No. _____

IN THE

Supreme Court of the United States

ALDRICH L. BOSS, as personal representative for the estate of STEWART R. CRANE,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent,

—v.—

COMMONWEALTH OF MASSACHUSETTS,
Acting by and through the Massachusetts Archives,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ERNEST EDWARD BADWAY
Counsel of Record
FOX ROTHSCHILD LLP
101 Park Avenue, 17th Floor
New York, New York 10017
(212) 878-7900
ebadway@foxrothschild.com

Attorney for Petitioner

QUESTIONS PRESENTED

Whether the Fifth Amendment's Takings Clause permits the establishment of a new category of property for forfeiture purposes in the form of a perpetual "public record," thereby, allowing the Government to seize the Letter from Alexander Hamilton to the Marquis De Lafayette Dated July 21, 1780 ("Hamilton Letter"), after said Hamilton Letter was no longer possessed by any governmental entity, without any evidence produced or demonstrating the Hamilton Letter was ever stolen, to avoid standing of the Petitioners.

Whether the innocent owner defense should have applied since Petitioners held the Hamilton Letter through a bona fide purchaser for value.

PARTIES TO THE PROCEEDINGS

Petitioners are Aldrich L. Boss, as Personal Representative for the Estate of Stewart R. Crane, and its Letter from Alexander Hamilton to the Marquis De Lafayette Dated July 21, 1780 (collectively, the "Petitioner"). Respondents are the United States of America ("Government") and the Commonwealth of Massachusetts ("Commonwealth"), acting by and through The Massachusetts Archives ("Archives").

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INTRODUCTION

This case presents a novel question of law with national importance: does the Fifth Amendment's Takings Clause permit the establishment of a new property category, the perpetual "public record," that would divest the Petitioner of standing in a forfeiture action and convert a statutory duty into a property right. The United States Court of Appeals for the First Circuit created a new class of property, exempt from the normal and customary forfeiture statute, to permit the Government to unlawfully acquire property that the Petitioner's family possessed for over 70 years and despite acknowledging the factual dispute between the parties as to its provenance. *See* Appendix ("App.") A. Unless this Court rejects the creation of this new category of property, the Government will be permitted to engage in legalized "stealing" as a result of the First Circuit's decision.

The decision below is not supported by the facts of this case, nor the law. Neither the Government nor the Commonwealth presented any evidence that the Hamilton Letter was stolen. Based upon pure speculation and conjecture, the First Circuit accepted the conclusory allegations of the Government and the Commonwealth that the Hamilton Letter was "stolen," thereby allowing the Government to satisfy a fundamental requirement by mere suspicion and supposition. Going beyond this failure of process, the First Circuit expanded the reach of the forfeiture statute in favor of the Government by declaring a new property category, the perpetual "public record."

In addition to excusing Respondents from any requirement to prove theft, the First Circuit ruled without even providing Petitioner the benefits of discovery, investigation, or trial to demonstrate that

the document was not stolen. Since the First Circuit denied Petitioner basic due process rights, the result below upsets the balanced precedent this Court previously established in civil forfeiture matters. The First Circuit's decision creates a massive loophole benefiting the Government and allowing it to seize any property on the flimsiest of rationales.

The facts clearly established that the Hamilton Letter has been in the possession of Stewart R. Crane's ("Stewart") family for over 70 years. Raymond E. Crane ("R.E."), Stewart's grandfather, purchased the Hamilton Letter from a reputable and well-regarded antiquities dealer in Syracuse, New York, along with numerous other historical documents and artifacts in about 1945. Neither the Government, nor the Commonwealth, introduced any evidence to dispute this purchase and retention. Stewart's family has enjoyed quiet possession of the letter for over 70 years *without any interference* from Respondents.

The First Circuit's decision presents a striking contrast: disregarding uncontroverted evidence of the purchase and possession by Stewart's family while given undeserved credence to the tale told by the Government and Commonwealth regarding an alleged theft. Perhaps it is the paucity of fact in the story being spun by the Government and the Commonwealth, that drives the First Circuit to provide cover for the unlawful taking perpetrated by the Government and Commonwealth. The First Circuit accepts Respondents' conjuring that the Hamilton Letter could never be divested from the Commonwealth because Massachusetts statutory law, purportedly, broadly defines "public records" and requires that parties in possession of such public records must return them to the Commonwealth upon request.

This myth, embraced by the First Circuit, concludes, without evidence, that any property residing in the possession of the Commonwealth, or any governmental body, is forever, without question or allowable objection, a "public record." Thus, it is "owned" in perpetuity by the Commonwealth. Moreover, even assuming arguendo that the Hamilton Letter was, previously, a "public record," the First Circuit erred by not permitting any hearing to dispute such status.

Additionally, Petitioner was also denied the innocent owner status under the civil forfeiture statute, despite proving possession of the Hamilton Letter as a good faith purchaser for value. Although there is no evidence the Hamilton Letter was stolen and, as such, the possession was not illegal, pursuant to 18 U.S.C. § 983(d)(4), by creating a new category of property, refused to consider Petitioner's innocent owner status. The First Circuit ignored the innocent owner defense, artfully created by the legislature, as an exemption from the civil forfeiture regime and the evidence that R.E. was the quintessential bona fide purchaser for value. The First Circuit should have found that, at the very least, Petitioner was an innocent owner entitled to cash compensation even if it truly believed that the Commonwealth was entitled to recovery of the Hamilton Letter.

In sum, the questions presented here are especially pressing today. Given the Government's "widespread and highly profitable" use of civil forfeiture, these lower court rulings expand the Government's ability to seize property without any compensation. *Leonard v. Texas*, 137 S. Ct. 847, 848 (2017). This case also presents a classic example of the strategic procedural advantages in civil-forfeiture cases that the Government enjoys where discovery and

trial may be avoided. The impulse to use economic sanctions "for raising revenue in unfair ways" could hardly be stronger, especially with an impossible standard to overcome. *See Browning-Ferris Indus. of Vt. v. Kelco Disposal, Inc.*, 492 U.S. 257, 272 (1989).

This Court offers the only protection to rights embodied in the Takings Clause, to avoid government overreach exemplified by the novel approach authored by the First Circuit. Since this case is an ideal vehicle for doing so, the Court should grant certiorari.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit is reported at 15 F.4th 515 (1st Cir. 2021). *See* App. A. The opinion of the United States District Court for the District of Massachusetts is reported at 498 F.Supp.3d 158 (D.Mass. 2020). *See* App. D.

JURISDICTION

The United States Court of Appeals for the First Circuit entered judgment on October 6, 2021. *See* App. B. Petitioners request a writ of certiorari pursuant to 28 U.S. Code § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The General Rule for Civil Forfeiture Proceedings, 18 U.S.C. § 983(a)(2)(A), provides that: "[a]ny person claiming property seized in a nonjudicial civil forfeiture proceeding under a civil forfeiture statute may file a claim with the appropriate official after the seizure." Further, 18 U.S.C. § 983(a)(4)(A) provides that: "[i]n any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims … ."

Additionally, 18 U.S.C. § 983(d)(1-4), the Innocent Owner Defense, provides that: "[a]n innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence. … With respect to a property interest in existence at the time

the illegal conduct giving rise to forfeiture took place, the term "innocent owner" means an owner who— (i) did not know of the conduct giving rise to forfeiture; or (ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property. … With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property—(i) was a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture. … Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess."

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STATEMENT OF FACTS

1. Petitioner owns the Hamilton Letter as a result of Stewart R. Crane's ("Stewart") death, who had obtained it from his father, Robert F. Crane, Sr. ("Robert, Sr."), who, in turn, had received it from his father, R.E. Boss is a Personal Representative for the Estate, as set forth in the Last Will and Testament of Stewart R. Crane, dated March 16, 2004, as amended by that certain First Codicil to the Last Will. (App. I at 81a-82a).

The Hamilton Letter is a rare document, since very few items from Alexander Hamilton's military service still exist today. (App. F at 62a-63a). The

Archives claims to have once possessed the Hamilton Letter, but produces absolutely no evidence demonstrating the reasons or circumstances for the Hamilton Letter leaving its possession. (App. H at 72a-73a). However, it is beyond dispute that R.E. had purchased the Hamilton Letter for value in or about 1945 from a reputable antiquities dealer in Syracuse, New York, and it had remained in Stewart's family until it was seized by the Government. (App. I at 83a–84a). In sum, the evidence adduced below establishes Petitioner's long-standing ownership of the Hamilton Letter, derived from R.E.'s status as a bona-fide purchaser for value with the Estate being the current owner/successor to R.E.'s ownership interest. (App. I at 83a).

The Commonwealth and Archives filed the Commonwealth's Claim seeking the Hamilton Letter under the guise that the Archives previously possessed the Hamilton Letter. The Government has brought the Verified Complaint for the purported return of the Hamilton Letter, alleging that it belongs to the Archives, and was stolen as a part of some theft that was not purportedly discovered until the 1950s, despite no evidence to support such a claim. That is, the Hamilton Letter was never referenced in police and news reports concerning the 1950s Archives' report of the employee's misappropriation, and the Archives never reported the Hamilton Letter stolen. (App. H at 73a).

In November 2018, Stewart contracted for the sale of the Hamilton Letter along with other historical documents in his inherited collection. (App. I at 83a). Notably, no other item sold was reported to the Estate as stolen. (App. F at 61a). Nonetheless, on December 19, 2018, the United States District Court for the Eastern District of Virginia issued a Warrant of

Seizure, and the Hamilton Letter was seized that same day. The Government first sought the seizure of the Hamilton Letter through the Warrant and Monition [sic], filed May 15, 2019 ("Warrant"), alleging that it had been "stolen." (App. F at 61a). In the Verified Complaint, the Government alleged that the Commonwealth owns the Hamilton Letter because it is a "public record," and was discovered "stolen" in the 1950s, despite the fact the there is no document or other reference to the Hamilton Letter being stolen at that or any other time. (App. F at 61a).

As indicated above, the Hamilton Letter was purchased by the Crane family in or about 1945, and has been in their possession ever since. (App. G at 58). Until the institution of this matter, at no time was a claim ever made that the Hamilton Letter had been stolen. (App. F at 61a). As such, Petitioner has the right to possess the Hamilton Letter, and it should be returned to it. (App. G at 70a and App. H at 72a).

2. The District Court held argument on the parties' competing motions on February 26, 2020. (App. J at 92a). No testimony was taken, nor exhibits entered into evidence. (App. J at 92a). On December 2, 2020, the Judgment was entered by the District Court, granting forfeiture to the Archives, and the Notice of Appeal followed. (App. C at 24a).

3. The United States Court of Appeals for the First Circuit unanimously affirmed. (App. A at 1a and App. B at 22a).

REASONS FOR GRANTING THE PETITION

This Court has remarked—correctly—on numerous occasions that great care should be taken before the imposition of forfeiture. *See e.g. Timbs v. Indiana*, 586 U.S. __, 139 S.Ct. 682, 203 L. Ed. 2d 11 (2019); *Leonard v. Texas*, 580 U. S. ____ , 137 S.Ct. 847 (2017); *Austin v. United States*, 509 U. S. 602, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993); and *United States v. James Daniel Good Real Property,* 510 U.S. 43, 114 S.Ct. 492, 126 L.Ed.2d 490 (1993).

