. Attorney
Chief, Asset Forfeiture and Money Laundering Section
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
410 209-4986

From: David L. Watt, Esq. [mailto:dwatt@dwattlaw.com]
Sent: Tuesday, May 29, 2012 1:41 PM
To: Cassella, Stefan (USAMD)
Subject: RE: Settlement Agreement
Importance: High

Stef,

I think we can still wrap this up before you leave on your trip. My client is still troubled by the "acknowledge" language, since he believes that he is admitting that there was reasonable cause. In the meantime, I've obtained the settlement in the Taylor Produce case (attached to this email), which is very similar to the Sowers' case, and there is no language regarding the Taylors' acknowledgement that there was reasonable cause for the seizure. We would even be satisfied with the same WHEREAS clauses as those in the Taylor agreement. I have a hard time explaining to my client why he is being treated differently, especially where your initial concern was that the government agents not be liable for any claims for the seizure (which we have covered in paragraph 5).

I hate to see this carried over til Mid-June since my clients really need the funds for their farming operations. Please reconsider your position and see if we can to an agreement on this final point this afternoon.

Thanks,

Dave

David L. Watt, Esq.
Law Offices of David L. Watt, LLC
3280 Urbana Pike, Suite 207
Ijamsville, MD 21754
(301) 639-5629

NOTICE: This email is a confidential communication of the Law Offices of David L. Watt, LLC and is intended solely for the use of the individual(s) to whom it is addressed. If you believe you have received this e-mail in error, please notify the sender immediately, delete the e-mail from your computer and do not copy or disclose the contents of the e-mail or any attachments to anyone else. If you are not an existing client of the Law Offices of David L. Watt, LLC, (1) nothing in this e-mail establishes an attorney/client relationship between you and the Law Offices of David L. Watt, LLC unless the e-mail contains a specific statement to that effect, (2) nothing in this e-mail shall be deemed, nor should you interpret anything in this e-mail to be legal advice, and (3) do not disclose anything to the Law Offices of David L. Watt, LLC that you expect to be held in confidence. Any advice concerning Federal, state and local tax

issues contained in this written communication or in any attachment has not been written nor is it intended to be used, and cannot be used, for the purpose of (i) avoiding Federal, state or local tax penalties that may be imposed by the Internal Revenue Service or applicable state or local tax provisions.

From: Cassella, Stefan (USAMD) [mailto:Stefan.Cassella@usdoj.gov]
Sent: Tuesday, May 29, 2012 12:37 PM
To: David L. Watt, Esq.
Subject: RE: Settlement Agreement

David,

Sorry we couldn't get this worked out before I have to leave on my trip. We're not quite there: Mr. Sowers doesn't have to admit that he did anything wrong, but he does have to acknowledge that there was a reasonable basis for the seizure.

I'll be gone until june 11 but then we'll go almost immediately into trial. It should be over by July 1, so we can pick it up then. In the meantime, I will not object to your withholding your claim until July. If Mr. Sowers should change his mind and agree to sign the last version of the letter I sent, we can get it filed right away.

Stef

Stefan D. Cassella
Assistant U.S. Attorney
Chief, Asset Forfeiture and Money Laundering Section
36 S. Charles Street, 4th Floor
Baltimore, MD 21201
410 209-4986

From: David L. Watt, Esq. [mailto:dwatt@dwattlaw.com]
Sent: Friday, May 25, 2012 2:57 PM
To: Cassella, Stefan (USAMD)
Subject: RE: Settlement Agreement
Importance: High

Stef,

I think we're almost there, but a couple of concerns. As I suggested in my May 15 email, my clients wanted language that they deny wrongdoing and did not want to admit there was reasonable cause. Again, one of my client's chief concerns is the perception in the marketplace. The latest draft replaces "admit" with "acknowledge" that reasonable cause existed, but in my client's view, this is the same thing. I originally would have preferred an affirmative "deny any wrongdoing", whereas you have "admit no wrongdoing." I know your chief concern is to ensure that government agents would not be subject to suit for seizure, but I think that's covered under Paragraph 5, so I don't believe the "acknowledge" clause is even necessary at this point.

Perhaps the easiest way to wrap this up before you go before you go abroad (vacation?) is to simply delete the "acknowledge" phrase in the 2nd WHEREAS clause since the 1st WHEREAS clause recites your filing which presumably was done with reasonable cause. So, the final version could keep the 1st WHEREAS clause reciting the government's suit, the 2nd WHEREAS clause would include my client's denial and then everything else is fine.

To sum it up, the 2nd WHEREAS clause in its entirety would be:

WHEREAS, the claimants deny any wrongdoing on their part; and

I know we're up against the deadline for filing a claim (again, I believe it's May 31, 2012), and we'd really like to wrap this up either today or at least by Tuesday (5/29/2012), so that we don't have to file a continuance.

Let me know if you have any questions.

