First Circuit holds that defendants both obtained, directly or indirectly, the proceeds of money laundering conspiracy. Donna Saccoccia and her brother Hurley were convicted in 1993 for their role in a money laundering conspiracy controlled by Donna's husband. They appealed the district court's denial of Donna's petition seeking vacatur of a forfeiture judgment of approximately $136,000,000 in proceeds based on *Honeycutt v. United States*, arguing that it should be applied retroactively to invalidate the forfeiture judgments against them. The Court found that Donna assisted her husband in most aspects of the money laundering operation, wiring over $136 million out of a jointly owned account to an assortment of foreign accounts, helping count money, personally authorizing wire transfer of more than $38 million, and causing phony invoices to be issued. At sentencing, although the district court found it "extremely difficult" to characterize Donna's role in the conspiracy, it found that she was involved in almost the entire spectrum of money-laundering activities that were engaged in by the conspiracy. The court clarified, however, that it viewed Donna as appreciably less culpable than some of the other defendants and recognized the unique influence her husband had over her but concluded it was disingenuous at best to suggest that Donna did not know that her actions were illegal. In addition, at sentencing, the district court concluded that Hurley stood a little higher in the pecking order than some of the other defendants, and concluded that he was involved in more facets of the organization than his co-defendants. The district court initially stated that each defendant was required to forfeit only property obtained "directly or indirectly" by that defendant pursuant to 18 U.S.C. §1963(a), but clarified that each defendant was accountable for the acts of co-conspirators that were committed in furtherance of the conspiracy and were reasonably foreseeable by the defendant. The key question on appeal was whether Donna and Hurley each "obtained, directly or indirectly" the proceeds of the conspiracy. As a joint owner, Donna had control over the account and the right to withdraw and wire funds; ownership over an account that contains tainted funds, regardless of who originally earned the money or deposited it into the account, is more than sufficient for acquisition purposes. Her ownership over the account through which the tainted money flowed thus was enough to demonstrate she obtained the funds for purposes of forfeiture even after *Honeycutt*. Unlike Donna, Hurley did not have an ownership interest in an account through which the entire proceeds of the conspiracy flowed, although he was deeply involved in the conspiracy as a lieutenant. He played a significant role in facilitating racketeering activities by, on several occasions, controlling the transportation, counting, packaging, and funneling of tainted property. However, Hurley failed to provide any factual basis to support his argument that he did not obtain the tainted funds either directly or indirectly. It is the job of the appellant, not the court, to "ferret out and articulate the record evidence considered material" to a legal theory on appeal. Since Hurley failed to do so, the issue of a more limited forfeiture judgment was deemed waived. *U.S. v. Saccoccia*, 20-1042, 2021 WL 2373865 (1st Cir. June 10, 2021).

Idaho district court denies third party lender's petition as owner of an unsecured interest in property sale proceeds. Semones embezzled and misappropriated funds from his employer, ETA Compute, and directed those fraudulently obtained proceeds to the construction of a house in Ketchum, Idaho. Semones plead guilty to wire fraud and admitted the asset forfeiture allegation in the Indictment. Consistent with the plea agreement, the house was sold and generated sufficient proceeds to pay full restitution. An additionally $191,841.54 in proceeds was retained, which Semones agreed to forfeit. A Trust timely filed a Petition claiming an interest in

the seized funds. The Trust had loaned Semones $1 million to fund construction costs for the house . Sometime after the execution of this loan, the Trust released its senior lien to allow a hard money lender, United Bridge Capital, to loan roughly $2.22 million to Semones to complete the construction. Semones later filed for chapter 11 bankruptcy. The government challenged the Trust's petition, contending that as an unsecured general creditor, it did not have standing to assert a claim against the forfeited funds. The Trust argued that it always had an enforceable contract and its interests were, at least at one time, secured. But the court said that regardless of any prior interest, the underlying legal premise was that any party who did not have a presently secured interest in the forfeited property did not have standing to object to forfeiture. The Trust explained that the more concise way to explain its interest was that of being "unperfected," not necessarily "unsecured," i.e., that when it loaned Semones the $1 million, he gave it a security interest in the form of a deed of trust, which stated that it "shall stand as continuing security until paid for all advances together with interest thereon." It thus argued that all the deed of reconveyance did was unrecord the deed of trust so that United Bridge Capital could come in and loan money on the project, but that it did not somehow make its interest unsecured. Based upon the evidence in the record, it appeared the Trust's deed was in effect and enforceable and that it was also unrecorded. Nevertheless, its interest was inferior to United Bridge Capital's interest and Eta Compute, Inc.'s interest. The Trust also referred to itself as an "unsecured" creditor throughout the bankruptcy case and this case. Ultimately, the Trust was nothing more than an unsatisfied creditor. A person or entity can only access forfeited funds if it can trace a legal right to those funds. Thus, while the Trust had a valid contract against Semones before and after the crime – and Semones owed the Trust money under that contract – the Trust could not recover those funds in this criminal case. The Trust interest was "against" Semones, not the forfeited funds, so the court denied its petition. *United States v. Semones*, 1:20-CR-00043-DCN, 2021 WL 2695357 (D. Idaho June 30, 2021).