Simply stated, Petitioner's rights to the Hamilton Letter were extinguished because the First Circuit created a new, broad form of property, implying a theft where none was established, thus, allowing for its "return" to the "public." Such a decision contradicts this Court's strong and unequivocal precedent advising against overbroad civil forfeiture actions. In fact, this Court's decision in *Timbs* instructed against civil forfeiture actions used to obtain excessive fines as found in this matter. *See Timbs*, 586 U.S. ___, 139 S. Ct. 682, 203 L. Ed. 2d 11.

Nonetheless, the First Circuit has now provided the Respondents with a "license to steal." Stephan B. Herpel, "Toward a Constitutional Kleptocracy: Civil Forfeiture in America," 96 Mich. L. Rev. 1910 (1988), https://repository.law.umich.edu/mlr/Vol96/issb/24. There is no evidence to establish that the Hamilton Letter was stolen; the First Circuit merely "implies" it was. Instead, regardless of the actual evidence, the First Circuit broadly interprets the statutory definition of a "public record" in a novel manner to include the Hamilton Letter. This reinterpretation provided a non-evidentiary basis for overlooking the only evidence in the case showing the contrary, that

the Hamilton Letter did not belong to the Commonwealth.

The circuitous reasoning employed by the First Circuit is not a basis for forfeiting the Hamilton Letter to the Archives. The First Circuit adopted a fiction: the Hamilton Letter could never have left the Commonwealth's possession. Notably, the plain language of Massachusetts public record laws contradicts this notion—providing that parties in possession of public records must return them to the Commonwealth upon demand. Mass. Gen. L. c 66 § 13. This is hardly a declaration that public records cannot be sold to an unknowing, good faith purchaser for value. To the contrary, the public records laws of Massachusetts seem to contemplate that records may find their way into the hands of an innocent owner. Moreover, the Massachusetts statute consistently cited by Respondents as the basis for exclusive ownership (that is, Mass. Gen. L. c 66 § 8) does not contain any prohibition on third party purchase or possession. Mass. Gen. L. c 66 § 8 merely provides a safe-keeping directive aimed at the Commonwealth itself, and, ironically, includes significant language on the topic of destruction and disposal. The First Circuit conclusions contradict even the laws that they claim are the basis for their erroneous decision.

Given the surge in punitive fines and forfeitures, the issue of creating a new avenue for the Government to abuse civil forfeiture must be addressed now more than ever. Only this Court can address the important national need for reasonable construction of civil forfeiture laws, and this case presents the ideal vehicle for resolving that question.

I. Petitioner Had Standing to Pursue the Hamilton Letter.

Despite the First Circuit's comments, Petitioner has standing to assert its claim to the Hamilton Letter because it owned the instrument and its injury will be rectified if it prevails in this action. There was no evidence for the First Circuit to find that: (1) the Hamilton Letter is a "public record;" (2) the Hamilton Letter was stolen; and (3) Petitioner cannot own a "stolen public record," thus, the Hamilton Letter is "illegal to possess." (App. A). For the reasons stated below, Petitioner has standing, pursuant to Supplemental Rule G and 18 U.S.C. § 983.

The First Circuit erred by not finding that Petitioner had met its standing burden. *See Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (standing is a threshold question for every federal case); and *United States v. One–Sixth Share of James J. Bulger in All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233*, 326 F.3d 36, 40 (1st Cir. 2003). In the *One–Sixth Share of James J. Bulger in All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233* case, standing has both statutory and constitutional components. *See* 326 F.3d at 40-41. A party must first demonstrate its ownership or possessory interest in the seized property to pass the first test of standing. *Id*. at 41.

Additionally, a party must also pass constitutional muster by showing "a concrete and particularized injury, a causal connection between that injury and the wrongdoer's conduct, and the likelihood that prevailing in the action will rectify the injury in some way." *United States v. $8,440,190.00 in U.S. Currency*, 719 F.3d 49, 57 (1st Cir. 2013) (citing *Antilles Cement*

Corp. v. Fortuño, 670 F.3d 310, 317 (1st Cir. 2012)). As the court in *$8,440,190.00 in U.S. Currency* recognized, the standing requirement is "not arduous," and "any colorable claim on the defendant property suffices." *Id.*; *United States v. $133,420.00 in U.S. Currency,* 672 F.3d 629, 638 (9th Cir. 2012) (at pleading stage, standing is not difficult to establish); *United States v. U.S. Currency, $81,000*, 189 F.3d 28, 35 (1st Cir. 1999) (considering standing at the motion to dismiss stage); and *United States v. One Parcel of Real Prop. with Bldgs., Appurtenances & Improvements Known as 116 Emerson St.*, 942 F.2d 74, 78–79 (1st Cir. 1991). A mere ownership allegation along with evidence of ownership is "sufficient to establish constitutional standing to contest a forfeiture." *United States v. $8,440,190.00 in U.S. Currency*, 719 F.3d at 57; and *U.S. Currency, $81,000*, 189 F.3d at 35.

Petitioner clearly documented its claim of ownership, providing a detailed chronology of the Hamilton Letter's purchase and retention by the Crane family up to and including the Estate. (App. I at 82a). Petitioner also provided an envelope showing the source of the Hamilton Letter, as well as an affidavit verifying the Crane family ownership of the Hamilton Letter. (App. I at 83a). The Respondents submitted no evidence disputing these facts.

The First Circuit, instead, ignored the evidence on actual ownership, claiming the Archives owned the Hamilton Letter since it is a "public record," essentially, creating a new category of property incapable of transfer and immune to contracts of sale. Therefore, the First Circuit concluded Petitioner could not own "stolen property." As stated below, the First Circuit grossly expanded the Government's ability to divest a demonstrated property ownership or

possessory interest in the Hamilton Letter. Undeniably, in this day of tokens and technology-driven intangibles, what other property might the Government take from persons on the basis of a state's declaration of exclusivity. This Court must reverse the First Circuit's judgment to deter judicial overreach.

This contortionist approach to the status and ownership of the Hamilton Letter began with the First Circuit ignoring evidence when it first reviewed the Massachusetts law relating to public records. The Massachusetts statute suggests that a "public record" may be, among other things, "books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics… ." Mass. Gen. L., c. 4, § 7, cl. 26. Simply stated, this statute does not support the First Circuit's broad interpretation that the Hamilton Letter—correspondence discussing a Revolutionary War campaign in Rhode Island—was or is a public record of the Commonwealth.

If this Court accepted the First Circuit's rationale, it would mean nearly everything in the hands of the Government, or a subsidiary agency, at any time, would have to forever be construed as a public record. This Court has cautioned against an expansive reading of a document called a "public record." *See e.g. Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009) (acknowledging Federal Rules of Evidence defines public records, thereby, excluding certain categories of documents). In fact, the First Circuit even ignored its own precedent where it said an expansive interpretation of a "public record" has "limits to that license." *See Freeman v. Town of Hudson*, 714 F.3d 29, 36 (1st Cir. 2013)

Nonetheless, the First Circuit determined that the Hamilton Letter was a "public record" solely because it found that it was an "original historical document," requiring it to be considered a "public record." (App. A). The First Circuit embraced this legal fiction to overcome the complete lack of evidence the Government and the Commonwealth failed to introduce in support of their Archives' theft story. Further, the First Circuit refused to accept any other possible rationale for it not being possessed by the Archives at the time of its seizure.

Similarly, the First Circuit also misapplied Mass. Gen. L., c. 66, § 8, re-writing the statutory language, to create a shield for the Respondents where none exists, effectively ignoring the evidence presented below. Mass. Gen. L., c. 66, § 8 provides for the preservation and destruction of various public records, not ownership:

> Every original paper ***belonging to the files of the commonwealth*** or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy, every book of registry or record, except books which the supervisor of public records determines may be destroyed, every town warrant, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other state, county or municipal interests not required to be recorded in a book and not so recorded, shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law or unless such records are included in disposal schedules

> approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records . . .

[Emphasis added].

The statutory language does not convert all documents that bear a date earlier than 1870 into public records, as the First Circuit claimed. (App. A). On the one hand, there must be some meaning given to "belonging to the files of the Commonwealth." On the other hand, the more logical meaning is derived from subsequent references to deeds and officer reports on public infrastructure. "Public records" portend the functioning of municipalities, not all documents that the government may come to possess. Further, even if it were so, the preservation and keeping language of this legislation would still not be a basis for holding that the Commonwealth continued to own the Hamilton Letter after so many decades. The evidence below actually indicates that the Hamilton Letter was permissively alienated from the Archives, and purchased from a reputable antiquities dealer.

Additionally, as to the safe-keeping mandate, this Court has even stated that the word "shall" has different connotations in statutory construction. *See Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 433, 115 S.Ct. 2227, 132 L.Ed.2d 375 (1995) (statute using the word "shall" open to plausible interpretation of "may").[1] Clearly, the First Circuit misread the "shall"

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[1] Congress and the federal government also recognize that "shall" does not mean "must." For example, the Federal Register Document Drafting Handbook states "[u]se 'must' instead of 'shall' to impose a legal obligation on your reader." See https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html. Further, the Federal Plain Language Guidelines,

to mean "must." Consequently, there was no prohibition against the Commonwealth abandoning, destroying, and/or otherwise alienating the Hamilton Letter over 90 years ago, and Respondents present no evidence indicating otherwise.

Although not specifically relating to an "original historical document" as inaccurately described by the First Circuit, Mass. Gen. L., c. 66, § 9, supports the plain construction of the statute and language now advanced before this Court. Mass. Gen. L., c. 66, § 9: states that:

> Every person having custody of any public record books of the commonwealth, or of a county, city or town shall, at its expense, cause them to be properly and substantially bound. He shall have any such books, which may have been left incomplete, made up and completed from the files and usual memoranda, ***so far as practicable***. He shall cause fair and legible copies to be seasonably made of any books which are worn, mutilated or are becoming illegible, and ***cause them to be repaired, rebound or renovated***. He may cause any such books to be placed in the custody of the supervisor of records, who may have them repaired, renovated or rebound at the expense of the commonwealth, county, city or town to which they belong. Whoever causes such books to be so completed or copied shall attest them, and shall certify, on oath, that they have been made from such files and memoranda or are

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required by the Federal Plain Writing Act of 2010, Public Law 111-274, compels all federal departments to "use 'must,' not 'shall'" to indicate requirements. *See* https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf.

> copies of the original books. Such books shall then have the force of the original records.

[Emphasis added].

Initially, the statute applies to "public record books," not documents. The statute also clearly implies that certain items may not be recoverable when it uses the language "so far as practicable" and that the duplicates will "have the force of the original records." *Id.* If the legislature had believed "all historical documents" could never be destroyed, alienated, or abandoned, it would have said so, but there is no evidence to suggest it ever did.