Thanks,

Dave

David L. Watt, Esq.
Law Offices of David L. Watt, LLC
3280 Urbana Pike, Suite 207
Ijamsville, MD 21754
(301) 639-5629

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From: Cassella, Stefan (USAMD) [mailto:Stefan.Cassella@usdoj.gov]
Sent: Friday, May 25, 2012 8:55 AM
To: David L. Watt, Esq.
Subject: Settlement Agreement

Dave,

Here is what I hope is the final draft of the agreement. I am leaving in mid-week on an overseas trip. If you have your clients sign the agreement and return it to me on Tuesday, I can get it filed in court before I leave; otherwise I can get it filed after I return.

Stef

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT L

U.S. Department of Justice

United States Attorney
District of Maryland
Northern Division

Rod J. Rosenstein
United States Attorney

Stefan D. Cassella
Assistant United States Attorney

36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

DIRECT: 410-209-4986
MAIN: 410-209-4800
FAX: 410-962-5130
TTY/TDD: 410-962-4462

May 25, 2012

David L. Watt, Esq.
Law Offices of David L. Watt, LLC
3280 Urbana Pike, Suite 207
Ijamsville, MD 21754

Re: United States v. $62,936.04 in U.S. Currency
No. 12-cv-01216-WDQ

Dear Mr. Watt:

In accordance with our recent conversation concerning the above-referenced forfeiture action, the following agreement is proposed pursuant to Rule 68 of the Federal Rules of Civil Procedure. Once the agreement is fully executed and returned to me, and the time for the filing of any additional claims to the property has expired,[1] I will forward it to the Court with a motion for an order of forfeiture. Once the order is entered, I will forward it to the appropriate agency for disposition.

SETTLEMENT AGREEMENT

This Settlement Agreement is made between Karen and Randy Sowers ("the claimants") and the United States of America ("the government"):

WHEREAS, the Government filed a civil forfeiture action against $62,936.04 that was seized from PNC Bank account number ****6112 on or about February 28, 2012 ("the defendant property"); and

WHEREAS, the claimants admit no wrongdoing on their part but acknowledge that the Government had reasonable cause to seize the defendant currency and to commence the action against the defendant property; and

---

[1] In lieu of waiting for the time for additional claims to expire, the Government is willing to file this agreement with the court and request the entry of judgment immediately so that the non-forfeited funds may be returned to the claimant without delay, *provided* the claimant agrees to indemnify the Government should any other third party file a meritorious claim to the defendant property.

WHEREAS, the parties wish to reach a fair and expedited resolution to this matter; and

WHEREAS, the account from which the defendant property was seized was held in the name of the claimants and it does not appear that any other person would have standing to contest the forfeiture of that property;

NOW, THEREFORE, for the foregoing reasons and for good and substantial consideration, the adequacy and receipt of which is hereby acknowledged, the claimants and the government agree as follows:

1. Entry into this Agreement constitutes recognition by the Government that the claimants, in executing this agreement, have claimed, under penalty of perjury, an ownership interest in the defendant property, and that the claimants may therefore be deemed to be parties to this matter who have filed a valid claim pursuant to 18 U.S.C. § 983(a)(4) and Supplemental Rule G(5).

2. The claimants agree that a portion of the defendant currency, to wit: $29,500, will be forfeited to the United States, and they relinquish all right and title thereto.

3. In return, the government agrees that the remainder of the defendant property, to wit: $33,436.04, will not be forfeited and will be returned to the claimants upon the entry of a forfeiture judgment by the court. Moreover, the Government agrees that it will not seek to seize or forfeit any part of the remainder of the $295,220 in allegedly structured funds that were not seized.

4. The parties also agree that this civil forfeiture settlement resolves all matters, civil and criminal, relating to the alleged structuring offense, but that there is no agreement regarding any civil or criminal tax liability. The IRS has not yet completed its review of the claimants' income tax returns and nothing in this agreement precludes the IRS or the Office of the United States Attorney from pursuing any civil or criminal sanction should such liability be found to exist.

5. The claimants agree to indemnify and hold the government harmless from and against all claims, damages, losses, and action resulting from or arising out of the seizure and release of the defendant property, including any claims that may be made by a third party who files a claim before the time to do so under Rule G(5) expires, but after the parties have entered into this Settlement Agreement. The claimants understand that their consent to this indemnity provision is necessary because the Government would otherwise not be able to release any

portion of the defendant property until the time for the filing of all claims pursuant to Rule G(5) has expired.

6. Notwithstanding the Government's agreement to release a portion of the defendant property to the claimants upon the entry of a judgment of forfeiture, the claimants understand that the Internal Revenue Service is required by law to withhold the release of any funds in the Government's possession until the IRS has determined that the claimants do not owe any unrelated debts to the United States. *See* 31 U.S.C. § 3716. The claimants, however, reserve the right to seek the intervention of the court if the Government unreasonably delays the release of the funds to which the claimants are entitled under this agreement.

7. The parties agree to bear their own costs and attorneys fees.

8. The claimants agree that the government may submit a copy of this agreement in connection with a request for an Order of Forfeiture.

