

Eleventh Circuit holds that Chinese nationals who could not appear for trial without a visa but were represented by counsel were not denied due process. A group of Americans and co-conspirators based in China schemed to obtain EB-1C visas fraudulently for Chinese nationals. The conspirators solicited from an American business tax returns and invoices, and then filed immigration-visa petitions on behalf of a Chinese client, falsely representing in the petition that the client's Chinese employer had entered into a joint venture with the American business. After the government granted the petition, the Chinese national would obtain an EB-1C work visa and immigrate to the United States, but would never actually work for the domestic business or the fictitious joint venture. To make the joint venture appear legitimate, the conspirators instructed each client to deposit about \$300,000 into an American bank account the client owned. The government secured the conviction of the leaders of the criminal scheme, but it did not prosecute any of the Chinese clients. Instead, it brought a civil forfeiture action against the funds in the domestic bank accounts. Fourteen Chinese nationals filed claims for the funds. In August 2019, the attorney for some of the claimants told the district court the State Department had denied four of his clients a visa to attend the forfeiture trial. A week before trial, the four Chinese nationals filed a motion to dismiss the forfeiture claims against their funds as a denial of the Due Process Clause by preventing them from presenting a statutory “innocent-owner” defense. The jury found that the government had satisfied its burden of proof as to all the funds. The jury also found that five claimants – four of whom had testified – had proved that they were innocent owners entitled to the return of their funds, but rejected the innocent-owner defense of the remaining Chinese nationals. Five who lost at trial appealed to vacate the judgment. The appeals court held the Chinese nationals were afforded due process. Each was represented by an attorney, including at trial, who had the opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. The claimants thus received an opportunity to be heard in a meaningful manner, and it was of no moment that they were unable to enter the United States or to attend trial in person. They also failed to establish that any purported violation had a substantial influence on the outcome of the case. *U.S. v. Approximately \$299,873.70 Seized From a Bank of Am. Account*, 15 F.4th 1332 (11th Cir. 2021).

First Circuit affirms finding that Alexander Hamilton letter stolen from Archives around the 1950's was an historic public record and belonged to Commonwealth of Massachusetts, not private owner. Alexander Hamilton was a principal author of the Federalist Papers and our nation's first Secretary of the Treasury. He wrote a letter to the Marquis de Lafayette on July 21, 1780 warning of imminent danger to French troops in Rhode Island. The Letter was seized by the FBI from a fine antiques auctions house in Virginia, and the government filed a forfeiture action. Claims advanced by the Commonwealth of Massachusetts and Aldrich L. Boss for the estate of Stewart R. Crane, and the court awarded the Letter to the Commonwealth. The judgment was affirmed on appeal. The Letter been entered the custody of the Massachusetts Archives as part of its collection in the mid-nineteenth century. In the 1880s, the Archives again identified the Letter in an index and in the 1920s, a photostat of the Letter was made and bound in a separate booklet along with other documents. By the time a compilation of Hamilton's papers was being prepared in the 1950s, the Letter had disappeared and only the photostat could be found in the Archives. The government and the Commonwealth said the Letter was purloined by Harold E. Perry, a kleptomaniacal cataloguer who worked for the Archives from 1938 to 1945 or 1946. The Estate argued the Letter was “permissively alienated from the Archives” by

“negligence” or because the Archives no longer wanted to go through the trouble of maintaining the original document. It eventually came into the possession of Stewart R. Crane, who inherited the Letter from his grandfather, R.E. Crane. In 2018, Crane included the Letter in a consignment to a Virginia auctioneer for sale at auction. The auctioneer discovered the Archives deemed the Letter stolen and notified the FBI, which seized the Letter pursuant to a judicial warrant. The case turned on whether the Letter was an historic public record and who can own such historic public records, questions of Massachusetts law. The court held that there was no reasonable basis to question that the Letter qualified as an historic public record. Moreover, Massachusetts's public records law definitively showed that, as an original paper belonging to the Commonwealth and dated in 1780, the Letter was owned by the Commonwealth. It could not lawfully have been alienated to a third party under any statutory regime that was operative either before or after the Letter left the custody of the Commonwealth. This showing was sufficient to satisfy the government's burden, and because it could not have obtained any lawful interest in the Letter, the Estate lacked any legally cognizable ownership interest that would confer standing upon it to contest forfeiture. The Letter belonged to the Commonwealth and was properly consigned by the district court to its custody. *U.S. v. Ltr. from Alexander Hamilton to Marquis de Lafayette Dated July 21, 1780*, 15 F.4th 515 (1st Cir. 2021).

Kansas district court compels the claimant’s responses to special interrogatories, but denied without prejudice the government’s motion to stay ruling on his motion to suppress.

The Junction City, Kansas Police Department seized \$487,025.00 in U.S. Currency during a traffic investigation of a rented pickup driven by Claimant on I-70 in Geary County, Kansas. After filing a civil forfeiture complaint, the government served special interrogatories on Claimant pursuant to Supplemental Rule (G)(6)(a). Responses and objections were served by Claimant, who responded fully to Interrogatory No. 1 by providing his name and address, but according to Plaintiff, the remaining responses were insufficient. Interrogatory #2 requested the claimant to indicate which type of ownership he was claiming, however he chose no particular interest description and instead repeated the broad language of the statute. In response to Interrogatories #3 through #11, the claimant objected: 1) that the Interrogatories exceeded the scope of Rule G(6) Special Interrogatory authority; and, 2) that the Fourth Amendment protected the personal information sought by the Interrogatories. Claimant then filed a motion to suppress, and the government subsequently filed a motion to compel, contending the interrogatories were served to allow the government to test the claimant's standing, and also a motion to stay the proceedings pending a determination of the claimant's standing. According to Claimant, if the traffic stop and resulting search were later suppressed, it would be improper for the government to rely on the same information that was gleaned through the interrogatories. The government argued that all of its known information came from the stop, so any suppression of the car stop and seizure would be universal, i.e., follow up civil discovery would have been based upon suppressed information and therefore be fruit of the poisonous tree. The Court agreed and granted the motion to compel, since the interrogatories were appropriately tailored to gathering information bearing on Claimant's standing to assert a claim. Claimant also argued there was no legal basis to stay the court's ruling on his motion to suppress. The court acknowledged the government's concerns regarding its ability to address standing without the requisite discovery, however it denied the motion to stay without prejudice. *United States v. \$487,025.00 in U.S. Currency*, 21-1076-JWB-KGG, 2021 WL 5038793 (D. Kan. Oct. 27, 2021).

Louisiana district court denies claimant's motion to stay proceeding because he lacked statutory standing for failure to file an answer. The government filed a civil forfeiture case against real property in Houston, Texas based on alleged drug violations. Claimant Harris had entered into a contract to purchase the property and applied for a loan on behalf of T&H Construction, LLC, which he allegedly owned. The government alleged Harris was believed to be the head of a violent drug trafficking organization that originated in Baton Rouge, Louisiana. Harris moved for a stay of the proceedings, because he believed he was a target of investigation by federal agents. The government argued Harris did not have statutory standing to assert a claim and obtain a stay because he had not yet filed an answer. The court held that since Harris failed to provide any explanation or justification for his failure to file an answer, and thus lacked statutory standing, his motion to stay was denied. *In re 1912 Wheeler St. Houston, Texas 77004*, CV 20-587-JWD-EWD, 2021 WL 4591679 (M.D. La. Oct. 6, 2021).