Despite its cavalier and derisive approach, the First Circuit acknowledged a "set of facts" from the evidence entitling the Petitioner to relief in this matter. *See Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). That is, in the 1920s, a photostat of the Hamilton Letter was made, and the original Hamilton Letter would not, thereafter, be subject to any permanent possessory or safe-keeping obligation. Mass. Gen. L., c. 66, § 9 indicates that public records may be replaced with copies, and various states destroy or even sell their public records. *See*, *e.g.,* John Hageman, "History on sale: North Dakota State Archives offering books, newspapers and records," *The Jamestown Sun* (June 26, 2019) ("The State archives will hold a sale Thursday and Friday at the Heritage Center in Bismarck to rid itself of duplicate items and things that aren't relevant to the state or region but have found its way into its collection … Among the treasures are more than 4,000 audio records known as 78s, books, atlases, posters and sheet music. Some items date back to the 1800s."). Accordingly, it is entirely plausible that, after copying the Hamilton Letter, the Archives disposed of it. Even

the District Court surmised that the Archives could have "negligen[tly]" disposed of the Hamilton Letter. (App. D at 58a).

Thus, the evidence established a set of facts in which the Commonwealth did not own the Hamilton Letter after the 1920s, and the letter could have been discarded by the Commonwealth, allowing for its subsequent purchase by R.E. This Court's precedent provides for consideration of alternative theories, and, as such, this case should not have been summarily dismissed. *See Conley*, 355 U.S. at 45-46.

Accordingly, this Court must reverse the First Circuit's Judgment.

II. Petitioner Was an Innocent Owner.

The evidence below also supports a finding that Petitioner was an innocent owner, pursuant to the federal civil forfeiture statute.

Pursuant to 18 U.S.C. §983(a)(4)(A), after the government institutes a civil forfeiture action, a person may file a claim regarding an interest in seized property, and, pursuant to 18 U.S.C. § 983(a)(4)(B), a person may file an answer to the government's complaint, and name various affirmative and separate defenses, including, but not limited to, the "innocent owner defense." *See* 18 U.S.C. § 983(d). The innocent owner defense provides that: "[a]n innocent owner's interest in property shall not be forfeited under any civil statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence." *Id*. The statute defines innocent owner as: "[w]ith respect to a property interest acquired after the conduct giving rise to forfeiture took place, the term 'innocent owner' means

a person who at the time that person acquired the interest in the property – (i) was a bona fide purchaser or seller for value . . . , and (ii) did not know and was reasonably without cause to believe that the property was subject to forfeiture." *Id*. at 18 U.S.C § 983(d)(3).

Initially, no evidence exists as to the "conduct" giving rise to this civil forfeiture action – that is, there is no criminal or illegal activity. Further, Petitioner is a bona fide purchaser and had no knowledge that there were any title issues regarding the Hamilton Letter. *See U.S. v. 198 Training Field Road*, 2004 WL 1305875, *2 (D. Mass. June 14, 2004).

R.E. met all the elements of a bona fide purchaser. He purchased the Hamilton Letter in good faith, unaware of the conduct that gave rise to the forfeiture action. Further, as detailed above, no one ever suggested that the Hamilton Letter was owned by the Commonwealth, was stolen, or was illegal to possess in any manner until this litigation. As such, R.E.'s status as an "innocent owner" is beyond question, and Petitioner succeeds to this status pursuant to 18 U.S.C. §983(d)(3), and the shelter provisions for holders in due course pursuant to Mass. G. L. c 106, Section 3-203(b). *See* The House Report 106-192 on Civil Asset Forfeiture Reform (983(d)(3)(B) intended for parties who gave no value but received assets by gift from a party who was an innocent owner). Accordingly, Petitioner has a lawful right to the Hamilton Letter, and this Court should reverse the Judgment finding otherwise.[2]

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[2] Cash compensation could have been awarded, pursuant to 18 U.S.C. §983, if court below had determined the Hamilton Letter should not be returned to the Estate.

Clearly, the Hamilton Letter was in the public realm and sold to R.E., a bona fide purchaser. Without actual evidence, the First Circuit overrode this unassailable legal conclusion, holding that Petitioner was not entitled to rely upon the bona fide purchaser doctrine because a bona fide purchaser may never retain title to an alleged stolen item (and that it is also illegal to possess pursuant to 18 U.S.C. § 983). However, the Government presented no evidence that the Hamilton Letter was stolen.

In the instant case, R.E. met all the elements of a bona fide purchaser under Massachusetts law. *See Richardson v. Lee Realty Corp.*, 307 N.E.2d 570, 573 (Mass. 1974). He did not know of any concerns regarding title to the Hamilton Letter and made his purchase in good faith. *See 198 Training Field Road*, 2004 WL 1305875, *2 (*quoting United States v. Reckmeyer*, 836 F.2d 200, 208 (4th Cir. 1987). Respondents acknowledge that there is no evidence that the Hamilton Letter was ever stolen, since the Archives never reported nor claimed the Hamilton Letter was stolen until the instant case, seven decades after R.E. purchased the Hamilton Letter from Mr. Heise. As a result, Petitioner has met its burden that it is a bona fide purchaser, having no knowledge of any illegitimacy relating to the Hamilton Letter. Thus, the First Circuit erred in holding it was illegal for Petitioner to possess the Hamilton Letter.

In sum, given there is no evidence that the Hamilton Letter was stolen,[3] the First Circuit relies

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[3] The Supreme Court of the State of New Jersey's decision in *O'Keeffe v. Snyder*, 83 N.J. 478, 499 (N.J. 1980), is instructive in this area because it highlights the lack of evidence found in the case now before this Court. In *O'Keeffe*, the New Jersey Supreme Court indicated that, where a bona fide purchaser bought artwork

solely on an interpretation not grounded in the evidence of this case, nor the law, that the Hamilton Letter could not be possessed by the Petitioner, since it was "owned" by the Commonwealth.

Accordingly, this Court must reverse the First Circuit's Judgment because Petitioner has proved its innocent owner defense.

III. The Questions Presented Raise Issues of National Importance That Warrant This Court's Review.

The First Circuit's avoidance of forfeiture protections on the basis of a "public records" classification exponentially expands the Government's reach in civil forfeiture. The acceptance of a state's declaration of exclusive ownership rights would be a license to steal. It would enable the Government to avoid clear legislative and constitutional protections and freedoms of contract. Such a turn of events would be important to the many Americans who, every year, are targeted for punitive economic sanctions by state and local authorities. This case is the perfect vehicle

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from an art dealer in the ordinary course of business, it should be able to acquire good title against the true owner. *Id.* In an action for replevin, the original artist sought to obtain the return of certain alleged stolen paintings, but there was no dispute that the artist never reported the paintings missing or instituted an action until 30 years after the paintings were allegedly stolen. *Id.* at 484. In the meantime, the paintings had been consigned to an art dealer, who, in turn, sold them to another art dealer. *Id.* at 486. The artist then sued the ultimate buyer, but the court opined that "entrusting possession of goods to a merchant who deals in that kind of goods gives the merchant the power to transfer all the rights of the entruster to a buyer in the ordinary course of business." *Id.* at 499.

to inhibit unreasonable takings, and there is no reason to delay.

This Court should grant review, hold that the Takings Clause should not be expanded to include a new category of property, exempt from forfeiture protections, and reaffirm that the federal courts bear "the duty to safeguard and enforce the right of every citizen." *Howlett v. Rose*, 496 U.S. 356, 368, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) (quoting *Minneapolis & St. L.R. Co. v. Bombolis*, 241 U.S. 211, 222 (1916)).

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CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: January 3, 2022

Respectfully submitted,

/s/ Ernest Edward Badway
Ernest Edward Badway
Counsel of Record
Fox Rothschild LLP
101 Park Avenue, 17th Floor
New York, New York 10178
(212) 878-7900
ebadway@foxrothschild.com

Attorney for Petitioner

APPENDIX

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 20-2061

UNITED STATES OF AMERICA,

Plaintiff, Appellee,

v.

LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780,

Defendant in Rem,

ALDRICH L. BOSS, as personal representative for the estate of STEWART R. CRANE,

Claimant, Appellant,

COMMONWEALTH OF MASSACHUSETTS, Acting by and through The Massachusetts Archives,

Claimant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Judith G. Dein, U.S. Magistrate Judge]

Before

Howard, Chief Judge,
Selya and Lynch, Circuit Judges.

Ernest Edward Badway, with whom Fox Rothschild LLP was on brief, for appellant.

Carol E. Head, Assistant United States Attorney, with whom Nathaniel R. Mendell, Acting United States Attorney, was on brief, for appellee United States.

Adam J. Hornstine, Assistant Attorney General, with whom Maura Healey, Attorney General of Massachusetts, was on brief, for appellee Commonwealth of Massachusetts.

October 6, 2021

SELYA, **Circuit Judge**. Alexander Hamilton was a principal author of the Federalist Papers and our nation's first Secretary of the Treasury. Few people played more significant roles in the founding of the republic. When he wrote a letter to the Marquis de Lafayette on July 21, 1780 (the Letter), warning of imminent danger to French troops in Rhode Island, Hamilton scarcely could have imagined that it would some day become the focal point of a civil forfeiture action. But truth often outpaces imaginings, and — after the Letter was seized by the Federal Bureau of Investigations (FBI) from a fine antiques auctions house in Virginia — the United States (the government) filed just such a forfeiture action the United States District Court for the District of Massachusetts. The district court, tasked with resolving competing claims advanced by the Commonwealth of Massachusetts (the Commonwealth) and Aldrich L. Boss in his capacity as personal representative for the estate of Stewart R. Crane (the Estate), awarded the Letter to the Commonwealth. The Estate appeals. Concluding, as we do, that the Estate's reach exceeds its grasp, we affirm.

I. BACKGROUND

This civil forfeiture action begins — and ends — with the provenance of the property that lies at its center. That provenance is (unless otherwise indicated) uncontroverted.

Upon learning that British troops stationed in New York were "making an embarkation with which they menace the French fleet and army" stationed in Rhode Island, Hamilton wrote the Letter to relay that information to Lafayette. When Lafayette received

the Letter, he met with Massachusetts General William Heath, who forwarded the Letter, accompanied by a letter of his own summarizing Lafayette's intelligence, to the President of the Massachusetts Council (the Commonwealth's executive body during the Revolutionary War period). The Council received these missives on July 26, 1780, and, as a result, authorized sending Massachusetts troops to Rhode Island to bolster the embattled French forces.

The Letter, along with the Council's other records of the period, were transferred in due course to the Commonwealth and eventually entered the custody of the Massachusetts Archives (the Archives). An internal table of contents and name index for Volume 202 of the Archives collection identified the Letter and General Heath's cover letter as part of the collection when the index was compiled in the mid-nineteenth century. Some thirty years later (in the 1880s), the Archives again identified the Letter in an index of Volume 202. And in the 1920s, the Archives selected Volume 202 for reproduction using the then-novel technology known as photostatic copying. A photostat of the Letter was made and bound in a separate booklet along with other documents from Volume 202.

At some point thereafter, the Letter left the Archives. The date of the Letter's departure is shrouded in mystery. It is evident, however, that by the time a compilation of Hamilton's papers was being prepared in the 1950s, the Letter had disappeared. Only the photostat could be found in the Archives. See The Papers of Alexander Hamilton, Volume II: 1779-1781 362-63 (Harold C. Syrett ed., 1961).

How the Letter vanished from the Archives collection is hotly disputed. Although we do not resolve that contretemps, we recount the parties' conflicting positions.