9. This agreement states the entire agreement reached between the parties hereto.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____
Stefan D. Cassella
Assistant United States Attorney

_____

_____
Randy and Karen Sowers, Claimants

_____
Date

_____
David L. Watt
Counsel for Claimant

_____
Date

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	
v.	*	**No. 12-cv-01216-WDQ**
$62,936.04 in U.S. Currency,	*	
Defendant.	*	

* * * * * * * * * * * * * *

MOTION FOR FINAL ORDER OF FORFEITURE

The United States of America, by and through undersigned counsel, hereby moves for entry of an order of forfeiture, and in support of such motion states the following:

1. The Verified Complaint for Forfeiture of the defendant property was filed on or about April 19, 2012.

2. The defendant currency, $62,936.04, was seized from a bank account held by Randy and Karen Sowers on or about February 28, 2012 based on probable cause to believe that it was property involved in a violation of 31 U.S.C. § 5324(a)(3) (structuring), and was therefore forfeitable to the United States pursuant to 31 U.S.C. § 5317(c)(2).

3. On or about May 29, 2012 Randy and Karen Sowers ("Claimants") and the Government agreed to disposition of the forfeiture action against the defendant currency. A copy of the settlement agreement is annexed hereto as **Exhibit A**.

4. According to the agreement, the Government agrees to recognize Randy and Karen Sowers as Claimants to the currency within the meaning of 18 U.S.C. § 983(a)(4) and Supplemental Rule G(5) of the F.R.Civ.P. even though they have not filed a formal claim.

5. Moreover, according to the agreement, the Government agreed to release a portion of the seized funds ($33,436.04) to Claimants. In return, Claimants agreed not to contest the forfeiture of the remaining $29,500 to the government and to relinquish all right, title and interest in that property.

6. Because the defendant currency was seized from an account held solely by the claimants, and there being no other person with a potential interest in the property, the Government and Claimants entered into the Settlement Agreement before the time for other persons to file claims pursuant to Supplemental Rules G(4)(a) and G(5) has expired. The Government submits that it would be in the interest of justice for the court to approve the attached settlement agreement and enter the proposed forfeiture order without waiting the usual 60 days to see if anyone with an interest in the property files a claim. The delay would serve only to prevent the Government from releasing the balance of the seized funds to Claimants.

WHEREFORE, the United States of America respectfully requests that the Court enter judgment for the United States of America under the terms and conditions of the draft order submitted herewith for the convenience of the Court.

Respectfully submitted,

Rod J. Rosenstein
United States Attorney

/s/

Date: 5/29/2012

Stefan D. Cassella
Assistant United States Attorney
36 S. Charles Street
Fourth floor
Baltimore, Maryland 21201
Telephone (410) 209-4800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 29, 2012, a copy of the foregoing Motion for Final Order of Forfeiture was mailed first class, postage prepaid to David L. Watt, Law Offices of David L. Watt, 3280 Urbana Pike, Suite 207, Ijamsville, MD 21754

/s/

Stefan D. Cassella
Assistant United States Attorney

PETITION FOR REMISSION OR MITIGATION OF RANDY AND KAREN SOWERS

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

UNITED STATES OF AMERICA,	*	
Plaintiff,	*	
v.	*	**No. 12-cv-01216-WDQ**
$62,936.04 in U.S. Currency,	*	
Defendant.	*	

* * * * * * * * * * * * * *

FINAL ORDER OF FORFEITURE

IT IS ORDERED, ADJUDGED, AND DECREED on this 30th day of May, 2012 that:

1. The United States of America has filed a Verified Complaint for forfeiture pursuant to Supplemental Rule G(2) of the F.R.Civ.P.;

2. The United States of America has shown that there was reasonable cause for the seizure of the defendant property under 28 U.S.C. § 2465;

3. Randy and Karen Sowers are recognized as claimants to the defendant property for the purposes of Supplemental Rule G(5) and 18 U.S.C. § 983(a)(4);

4. There are no other potential claimants to the defendant property;

5. The parties have reached a settlement whereby Randy and Karen Sowers have agreed not to contest the forfeiture of $29,500 of the defendant property and the United States has agreed not to seek the forfeiture of $33,436.04.

WHEREFORE, $29,500 in U.S. Currency, being part of the defendant *in rem,* is condemned and all rights, title, and interest of Randy and Karen Sowers and any and all other persons is **HEREBY FORFEITED** to the United States of America; and

Case 1:12-cv-01216-WDQ Document 3-2 Filed 05/29/12 Page 2 of 2

IT IS FURTHER ORDERED that the United States shall dispose of the defendant property in accordance with law and in accordance with the agreement annexed to the government's motion, that the portion of the defendant property that is to be returned to the claimants be released as soon as possible, consistent with the requirements of 31 U.S.C. § 3716, and that the clerk of the court shall provide copies of this order to counsel of record.

William D. Quarles

United States District Judge