Illinois district court dismisses claim to funds based on claimants' lack of standing for failure to file verified claim before filing answer. The government sought forfeiture of funds it seized from Hweih and Rayan Elabad as they alighted from an airplane at Chicago's Midway airport. The brothers filed verified answers to the complaint in which they denied any involvement in the alleged offenses and stated the seized funds were proceeds from the sale of electronics by Rayan's company, We Buy N Sell, Inc., to an overseas client. The government moved to strike the brothers' answers on the ground that neither filed the verified claims that Rule G(5) requires to establish "statutory standing." The brothers sought leave to cure their failure to file timely verified claims by filing such claims now, nearly two years late. A district court may in its discretion extend the time for the filing of a verified claim, e.g., based on whether the government encouraged the delay, the reasons proffered for the delay, whether the claimant had advised the court and the Government of his interest in defendant before the claim deadline, whether the Government would be prejudiced by allowing the late filing, the sufficiency of the answer in meeting the basic requirements of a verified claim, and whether the claimant timely petitioned for an enlargement of time. The brothers' motion for leave addressed only two of these factors: the reason for the delay, and prejudice to the government. The court first said their unadorned statement that their attorney "simply failed to realize that the judicial claims were required" was implausible given evidence that the government explicitly directed the brothers' attorney to Supplemental Rule G as supplying the relevant procedural requirements;

advised the attorney that those requirements included the filing of a "petition or claim" that, among other things, describes the nature and extent of the claimants' interest in the property; and reminded the attorney in subsequent communications about the need to file such a claim. Even if it accepted the brothers' proffered reason for the omission, it did not save them from the consequences of their attorney's neglect, since the failure of the attorney is imputed to the claimant, and direct compliance with the filing requirements is typically required. Nothing in the brothers' submissions suggested that their failure to file timely claims as required by Rule G amounted to the type of "excusable neglect" that might warrant departure from the general rule requiring procedural compliance. Moreover, the verified claims the brothers attached to their response failed to allege clearly the nature and extent of their interest in the seized funds. Thus, the brothers did not establish statutory standing to contest the forfeiture. *U.S. v. Funds in the amount of $130,000 U.S. Currency*, 19 CV 3440, 2021 WL 2433733 (N.D. Ill. June 15, 2021).

Illinois district court denies motion to suppress evidence where officers could articulate several specific indicators of criminal activity that sustained a reasonable suspicion and therefore justified further investigation. In a motion to suppress filed in a civil forfeiture case, Cook argued officers conducted an unreasonable search and seizure by prolonging the stop of his vehicle to conduct a K-9 sniff. The Court disagreed. Although Cook urged the Court to consider the totality of the circumstances, as it must, his motion took a piecemeal approach. Objectively speaking, because one puts their windows down during a traffic stop, in the absence of an odor of marijuana or a masking agent, can the Court rationally infer criminal activity afoot? Likewise, because one resides in northern California and has two empty duffle bags in the back seat, can the Court rationally infer criminal activity afoot? Since the Court must consider the totality of the circumstances, is it likely Cook was returning to the "Emerald Triangle" traveling on Interstate 70, or more likely traveling back to school in Utah?" The court said these facts, taken in isolation, might not be enough to carry the government's burden. But when considered together, they established that the officers had a reasonable suspicion of criminal activity justifying the prolonged traffic stop. The government did not launch this action merely based on the "bare assumption that most people do not have huge sums of money lying about, and if they do, they must be involved in narcotics trafficking or some other sinister activity." Rather, the government noted that Cook's hometown was near California's Emerald Triangle, which apparently has a reputation for marijuana cultivation. The government also said Cook had shaky hands and constricted pupils, and two large duffel bags of the type commonly used to transport drugs because of their odor-masking qualities were found in Cook's car. While Cook asserted the lack of a masking agent, one officer did observe a bottle of Ozium air sanitizer he believed was being used to possibly mask a drug odor. Of course, the fact that Cook was driving with his windows down in 30-degree weather created further suspicion that he might be airing out his car. Cook tried to offer some explanations for these apparent peculiarities; but what mattered at this stage was whether the officers had a reasonable suspicion of criminal activity at the time of the seizure. Cook's explanations were absent then. But more importantly, the reasonable-suspicion standard is low and can turn on information that is less reliable than probable cause. And taken as a whole, the officers could articulate several specific indicators of criminal activity that sustained a reasonable suspicion and therefore justified further investigation. In sum, the court said there was no Fourth Amendment violation. *U.S. v. $128,915.00*, 20-CV-00667-JPG, 2021 WL 2432064 (S.D. Ill. June 15, 2021).