The government and the Commonwealth assert that the Letter was purloined by Harold E. Perry, a kleptomaniacal cataloguer who worked for the Archives from 1938 to 1945 or 1946. Perry had extensive access to original papers and, during his tenure, absconded with numerous historical documents. He sold some to disreputable dealers and hoarded others in his Cambridge residence. By the time the compilation of Hamilton's papers was published in 1961, the Archives had declared that the Letter was "missing." See id. The Estate conjures up an alternate reality. It suggests that 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.

Whatever its itinerary, the Letter eventually came into the possession of Stewart R. Crane.[1] Stewart Crane inherited the letter from his grandfather, R.E. Crane. In November of 2018, Stewart Crane included the letter in a consignment to the Potomack Company (Potomack), a Virginia auctioneer, for sale at auction. Potomack discovered that the letter was listed as

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[1] According to the Estate's reconstruction of events — a reconstruction not burdened with many hard facts — the Letter waspurchased in good faith and for value in 1945 by R.E. Crane from John Heise Autographs, a reputable rare documents dealer in Syracuse, New York. In support, the Estate proffered only an affidavit recounting this family history and an empty envelope, postmarked in 1945, addressed to R.E. Crane and bearing the returnaddress of the dealer.

"missing" from the Archives, contacted the Archives, and learned that the Archives deemed the Letter stolen. Potomack notified the FBI, which seized the letter pursuant to a judicial warrant on December 19, 2018.

Roughly five months later, the government filed a verified complaint for forfeiture in rem against the Letter, alleging that the Letter was subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) as property traceable to a violation of 18 U.S.C. § 2314 and/or 18 U.S.C. § 2315 (statutes that criminalize, respectively, interstate transport of and trade in stolen goods valued over $5,000). See 18 U.S.C. §§ 1956(c)(7)(A), 1961(1). The complaint also alleged that "only the Commonwealth can lawfully own original documents from its collection dated before 1870, including . . . the [Letter]" because Massachusetts law "prohibits the lawful removal or alienation of such documents from the Commonwealth's custody." As required by Rule G(4)(a) and (b) of the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Actions, notice was given to all known potential claimants and posted on a government website.

The government gave due notice of the institution of the forfeiture proceedings. Only the Commonwealth and the Estate filed claims to the Letter.[2] The government moved to strike the Estate's claim under Supplemental Rule G(8)(c)(i)(B), asserting that the Estate lacked standing to intervene as a claimant because the Letter is "a Massachusetts public record that only the Commonwealth can own" and because "one cannot

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[2] Stewart Crane died on December 21, 2018 (two days after the Letter was seized by the FBI). His Estate stepped into his shoesand filed the claim sub judice.

maintain good title to stolen property against its true owner." The Estate counter-attacked, moving to dismiss the government's complaint for failure to state a claim upon which relief could be granted. See Fed. R. Civ. P. 12(b)(6).

All parties consented to proceed before a magistrate judge, see 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(a), who consolidated the pending motions for hearing. After receiving the parties' briefs and hearing arguments, the district court, in a thoughtful rescript, granted the government's motion to strike the Estate's claim. See United States v. Letter from Alexander Hamilton to the Marquis de Lafayette Dated July 21, 1780, 498 F. Supp. 3d 158, 175 (D. Mass. 2020). The court concluded (as relevant here) that the Letter was a public record, which could be owned only by the Commonwealth, thus precluding any ownership interest by the Estate. See id. at 165-71. The court then denied as moot the Estate's motion to dismiss. See id. at 175. And having concluded that the Commonwealth is the only entity that can own the Letter, the court awarded it to the Commonwealth. This timely appeal followed.

II. ANALYSIS

With eyes on the prize, the Estate assails the judgment below on multiple fronts. First, the Estate argues that the Letter is not a public record that only the Commonwealth may own. Second, the Estate argues that even if the Letter is a public record, the Letter could have been — and was — lawfully alienated by the Commonwealth. Third, the Estate argues that because its predecessor in interest purchased the Letter for value and without knowledge of its possible theft, it is an "innocent

owner" within the purview of 18 U.S.C. § 983(d) and is thus entitled, at a minimum, to cash compensation. Finally, the Estate argues that the Commonwealth's competing claim (and, by implication, the forfeiture complaint itself) is barred by the doctrine of laches. It is against the backdrop of this asseverational array that we turn to the task at hand

In a civil forfeiture proceeding, we review a district court's legal conclusions (including legal conclusions on questions of standing) de novo and factual findings for clear error. See United States v. Carpenter, 941 F.3d 1, 6 (1st Cir. 2019); United States v. U.S. Currency, $81,000.00, 189 F.3d 28, 33 (1st Cir. 1999). Where, as here, an interpretation of state law forms part of the district court's reasoning, we review that interpretation de novo. See Gargano v. Liberty Int'l Underwriters, Inc., 572 F.3d 45, 49 (1st Cir. 2009). We are not wed to the district court's reasoning but, rather, may affirm its final judgment on any rationale made manifest by the record. See Román-Cancel v. United States, 613 F.3d 37, 41 (1st Cir. 2010).

A. Standing.

Standing is a threshold question in civil forfeiture cases. See United States v. One-Sixth Share of James J. Bulger in All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233, 326 F.3d 36, 40 (1st Cir. 2003). Parties seeking to press claims of entitlement in such proceedings must demonstrate independent standing. See id. First, such parties must satisfy statutory standing through compliance with the procedures and deadlines for filing a claim set out in Supplemental Rule G. See id. Second, they must demonstrate constitutional standing through a

legal ownership or possessory interest that would support an injury in fact.[3] See id. at 40-41; see also United States v. Cambio Exacto, S.A., 166 F.3d 522, 527-29 (2d Cir. 1999). At the initial intervention stage, "any colorable claim on the defendant property suffices." See One-Sixth Share, 326 F.3d at 41. As a result, "[c]ourts do not generally deny standing to a claimant who is either the colorable owner of the res or who has any colorable possessory interest in it." $81,000.00, 189 F.3d at 35.

In civil forfeiture proceedings, those ownership or possessory interests are defined by state law but their effect is determined by federal law. See id. at 33. A claimant need not conclusively prove facts supporting his entitlement to the res; "an allegation of ownership and some evidence of ownership are together sufficient." Id. at 35. But the interest claimed must be legally possible under state law — supportable by some set of facts — and that is the crux of the present matter.

As a general rule, courts should be chary about conflating the threshold standing inquiry with the subsequent merits inquiry. See One-Sixth Share, 326 F.3d at 41. But this general rule — like virtually every general rule — is subject to exceptions. Here, the merits and the Estate's standing to contest the merits converge on the same dispositive question of

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[3] This requirement for intervening claimants in the civil forfeiture context is analogous to the rule that intervenors as of right under Federal Rule of Civil Procedure 24(a)(2), seeking different relief from other litigants, must have independent standing. See Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645, 1651 (2017). When there are multiple claimants, a claimant will rarely be seeking relief that does not in some way exclude other claimants' claims.

state law: can the Letter only be owned by the Commonwealth? If the Commonwealth has exclusive ownership and could not have lawfully alienated its interest in the Letter, then the Estate lacks any cognizable legal interest that would give it standing to intervene as a claimant and the Letter must be awarded to the Commonwealth. Given this convergence and given, too, that the merits of the Estate's claim are susceptible to resolution on this basis, we chart a practical course and resolve both together.

B. The Merits.

This case turns on whether the Letter is an historic public record and who can own such historic public records. The district court held — and the parties agree — that these are questions of Massachusetts law. See Letter from Alexander Hamilton, 498 F. Supp. 3d at 165 & 165 n.4; cf. Borden v. Paul Revere Life Ins. Co., 935 F.2d 370, 375 (1st Cir. 1991) (explaining that when "the parties have agreed about what [state] law governs, a federal court . . . is free, if it chooses, to forgo independent analysis and accept the parties' agreement").

Both the meaning of "public records" and the question of who may possess public records have been addressed by statute in Massachusetts since at least 1897. At that time, Massachusetts revamped its public records laws, instituting the regime that, in large part, still obtains today.[4] See An Act Relative to

[4] Because the letter was unquestionably in the custody of the Commonwealth at a point in time subsequent to 1897, we need not retreat any further into the mists of history. We note, though, that evidence of previous laws requiring the safekeeping of public records fills the margins of early twentieth-century

Public Records (1897 Act), 1897 Mass. Acts 411. It is with that statutory text that we begin. See U.S. Bank Tr. v. Johnson, 134 N.E.3d 594, 597 (Mass. App. Ct. 2019).

The 1897 Act defined a "public record" in relevant part as "any written or printed book or paper . . . which any officer or employee of the Commonwealth . . . is required by law to receive, or in pursuance of any such requirement has received for filing, and any book, paper, record, or copy mentioned in any of the following five sections." 1897 Mass. Acts 411, ch. 439, § 1. One of those five sections — section 4 — encompasses "[e]very original paper belonging to the files of the Commonwealth . . . bearing a date earlier than the year eighteen hundred" and provides that such records "shall be safely kept."[5] Id. at 412-13, § 4. For ease in exposition, we refer (as did the district court) to public records satisfying this definition — that is, original papers belonging to the files of the Commonwealth and dated before the year 1800 — as "historic public records."[6]

Given the explicit language of the 1897 Act, there is no reasonable basis to question that the Letter qualifies as an historic public record. It is an "original

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codifications, see, e.g., 1902 Mass. Rev. Laws ch. 35, and a recognition that certain records of a public nature must be kept is enshrined in the Commonwealth's 1780 constitution, see Mass. Const. pt. 2, ch. II, § IV, art. II.

[5] Just four years later, the Massachusetts legislature would strengthen this injunction, requiring that such records "shall bepreserved and safely kept." See 1902 Mass. Rev. Laws ch. 35, § 14.

[6] In the current version of the statute, the definition of historic public records has been expanded to include all such papers dated before 1870. See Mass. Gen. Laws ch. 66, § 8.

paper" and it "bear[s] a date earlier than the year eighteen hundred." It was transmitted to the President of the Massachusetts Council as an attachment to a letter by Massachusetts General William Heath (which is still in the possession of the Archives), and it dealt with a matter of public concern. Furthermore, the Letter's unchallenged provenance makes it pellucid that it was part of "the files of the Commonwealth," was retained by the Commonwealth in the normal course of record-keeping, and was stored in the Archives. To cinch the matter, the Letter remained there until at least the 1920s, as evidenced (without contradiction) by two different nineteenth- century indices, the 1920s index, and the existing photostatic copy.

Modern Massachusetts public records law does not suggest a different conclusion. The term "public records" is defined even more expansively under the most recent statute and extends to, among other things, "all books, papers, maps, photographs . . . or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth." Mass. Gen. Laws ch. 4, § 7, cl. 26. While the statute provides some enumerated exceptions, see id. § 7, cl. 26 (a)-(v), all of those exceptions are inapplicable.

The present statute, in consequence of changes in 1901 and 1962, is even stronger and more expansive than the 1897 Act, requiring that "[e]very original paper belonging to the files of the commonwealth . . . bearing date earlier than the year eighteen hundred and seventy . . . shall be preserved and safely kept." Mass. Gen. Laws ch. 66, § 8.

At oral argument, the Estate acknowledged that the Letter appears to be an historic public record under Massachusetts public records law. It lamented, though, that appearances can be deceiving: taking the text of Massachusetts law at face value "would mean nearly everything in the hands of the Commonwealth or a subsidiary agency would have to be construed as a public record." The Estate branded this result as unacceptable. But in support of its jeremiad, the Estate cites only Freeman v. Town of Hudson, 714 F.3d 29 (1st Cir. 2013). That decision, which discussed the scope of extrinsic evidence of "matters of public record" that a federal court may consider on a motion to dismiss, see id. at 36, did not address Massachusetts public records law at all. Consequently, it offers cold comfort for the Estate's argument.

More pertinent, we think, are the Massachusetts cases that repeatedly have affirmed that the term "public records" must be "broadly defined." Att'y Gen. v. Dist. Att'y for Plymouth Dist., 141 N.E.3d 429, 432 (Mass. 2020); see Hull Mun. Lighting Plant v. Mass. Mun. Wholesale Elec. Co., 609 N.E.2d 460, 463-64 (Mass. 1993) (collecting cases).

Those cases have stressed that, notwithstanding the breadth of the definition, "not every record or document kept or made by a governmental agency is a 'public record'" because "the Legislature has identified twenty categories of records that fall outside of the definition of 'public records.'" Dist. Att'y for Plymouth Dist., 141 N.E.3d at 433 (alterations omitted). The Estate does not argue that the Letter comes within any of those categories.

That ends this aspect of the matter. We conclude, without serious question, that the Letter is an historic public record.

This conclusion is outcome-determinative. Both the government and the Commonwealth have consistently maintained that because the Letter is an historic public record, the Commonwealth is entitled to custody of it. Building on this foundation, they also maintain that the Commonwealth — once the Letter was in its custody — was obliged to ensure that it was "safely kept," thus precluding its lawful alienation.

The Estate demurs, contending that even if the Letter is an historic public record, the Commonwealth was not obliged to hold fast to the original. In the Estate's view, the Commonwealth could lawfully have alienated the Letter based on statutory provisions allowing destruction of certain categories of documents. See, e.g., Mass. Gen. Laws ch. 66, §§ 8-9. We do not agree.

Massachusetts law leads inexorably to the conclusion that the Commonwealth retains ownership of the Letter as an historic public record and could not have alienated it. To begin, unless otherwise provided — and no such provision is applicable here — the Secretary of State has presumptive custody of all public records of the Commonwealth. See Mass. Gen. Laws ch. 66, § 7; 1897 Mass. Acts at 412, ch. 439, § 3. What is more, the law leaves no room to doubt that the Secretary of State (or some other specifically designated custodian) is the only person who may possess public records on a permanent basis; any person holding public records must return those records to the relevant government custodian on pain of penalties,

some criminal, for noncompliance. See Mass. Gen. Laws ch. 66, § 13 ("Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him."); id. § 15 ("Whoever unlawfully keeps in his possession any public record or removes it from the room where it is usually kept . . . shall be punished [as provided].").

Iterations of these provisions were in force during the period that the Letter was located in the Commonwealth Archives. See, e.g., 1902 Mass. Rev. Laws ch. 35, § 20 ("Whoever is entitled by law to the custody of public records shall demand the same from any person in whose possession they may be, and he shall forthwith deliver the same to him."); id. § 22 ("Whoever unlawfully keeps in his possession any public record . . . shall . . . be punished [as provided]."). And the Massachusetts legislature continued to strengthen its prerogatives over the custody of public records in succeeding years. See 1951 Mass. Acts 158, 158-59, ch. 200 ("Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person having such record in his possession to deliver the same to the complainant.").

Attempting to sidestep the obvious conclusion that these provisions control ownership of the Letter, the Estate speculates that there is a possibility that the Commonwealth could lawfully have alienated the Letter. That is whistling past the graveyard: Massachusetts law requires that original historic public records (like the Letter) "be preserved and safely kept." Mass. Gen. Laws ch. 66, § 8. Although the law provides for the potential destruction of "other paper[s]," such papers do not include historic

public records. Id. This obligation has existed in terms applicable to the Letter dating back to a time well before the Letter left the Archives. See 1897 Mass. Acts at 412-13, ch. 439, § 14.

The "plain and ordinary meaning" of this statutory language is generally the best guide to the legislature's intent. See Town of Boylston v. Comm'r of Revenue, 749 N.E.2d 684, 689 (Mass. 2001). So it is here. With respect to historic public records, "kept" — the operative verb that has appeared throughout the succession of pertinent statutory provisions — is best understood as incorporating facets of its standard definition, which is to "preserve," "maintain," or "retain and to continue to have in one's possession or power esp[ecially] by conscious or purposive policy." Webster's Third New International Dictionary of the English Language Unabridged 1235 (1981). The associated adverb, "safely," denotes the care with which this task should be undertaken by the relevant Commonwealth official. "Preserve," added to the statute shortly after "kept," see 1902 Mass. Rev. Laws ch. 35, § 14, avoids surplusage by reinforcing the notion that "original paper[s] belonging to the files of the Commonwealth" themselves, not copies, must be retained. See Webster's Third, supra at 1794 (defining verb "preserve" as "to keep alive, intact, in existence, or from decay").

Seeking to water down this plain meaning, the Estate cites Gutierrez de Martinez v. Lamagno, 515 U.S. 417 (1995), for the proposition that "shall" (as in "shall be safely kept") sometimes can mean "may." See id. at 432-34 & 432 n.9. But that usage is quite rare: "the mandatory 'shall,' . . . normally creates an obligation impervious to judicial discretion." Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998); see Union of Concerned Scientists

v. Wheeler, 954 F.3d 11, 17 (1st Cir. 2020). The Estate has made no effort to show why the normal meaning of shall should not control in this instance. Taking into account the strong policy interest in maintaining historic public records for posterity, we believe that the ordinary meaning of "shall" is what the Massachusetts legislature intended in crafting section 8 and its precursors. Every indication is that the legislature said what it meant and meant what it said.

The bottom line is that Massachusetts law establishes a mandatory duty to preserve and safely keep historic public records in the Commonwealth's possession. The text of the statute brooks no exceptions. It follows that any alienation of historic public records would be unlawful.

Laboring to force a square peg into a round hole, the Estate suggests that two statutory provisions imply the possibility that historic public records could be lawfully destroyed and, thus, alienated. Passing the obvious point that the Letter was never destroyed and still exists, neither of these statutes possesses the reach that the Estate ascribes to them.

The Estate first alludes to the second independent clause in section 8 of chapter 66, which permits the destruction of "other paper[s]" under certain circumstances. Mass. Gen. Laws ch. 66, § 8. In this statutory context, though, the term "other paper[s]" can be defined only by exclusion of the categories of documents required to be "preserved and safely kept" in the preceding independent clause of the section, which encompasses historic public records. See id. The semicolon separating these independent clauses in the modern statute, see id., fortifies that reading by "shatter[ing] the unity" of the sentence. Globe

Newspaper Co. v. Bos. Ret. Bd., 446 N.E.2d 1051, 1056 (Mass. 1983).

The Estate next alludes to section 9 of chapter 66, which permits the copying and replacement of public record books that are no longer "practicable" to maintain as originals. Mass. Gen. Laws ch. 66, § 9. For two reasons, this provision is irrelevant to the case at hand. For one thing, it deals exclusively with a separate category of documents — "public record books" — and historic public records are entirely a different matter. For another thing, there is simply no basis for an assumption that the Letter is (or was) in such a state that preservation was not "practicable." Given these facts, the statutory provisions to which the Estate alludes cast no doubt on the conclusion that historic public records cannot lawfully be alienated.

Our construction of the Massachusetts statutory scheme governing historic public records is consonant with the general principle that "[p]ublic records are the people's records, and the officials in whose custody they happen to be are merely trustees for the people." 66 Am. Jur. 2d Records and Recording Laws § 4 (Aug. 2021). So, too, our construction is consonant with the principle that title to government property may generally pass only in the manner prescribed by legislative enactment and not through the carelessness, negligence, or perfidy of government employees or agents. See, e.g., United States v. California, 332 U.S. 19, 40 (1947) (stating that "[t]he Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property . . ."); cf. Aaron v. Bos. Redev. Auth., 850 N.E.2d 1105, 1108-09

(Mass. App. Ct. 2006) (observing that adverse possession does not run against the Commonwealth for land held in trust for the public for specified purposes). We think that these principles apply with special force where, as here, the property at issue is an historic public record that constitutes part of the patrimony of the Commonwealth.[7]

Finally, we give short shrift to the Estate's suggestion that the Commonwealth's claim of ownership is barred by the doctrine of laches. In general terms, the doctrine of laches restricts the assertion of claims or defenses by litigants who have slept upon their rights or prerogatives and, thus, have prejudiced opposing parties by or through their inexcusable delay. See City of Sherrill v. Oneida Indian, 544 U.S. 197, 217 (2005). This defense, however, is typically not available against a state or federal sovereign seeking either to enforce a public right or to protect a public interest. See, e.g., Texaco P.R., Inc. v. Dep't of Consumer Affs., 60 F.3d 867, 878 (1st Cir. 1995); Wang v. Bd. of Registration in Med., 537 N.E.2d 1216, 1220 (Mass. 1989); see also United States v. California, 332 U.S. at 40 (explaining that "officers who have no authority at all to dispose of Government property cannot by their conduct cause

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[7] To be sure, there may be circumstances in which a public entity, acting lawfully, may dispose of property such that it may be deemed abandoned to a fortuitous finder. See, e.g., Morissette v. United States, 187 F.2d 427, 441 (6th Cir. 1951) (McAllister, J., dissenting) ("There is no reason why the government may not abandon property as well as an individual."), rev'd, 342 U.S. 246 (1952); Willcox v. Stroup, 467 F.3d 409, 414 n.1 (4th Cir. 2006) (suggesting abandonment as a defense to a state's claim of title). Here, however, the relevant provisions of Massachusetts law foreclose this possibility with respect to historic public records.

the Government to lose its valuable rights by their acquiescence, laches, or failure to act"). Such a bar to the use of laches against a sovereign is particularly apt in the context of historic public records held in trust for future generations, and we hold that the bar applies here.[8]

The short of it is that Massachusetts's public records law definitively resolves both the issue of the Estate's standing and the merits of this civil forfeiture action. As an original paper belonging to the Commonwealth and dated in 1780, the Letter is 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 — that the Letter could not lawfully have been alienated — is sufficient to satisfy the government's burden "to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). And because it could not have obtained any lawful interest in the Letter, the Estate lacks any legally cognizable ownership interest that would confer standing upon it to contest forfeiture. The Letter belongs to the Commonwealth and was properly consigned by the district court to its custody.

The lack of a legal ownership interest within the meaning of 18 U.S.C. § 983(d)(6) likewise defeats the

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[8] Even if a laches defense was available to the Estate in this case — and it is not — that theory would run aground on the facts. For aught that appears, any delay in bringing a claim was clearly attributable to the fact that the Commonwealth lacked knowledge ofthe Letter's whereabouts, and both the government and the Commonwealth acted expeditiously once Potomack notified the FBI that the Letter had surfaced.

Estate's claim that it is an "innocent owner" under that statutory provision. Other claims advanced by the Estate are either patently meritless or fatally underdeveloped, and they do not warrant discussion.