Illinois district court denies motion to quash deposition subpoena and orders third party deponent to serve the government and the court with written responses explaining the basis for each invocation of the Fifth Amendment regarding subpoenaed documents.
Following a search of a vehicle, law enforcement seized $110,000 in U.S. currency. The occupants, Martinez and Abbasi denied knowledge or ownership of the currency. Later, in connection with the administrative forfeiture proceedings arising out of the traffic stop, Martinez asserted ownership of the $110,000. In support of his claim, Martinez submitted a loan agreement between himself and William Madden. After the government filed a civil forfeiture action, Martinez reasserted his claim to the seized currency based on the loan agreement. During his deposition, Martinez testified Madden owned a consulting agency and first met Madden after serving as his Uber driver, and later was hired by Madden to act as his driver on a regular basis. Martinez testified that Madden loaned him the $100,000 so Martinez could use the funds to purchase a home and he drove Madden to the bank to withdraw the $100,000 cash for the loan. Based on this testimony, the government issued a subpoena to Madden to produce six categories of documents to the U.S. Attorney's Office in Chicago (where Madden lived), including Madden's email and phone communications with Martinez and bank and tax records. In response Madden refused to produce documents and filed a motion to quash in the District of Nebraska. The motion was denied for lack of jurisdiction. Madden reached an agreement with the government to produce documents, but failed to meet the deadline and declined to propose a concrete timeline for compliance. The government moved for an order to show cause, and Madden provided written responses and objections to the subpoena. The government issued a second subpoena that narrowed the scope of its document requests in response to Madden's objections, and Madden moved to quash it. Madden argued the subpoena demanded compliance beyond geographic limits. According to Madden, because the subpoena called for a virtual deposition conducted by government attorneys in Nebraska, the deposition was being held in Nebraska, which is more than 100 miles from his home in Chicago, and thus violated Fed.R.Civ.P. 45(c). The court said that in response to COVID-19 litigants increasingly relied on virtual depositions, although they were not yet routine in federal court proceedings. While it is true that virtual testimony may make violations of Rule 45(c) less likely, the court did not think that this caused the rule to lose its meaning. Rule 45(c) does not limit the reach of a subpoena to only those residing within 100 miles of the pending litigation. Instead, Rule 45(c)'s geographic limits were crafted to protect third parties from the undue burden of traveling more than 100 miles to provide testimony or produce documents in a proceeding to which they are not a party. Thus, proceeding virtually with Madden in Chicago and some government attorneys in Nebraska prevented the harm Rule 45(c) was meant to guard against. Given the continued risk and nationwide remote work arrangements, the court separately concluded that for the health and safety of the parties, it would not require government attorneys from Nebraska to travel to Chicago when substantially the same result was available digitally. As for relevance, Rule 45 does not exempt non-parties from the basic obligation of all citizens to provide evidence of which they are capable upon appropriate request. The crux of the case was that the $110,000 was allegedly the proceeds of criminal activity, and Martinez's claim that Madden loaned him money, given their professional relationship. Martinez further testified he did not know the source of the funds he received from Madden. Thus, the government's requests for communications between them and Madden's financial records went to the veracity of this testimony and further explored

topics upon which Martinez could not testify. This information, which was relevant to Martinez's defense. Also, the document requests identified with sufficient particularity the records being sought, including phone bills, statements, call and text logs, emails, contracts or agreements, demand letters and financial data. While potentially voluminous, the request itself was not overbroad or nor was the time frame unreasonable. In addition, although compliance with any subpoena will impose some burden, as it takes time to collect responsive documents, the requests were proportional to the needs of the case. Finally, the government agreed Madden could invoke his Fifth Amendment right, however this assertion is not a reason to quash the subpoena. At the time of his deposition, Madden may invoke the Fifth Amendment in response to questions posed by the government, but that would not obviate his responsibility to sit for a properly subpoenaed deposition. Also, Madden must present for in camera review the documents he intends to withhold in response to the subpoena, with an accompanying explanation of how the act of producing such documents would have an incriminating effect and a testimonial aspect. The court thus ordered that if he wished to invoke the Fifth Amendment regarding document production, he must serve the government and the court with written responses explaining the basis for each invocation. *U.S. v. $110,000 in U.S. Currency*, 21 C 981, 2021 WL 2376019 (N.D. Ill. June 10, 2021).