III. CONCLUSION

We need go no further. We hold that the Letter is an historic public record as that term is defined in the 1897 Act, as from time to time amended; that, based on the undisputed evidence, the Letter was in the custody of the Commonwealth for some period following the passage of the 1897 Act; and that it could not lawfully have been alienated. We hold, therefore, that the district court acted appropriately in granting the government's motion to strike the Estate's claim of ownership, in denying the Estate's Rule 12(b)(6) motion as moot, and in honoring the Commonwealth's claim of entitlement to the Letter. For the reasons elucidated above, the judgment of the district court is

Affirmed.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 20-2061

UNITED STATES OF AMERICA,

Plaintiff, Appellee,

v.

LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780,

Defendant in Rem,

ALDRICH L. BOSS, as personal representative for the estate of STEWART R. CRANE,

Claimant, Appellant,

COMMONWEALTH OF MASSACHUSETTS, Acting by and through The Massachusetts Archives,

Claimant, Appellee.

JUDGMENT

Entered: October 6, 2021

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: Carol Elisabeth Head, Donald Campbell Lockhart, Adam J. Hornstine, Ernest Edward Badway

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780, Defendant.	)	Civil Action No. 19-11121-JGD
ALDRICH L. BOSS, as Personal Representative for the ESTATE OF STEWART R. CRANE, and COMMONWEALTH OF MASSACHUSETTS, acting by and through THE MASSACHUSETTS ARCHIVES, Claimants.	)	

FINAL JUDMENT

DEIN, M.J.

Upon consideration of the United States of America and the Commonwealth of Massachusetts' Joint Motion for Entry of Final Judgment pursuant to Federal Rules of Civil Procedure 54 and 58, it is hereby ORDERED, ADJUDGED and DECREED:

1. Judgment is hereby entered recognizing the claim of the Commonwealth of Massachusetts, acting by and through the Massachusetts Archives (the "Commonwealth"), to the Letter from Alexander Hamilton to the Marquis De Lafayette, dated July 21, 1780 (the "Letter"). As a matter of law, the Commonwealth is the only entity that can own the Letter.

2. The claim of Aldrich L. Boss, as personal representative for the Estate of Stewart R. Crane, having been previously stricken by the Court, and no other claims to the Letter having been filed with the Court or served on the United States Attorney's Office and the time to do having expired, the claim of Aldrich L. Boss, as personal representative for the Estate of Stewart R. Crane and any claim of any other parties claiming any right, title, or interest in or to the Letter are hereby held in default and dismissed.

3. The United States Marshals Service and the Federal Bureau of Investigation shall release the Letter to the Commonwealth.

4. As agreed to by the United States and the Commonwealth, each side shall bear its own attorney's fees and costs.

5. This Court shall retain jurisdiction in this case solely for the purpose of enforcing the terms of this

Judgment. Otherwise, this Order shall be, and hereby is, the full and final disposition of this civil forfeiture action.

DONE and ORDERED in Boston, Massachusetts, this 2 day of December, 2020.

/s/ Judith Gail Dein
JUDITH GAIL DEIN
United Magistrate Judge

Appendix D

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil Action No. 19-11121-JGD
LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780 Defendant.	)	
ALDRICH L. BOSS, as Personal Representative for the ESTATE OF STEWART R. CRANE, and COMMONWEALTH OF MASSACHUSETTS, acting by and through THE MASSACHUSETTS ARCHIVES, Claimants.	)	

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION TO STRIKE THE CLAIM OF CLAIMANT ALDRICH L. BOSS AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF STEWART R. CRANE AND CLAIMANT BOSS' MOTION TO DISMISS THE PLAINTIFF'S VERIFIED COMPLAINT

October 28, 2020

DEIN, M.J.

I. INTRODUCTION

This civil forfeiture case concerns an ownership dispute over a letter dated July 21, 1780 from Alexander Hamilton to the Marquis de Lafayette (the "Letter") notifying Lafayette of British troop movements in Rhode Island. The United States of America brings this action for civil forfeiture of the Letter, pursuant to 18 U.S.C. § 981(a)(1)(C). The United States contends that the Letter is a public record belonging to the Commonwealth of Massachusetts (the "Commonwealth") that was stolen from the Commonwealth of Massachusetts Archives ("the Archives") at some point between 1938 and 1946. It was allegedly purchased by R.E. Crane in around 1945, and resurfaced in 2018, when Crane's heirs sought to sell it at auction. The Letter was seized by, and remains in the possession of, the Federal Bureau of Investigation (the "FBI") in Boston, Massachusetts.

The United States alleges that the Letter is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) because there is probable cause to believe that the Letter is property which is derived from proceeds traceable to the interstate transportation of stolen property, which is prohibited by 18 U.S.C. §§ 2314 and

2315. (See Docket No. 1, Verified Complaint for Forfeiture *in Rem* (the "Complaint") ¶¶ 19-22). The Estate of Stewart R. Crane, by and through its personal representative, Aldrich L. Boss, ("the Estate"), filed a claim asserting an ownership interest in the Letter, pursuant to Rule (G)(5)(a)(i) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. (See Docket No. 15, the "Estate Claim"). The Commonwealth of Massachusetts also filed a verified claim alleging an ownership interest in the Letter. (See Docket No. 14, the "Commonwealth Claim").

This matter is before the Court on the *United States' Motion to Strike the Claim of the Claimant Aldrich L. Boss as Personal Representative for the Estate of Stewart R. Crane* (Docket No. 24) and memorandum of law in support thereof (Docket No. 25, the "USA Mem."), and the Estate's *Cross-Motion to Dismiss the Plaintiff United States of America's Verified Complaint for Forfeiture* in Rem*, Dated May 15, 2019* (Docket No. 28) and memorandum of law in support thereof and in opposition to the USA Motion to Strike (Docket No. 29, the "Estate Mem."). The Commonwealth has also filed a memorandum of law in support of the USA's Motion to Strike and in opposition to the Estate's Motion to Dismiss. (Docket No. 34, the "Commonwealth Mem."). For the reasons detailed herein, the USA's Motion to Strike (Docket No. 24) is ALLOWED and the Estate's Motion to Dismiss (Docket No. 28), is DENIED as moot.

II. FACTUAL BACKGROUND

The Letter

The following facts are drawn from the Complaint and the parties' submissions and are undisputed

unless otherwise noted.[1] The property in dispute is a letter penned by Alexander Hamilton on July 21, 1780 during the Revolutionary War. (Complaint ¶ 1). The Letter was addressed to Lafayette and relayed information concerning British troop movement that could "menace the French fleet and army" in Rhode Island. (USA Mem. at 3). Massachusetts General William Heath forwarded the Letter to the President of the Council for the State of Massachusetts, enclosing with it a letter of his own dated July 25, 1780, and asking the Council to send troops to support the French allies in Rhode Island. (Id.; see also Commonwealth Claim ¶ 4). According to the records of the Massachusetts Council, the request for aid was received on July 26, 1780, and prompted the Council to send military reinforcements to Rhode Island. (Commonwealth Claim ¶4). The Commonwealth asserts that "[a]s items from a Massachusetts General in the Continental Army directed to the Massachusetts Counsel, General Heath's correspondence and the enclosed [Letter] were duly received and retained by an administrative division of the Massachusetts government in the normal course of its recordkeeping." (Id.).

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[1] The factual record has been fully developed in this case through answers to the Complaint filed by the Estate (Dkt. No. 16) and the Commonwealth (Dkt. No. 18), the Claims filed by the Estate (Dkt. No. 15) and the Commonwealth (Dkt. No. 14), and the answers to special interrogatories by the Estate (USA Mem., Ex. B). While the Estate has stated that it would be interested in taking additional discovery, it has not indicated in any way what additional information would be helpful to understand the historic events at issue in this dispute, or otherwise alter the standing analysis. (See Docket No. 36, Transcript ofFebruary 26, 2020 Oral Argument (Docket No. 36) at 26:5 – 28:21).

Custody of the Letter

The Letter was apparently in the custody of the Archives as early as 1880, as evidenced by an index of the Archives' collection during that time. (USA Mem. at 4). The Letter also appeared on the table of contents and attendant name index for Volume 202 of the Massachusetts Archives Collection (SC1/Series 45x), which listed materials contained in the Archives Collection in the mid-19th century. (Commonwealth Claim ¶ 7(b)). It is also undisputed that the Letter remained in the Archives' possession until at least the 1920's when the Letter was "chosen for reproduction on the basis of [its] historical significance and use" and a photostat copy of the Letter was created and bound within a facsimile of Volume 202 of the Archives' collection. (USA Mem. at 4; see also Commonwealth Claim ¶ 7(c)). All parties agree that sometime following the creation of the photostat copy, the Letter left the possession of the Archives.

The United States alleges that the Letter, along with other historical documents, were stolen from the Archives between 1937 and 1945 by a former employee. (Complaint ¶ 5). The United States claims that a former Archives employee, who was arrested in 1950, sold various stolen items, including the Letter, to rare document dealers throughout the country. (Id. ¶ 9). on February 27, 1950, the then-Attorney General of Massachusetts sent letters to the New York, Philadelphia, and Chicago police departments alerting them of the theft of the stolen documents and listing "some of the more important and valuable documents" that were compromised. (Commonwealth Claim ¶ 8). The Letter was not specifically named in this correspondence. (Estate Mem. at 5). The thefts were also reported in newspapers both locally and nationally, although, again, the Letter was not

specifically referenced among the items listed as stolen. (Commonwealth Claim ¶ 8; Estate Mem. at 5).

The Estate questions whether the Letter was stolen, and instead suggests, without factual support, that the United States and the Commonwealth have "invent[ed] a theft" in order to "cover-up the incompetent management" of the Archives. (Estate Mem. at 1-2). The Estate alleges that R.E. Crane, grandfather of Stewart Crane, purchased the Letter from a reputable rare documents dealer, John Heise Autographs, in Syracuse, New York, in or around 1945. (Id. at 6). The only evidence of this purchase is a post-marked envelope from John Heise Autographs, which the Estate claims contained the Letter which was sent to R.E. Crane in Pennsylvania following his purchase. (Id.). The United States and the Commonwealth challenge the sufficiency of this proof. The Estate contends further that upon R.E. Crane's death, the Letter was transferred to his son, Robert F. Crane, Sr., who in turn, conveyed the Letter to his son, Stewart Crane, whose Estate held the Letter until it was seized by the FBI in 2018. (Id. at 7).

Following Stewart Crane's death in 2018, his family contracted with an auction house to sell the Letter along with other historical documents. (Estate Mem. at 7). A researcher at the auction house located a copy of the Letter on the archival website, Founders Online, which listed the Letter as "missing" from the Archives. (Complaint ¶¶ 12, 16).[2] The auction house

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[2] The listing can be found at https://founders.archives.gov/documents/Hamilton/01-02-02-0775. This isa resource created by the National Archives that makes available historical documents of the Founders of the United States. (See Commonwealth Claim ¶ 7d, Ex. 8). There is no information in the record as to when or how the Letter was reported as "missing" by the archival website.

then contacted the Archives, and the Archives confirmed that the Letter was stolen from its collection. (Id.). Upon this discovery, the auction house contacted the FBI, and the Letter was seized shortly thereafter. (Id.; see also Estate Mem. at 7).

Additional facts will be provided below as appropriate.

III. ANALYSIS

A. Overview of the Standing Requirement

The United States seeks to strike the Estate's claim to the Letter on the grounds that the Estate lacks standing to intervene in this action. "Standing is a threshold consideration in all cases, including civil forfeiture cases." U.S. v. One-Sixth Share of James J. Bulger In All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233, 326 F.3d 36, 40 (1st Cir. 2003). "In forfeiture cases, the property is the defendant and therefore defenses against forfeiture can only be brought by a third-party intervenor . . . who generally must have independent standing." U.S. v. $8,440,190.00 in U.S. Currency, 719 F.3d 49, 57 (1st Cir. 2013) (citing One-Sixth Share of James J. Bulger, 326 F.3d at 40). "By virtue of the roots of *in rem* jurisdiction in admiralty law, the procedures for intervention in civil forfeitures are governed by the Supplemental Rules of Certain Admiralty and Maritime Claims." One-Sixth Share of James J. Bulger, 326 F.3d at 40-41 (citing 18 U.S.C. § 981(b)(2) (1994) (amended 2000)); see also U.S. v. $80,020.00 in U.S. Currency, 57 F. Supp. 3d 143, 145 (D.P.R. 2014) (noting Rule G governs forfeiture actions *in rem* under federal statutes such as 18 U.S.C. § 981). Supplemental Rule G(8)(c)(i) provides that the United States may move to strike a claim or answer at any

time before trial for failing to comply with Rule G(5) or (6) or "because the claimant lacks standing."

"When faced with a motion seeking to strike a claim . . . the burden is on the party contesting the forfeiture (the claimant) to establish standing by a preponderance of the evidence." $8,440,190.00 in U.S. Currency, 719 F.3d at 57. Supplemental Rule G further provides that such a motion to strike must be decided "before any motion by the claimant to dismiss the action" and "may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing by a preponderance of the evidence." Supplemental Rule G(8)(c)(ii)(A) and (B). Thus, only a claimant who establishes standing may move to dismiss the action. See id. at G(8)(b)(i).

Applying these principles, the analysis in the instant case begins with a determination of whether the Estate has established standing to survive the USA Motion to Strike. For the reasons explained below, the Estate does not have standing because it cannot assert an ownership interest in the Letter as a matter of law.

B. Standard of Review: Standing

"Enacted in 2000, the Civil Asset Forfeiture Reform Act ("CAFRA") sets forth the procedures used in all civil forfeitures under federal law unless the particular forfeiture statute is specifically exempted in [the statute]." U.S. v. 144,774 pounds of Blue King Crab, 410 F.3d 1131, 1134 (9th Cir. 2005). To intervene in a civil forfeiture case, a third-party claimant must establish both statutory and constitutional standing. See One-Sixth Share of James J. Bulger, 326 F.3d at 40 (citing U.S. v. Cambio Exacto,

S.A., 166 F.3d 522, 526 (2d Cir. 1999)). Statutory standing is satisfied when the claimant meets the procedural requirements of Rule G(5). See $80,020.00 in U.S. Currency, 57 F. Supp. 3d at 146. As such, a claimant who files an untimely claim does not have standing to contest the forfeiture. See U.S. v. One Dairy Farm, 918 F.2d 310, 311 (1st Cir. 1990) (concluding claimants lacked standing because they failed to file timely claim or answer). This court concludes that the Estate has established that it has statutory standing, and that requirement will not be discussed further.[3]

Constitutional standing requires a party to show they have suffered a "concrete and particularized" injury, that the injury was caused by the wrongdoer's conduct, and that a favorable court decision will

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[3] The United States argues that the Estate filed an untimely response, and therefore lacks standing to bring a claim. (See USA Mem. at 19-20). However, the Estate contends that the United States failed to give notice to the correct Estate, and that it filed its claim prior to the extended deadline granted by the United States to other claimants who were related to the Estate. (See Dkt. No. 12, extending deadline to file claims for the Commonwealth, Ann-Stewart Boss and/or the Estate of R.E. Crane). Furthermore, the Estate filed a timely answer containing all of the information required in the claim and the United States was already in discussions with members of the Estate's family to extend the deadline for filing claims. Therefore, if the Estate's claim was untimely, it caused no prejudice to the United States or the Commonwealth. Accordingly, the Court will exercise its discretion to treat the Estate's claim as timely. See U.S. v. One Urban Lot Located at 1 Street A-1, Valparaiso, Bayamon, Puerto Rico, 885 F.2d 994, 999(1st Cir. 1989) ("So that to the greatest extent possible controversies are decided on the merits, a district judge should exercise his discretion to grant additional time for the filing of a claim when the goals underlying the time restrictions and the verification [of the claim] are not thwarted." (internal quotation and citation omitted)).

redress the injury. See $8,440,190.00 in U.S. Currency, 719 F.3d at 57. To establish constitutional standing in the context of a civil forfeiture action, the "'party seeking to challenge a forfeiture of property must first demonstrate an ownership or possessory interest in the seized property'" such that the claimant has suffered a concrete injury by the forfeiture that can be rectified by a favorable decision. One-Sixth Share of James J. Bulger,, 326 F.3d at 41 (quoting U.S. v. 116 Emerson St., 942 F.2d 74, 78 (1st Cir. 1991)); see also U.S. v. U.S. Currency, $81,000.00, 189 F.3d 28, 35 (1st Cir. 1999) (an owner of seized property "necessarily suffers an injury" that can be redressed by returning the property).

The First Circuit has characterized this standing requirement as "forgiving," such that "any colorable claim on the defendant property" will suffice. See One-Sixth Share of James J. Bulger, 326 F.3d at 41. See also $8,440,190.00 in U.S. Currency, 719 F.3d at 57-58 ("At the initial stages of intervention, the requirements [to establish an ownership or possessory interest in the seized property] are not arduous and typically any colorable claim on the defendant property suffices." (internal quotation omitted)). The claimant "need not prove the full merits of her underlying claim" in order to establish an ownership interest for the purposes of standing. See U.S. v. One Parcel of Real Prop. With Bldgs., Appurtenances and Improvements Known as 116 Emerson St., Located in City of Providence, R.I., 942 F.2d 74, 78 (1st Cir. 1991) (affirming district court's holding that because claimant "raise[d] questions about the possibility of an equitable interest in the property [seized]" she was entitled to "the opportunity to prove her claim at trial," even though the basis of her claim was later held to be improper). "An allegation of ownership, coupled with

some evidence of ownership, is sufficient to establish constitutional standing to contest a forfeiture." $8,440,190.00 in U.S. Currency, 719 F.3d at 58 (citation omitted). Nevertheless, claims of claimants who cannot establish an ownership interest as a matter of law are subject to dismissal because, without an ownership interest, "there is no possible way" that a claimant is injured by the forfeiture. Id. at 59.

In a civil forfeiture action, state law governs the claimant's ownership interest in the property. See One-Sixth Share of James J. Bulger, 326 F.3d at 45; see also U.S. Currency, $81,000.00, 189 F.3d at 33 (state law determines a claimant's ownership interest while federal law determines the effect of that ownership interest). Accordingly, we look to Massachusetts law to determine the Estate's ownership interest in the Letter.[4]

C. The Letter Is A Public Record Under Massachusetts Law

The parties dispute, in the first instance, whether, under Massachusetts law, the Letter is a "public record" and, if it is, whether individuals or entities other than the Commonwealth may own a public record. (See USA Mem. at 8-9; Estate Mem. at 11-14). Where, as here, the relevant facts are undisputed, these issues raise questions of law which can be decided by the court. See Burton v. Town of Littleton, 426 F.3d 9, 17 (1st Cir. 2005) (concluding that a termination letter forwarded to the Massachusetts Commissioner of Education was not a public record

[4] Although the Estate argued in its brief that it was "not clear" that Massachusetts law applied to this case, it conceded at oral argument that Massachusetts law controls the issue of who owns the Letter. (See Transcript of February 26, 2020 Oral Argument at 47:22 – 48:04).

under Massachusetts law as a matter of law); U.S. v. $75,000 in U.S. Currency, 97 F. Supp. 3d 1, 3-4 (D.P.R. 2015) (where lottery tickets could not be brought into United States as a matter of law, claimant could not establish an ownership interest and lacked standing to challenge forfeiture of lottery proceeds); Dunn v. Bd. of Assessors of Sterling, 361 Mass. 692, 693, 282 N.E.2d 385, 387 (1972) (concluding field record cards from property appraisals were not public records pursuant to Mass. Gen. Laws ch. 4, § 7 as a matter of law). For the reasons detailed herein, this court concludes that the Letter is a public record. As detailed in the next section, this court further concludes that the Commonwealth is the only entity that can own the Letter. Therefore, the United States has met its burden of establishing, "by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1).

Statutory Definitions of a Public Record

It is well-established that all questions of statutory interpretation "begin with the language of the statute." U.S. Bank Trust, N.A. v. Johnson, 96 Mass. App. Ct. 291, 294, 134 N.E.3d 594, 597 (2019). Moreover, statutes must be read "as a whole to produce an internal consistency" with the "overarching objective" to be "to discern the intent of the Legislature, based on the words used and the evident purpose for which the statute was enacted." Id. At 295, 134 N.E.3d at 597-98 (internal punctuation and citations omitted). See also City Electric Supply Co. v. Arch Ins. Co., 481 Mass. 784, 788, 119 N.E.3d 735, 740 (2019) ("Where the language of a statue is plain and unambiguous, it is conclusive of the Legislature's purpose.") (internal punctuation and quotation omitted). Similarly, "all the pertinent statutes relating to the same subject matter should be considered as a

whole and, if possible, be so construed as to make them effectual pieces of legislation in harmony with common sense and sound reason." Hardman v. Collector of Taxes of North Adams, 317 Mass. 439, 442, 58 N.E.2d 845, 846 (1945) (internal quotation and citation omitted) (interpreting public record laws). The relevant statutes compel the conclusion that the original document at issue here is an historic public record.

"Public records" are "broadly defined" under current Massachusetts law, see Attorney General v. District Attorney for Plymouth District, 484 Mass. 260, 263, 141 N.E.3d 429, 432-33 (2020), and have been since the first public records law was enacted in 1897. Unless expressly exempted, they "include all documentary materials made or received by an officer or employee of any corporation or public entity of the Commonwealth[.]" Wakefield Teachers Ass'n v. School Committee of Wakefield, 431 Mass. 792, 796, 731 N.E.2d 63, 66 (2000) (internal quotation and citation omitted). As detailed herein, the Letter meets the definition of a "public record."

The first comprehensive Public Records Act was enacted in Massachusetts in 1897. See 1897 Mass. Acts, c. 439 (An Act Relative to Public Records) (the "1897 Act"). (USA Mem. at Ex. D). The 1897 Act designates who shall have custody of all public records, and provides that "[t]he secretary of the Commonwealth . . . shall have custody of all other public records of the Commonwealth . . . when no disposition of such records is made by law or ordinance." 1897 Act at Section 3. The words "public records" are defined to mean:

> Any written or printed book or paper, or any map or plan of the Commonwealth or of any

> county, city or town, in or on which any record or entry has been or is to be made in pursuance of any requirement of law, or any written or printed book or paper, or any map or plan which any officer or employee of the Commonwealth or of any county, city or town is required by law to receive, or in pursuance of any such requirement has received for filing, **and any book, paper, record or copy mentioned in either of the five following sections.** . . .

1897 Act at Section 1 (emphasis added). The "following" Section Four mentions "[e]very original paper belonging to the files of the Commonwealth or of any county, city or town, bearing a date earlier than the year eighteen hundred" and provides that they shall be "safely kept." 1897 Act at Section 4. The Letter is dated prior to 1800, and is an original document. It "belonged to the files of the Commonwealth" as evidenced by the fact that it was delivered to the President of the Council for the State of Massachusetts as an attachment to a letter from Massachusetts General William Heath, at which time it was "retained by an administrative division of the Massachusetts government in the normal course of its record keeping" and thereafter stored in the Archives of Massachusetts. (See Commonwealth Claim ¶¶ 4-5). The Letter clearly constitutes a public record under the 1897 Act.

The Letter qualifies as a public record under modern Massachusetts statutes as well. For example, Mass. Gen. Laws ch. 4, § 7, clause Twenty-sixth, provides that in construing statutes, "public records"

> **shall mean all books, papers,** maps, photographs, recorded tapes, financial

> statements, statistical tabulations, **or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office,** department, board, commission, bureau, **division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose**, or any person, corporation, association, partnership or other legal entity which receives or expends public funds for the payment or administration of pensions for any current or former employees of the commonwealth or any political subdivision as defined in section 1 of chapter 32, **unless such materials or data fall within the following exemptions . . . .**

(Emphasis added). None of the exemptions have any application to the instant case. See Mass. Gen. Laws ch. 4, § 7, clause Twenty-sixth (a)-(u). The Letter clearly fits within the "broad" definition of "public records" since it is a paper "made or received by any officer or employee of any Massachusetts governmental entity." Attorney Gen. v. District Attorney for Plymouth District, 484 Mass. 260, 263, 141 N.E.3d 429, 432-33 (2020) (internal punctuation omitted), citing Mass. Gen. Laws ch. 4, § 7. See also Mass. Gen. Laws ch. 30, § 42 (defining "record" broadly in the context of the powers of the Commonwealth's records conservation board).

Similarly, modern Massachusetts statutes require that original historical documents such as the Letter must be safely kept by the Commonwealth. Like the 1897 Act, the current Public Records Act, Mass. Gen.

Laws ch. 66, §§ 1 *et seq.* designates which governmental entity is responsible for maintaining specific public records, and provides that the "state secretary" shall "have the custody of all other public records of the commonwealth . . . if no other disposition of such records is made by law or ordinance[.]" Mass. Gen. Laws ch. 66, § 7. Pursuant to Mass. Gen. Laws ch. 66, § 8, "[e]very original paper belonging to the files of the commonwealth or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy . . . shall be preserved and safely kept[.]" Again, the original 1780 Letter, which belonged to the files of the Commonwealth and was stored in the Commonwealth's Archives, fits within this definition of a public record.[5]

The Estate argues that the statutes cited by the United States and the Commonwealth do not support the claim that the Letter is a public record because such a broad interpretation "would mean nearly everything in the hands of the Commonwealth or a subsidiary agency would have to be construed as a public record." (Estate Mem. at 12). In the instant case, however, the Letter fits into specific criteria – it is an original document dated prior to 1800 (or 1870) received and maintained by the Commonwealth. Any

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[5] The regulations promulgated pursuant to the Public Records Act also define a public record broadly as,

> [a]ll books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by a governmental entity unless such materials or data fall within one or more of the exemptions found within M.G.L. c. 4, § 7, clause Twenty-sixth or other legally applicable privileges

950 C.M.R. § 32.02.

claim of overbreadth in the definition of public document has no application in the instant case.

Moreover, the Estate's reliance on Freeman v. Town of Hudson, 714 F.3d 29 (1st Cir. 2013) for the proposition that public records are limited to documents with "indicia of reliability" is unavailing. (Estate Mem. at 12). Freeman addressed the question whether a transcript of a 911 call and two police department incident reports could be considered "official public records," and therefore considered by the court without converting a motion to dismiss into a motion for summary judgment. The court held that the phrase "official public records" "when used in the present context" *i.e.* in the context of determining whether documents could be considered in connection with a motion to dismiss, is "limited, or nearly so, to documents or facts subject to judicial notice under Federal Rule of Evidence 201." Id. at 36. In contrast, the reliability or veracity of the content of the Letter is not at issue in the present dispute. The Estate fails to explain how Freeman's discussion of "matters of public record" in the context of the standard for evidence a court can consider in deciding a motion to dismiss is at all relevant to what documents constitute "public records" under the relevant public records statutes. The Freeman Court's analysis has no application to the instant case.

The Estate argues further that references in pleadings to the Letter being part of the Archives' "Collection," as opposed to being part of the Commonwealth's "public records' files" is evidence that, "despite the bravado of Plaintiff's Motion to Strike, it is far from clear that the Hamilton Letter is a public record: accordingly, the Plaintiff has not met its required burden and the Motion to Strike must be denied." (Estate Mem. at 14). However, the United

States and the Commonwealth have been unwavering in their position that the Letter has always belonged to the Commonwealth, and the Estate is trying to make a distinction where none exists. Moreover, the fact that the Letter was part of the Archives' "Collection" simply confirms that it consistently has been treated as a public document which the Commonwealth was mandated to preserve and keep safely. For all the reasons detailed herein, Letter constitutes a public record as a matter of law.

D. The Letter is Owned by the Commonwealth

The United States and the Commonwealth argue that, under both the modern Public Records Act and the 1897 Act, only the Commonwealth may own an historic public record such as the Letter and, therefore, regardless of how the Letter eventually came into the possession of the Estate, only the Commonwealth may have legal title to the document. The Estate, on the other hand, argues that the statutory scheme allows for the Commonwealth to destroy or abandon its public records, and, therefore, that the Estate is entitled to own the Letter. As detailed herein, the statutory scheme establishes that only the Commonwealth is entitled to own original public documents from its files that pre-date 1870, such as the Letter. Moreover, even assuming, *arguendo*, that an individual could acquire title to a document voluntarily released by the Commonwealth, the Estate has failed to meet its burden of proving that it lawfully acquired title to the Letter.

Under the 1897 Act, the secretary of the Commonwealth is tasked with maintaining custody of the public records of the Commonwealth "when no other disposition of such records is made by law or

ordinance." 1897 Act at Section 3. With respect to the documents in the Commonwealth's custody, the 1897 Act provides in relevant part that

> [e]very original papers belonging to the files of the Commonwealth . . . bearing a date earlier than the year eighteen hundred . . . shall be safely kept, **and every other paper** belonging to the files of the Commonwealth . . . shall be safely kept for seven years after the latest entry originally made therein or thereon unless required by law to be destroyed at some other time, and no such paper of any county, city or town shall be destroyed unless such destruction is approved by the commissioner of public records.

1897 Act at Section 4 (emphasis added). Pursuant to Section 9 of the 1897 Act,

> [e]very person who is given by law the custody of any public records shall have power to demand, and shall demand, any such record from the person having the same in his possession, and such person shall forthwith deliver such record to such custodian. . . .

Moreover, the 1897 Act provides that "[e]very person who unlawfully keeps in his possession any public record" shall be fined. 1897 Act at Section 12.

The present statutory scheme makes it even clearer that the Commonwealth is the sole entity which owns the original documents dated before 1870 and received and maintained by the Commonwealth in its files. Like the 1897 Act, the modern Public Records Act provides that the Commonwealth must maintain custody of public records of the Commonwealth "if no other disposition of such records is made by law or

ordinance[.]" Mass. Gen. Laws ch. 66, § 7. However, pursuant to Mass. Gen. Laws ch. 66, § 8 it is now clear that not only must the documents be "safely kept" but they must be "preserved." Thus, the statute now provides that "[e]very original paper belonging to the files of commonwealth or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy . . . shall be preserved and safely kept[.]" See 1902 Mass. Rev. L. ch. 35, § 14 (USA Mem. Ex. E). The statutory scheme also was expanded so that whoever is entitled to custody of a public record may seek recourse in court in order to have such records returned. See Mass. St. 1951, c. 200 (USA Mem. at Ex. G). Specifically, Mass. Gen. Laws ch. 66, § 13 now provides:

> Whoever is entitled to the custody of public records shall demand the same from any person unlawfully having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Moreover, over the years the penalties "for the unlawful possession of any public record" have expanded to include "imprisonment for not more than one year" in addition to a fine. See Mass. Gen. Laws ch. 66, § 15; Mass. St. 1951, c. 200 (USA Mem. Ex. G). The statute also provides that "[a]ny public officer who refuses or neglects to perform any duty required of him by this chapter [66]," such as preserving and safely keeping historic public records, shall also be fined during the period of such neglect. Id.

In sum, the statutory scheme provides that the Commonwealth has custody of and is responsible for preserving and safely keeping historical documents such as the Letter. The Estate, nevertheless, argues that the statutory scheme, and in particular, Mass. Gen. Laws ch. 66, § 8, addresses not only preservation, but also the destruction of public records. (See Estate Mem. at 13-14). However, the statutory scheme is clear that the authority to destroy records does not apply to original documents that pre-date 1870.

Mass. Gen. Laws ch. 66, § 8 provides in its entirety as follows:

> **Every original paper belonging to the files of the commonwealth** or of any county, city or town, **bearing date earlier than the year eighteen hundred and seventy**, every book of registry or record, except books which the supervisor of public records determines may be destroyed, every town warrant, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other state, county or municipal interests not required to be recorded in a book and not so recorded, **shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon,** unless otherwise provided by law or unless such records are included in disposal schedules approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records; **and no such paper shall be destroyed without the written approval of the supervisor of records.**

> Notwithstanding the foregoing, the register of deeds in any county may, without such written approval, destroy any papers pertaining to attachments or to the dissolution or discharge thereof in the files of his office following the expiration of twenty years after the latest original entry therein or thereon, unless otherwise specifically provided by law, and he may destroy all original instruments left for record and not called for within five years after the recording thereof.

(Emphasis added). The phrase "and every other paper" creates a separate and distinct class of documents subject to disposal, which documents do not include the "original papers" belonging to the Commonwealth that pre-date the year 1870. See Moulton v. Brookline Rent Control Bd., 385 Mass. 228, 230-32, 431 N.E.2d 225, 227 (1982) ("It is the general rule of statutory as well as grammatical construction that a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation").[6] The semicolon inserted before "every other paper" reinforces the conclusion that original papers, pre-dating the year 1870, "must be preserved and safely kept," and are not part of the class of documents that may be destroyed. See Globe Newspaper Co. v. Boston Ret. Bd., 388 Mass. 427, 434, 446 N.E.2d 1051, 1056 (1983) (noting the insertion of a semicolon into the statute at issue "shatter[ed] the unity of the phrase"

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[6] As quoted above, the distinction between original papers belonging to the files of the Commonwealth dated prior to 1800 "and every other paper" was also included in Section 4 of the 1897 Act. The historicrecords are not included in those which may be destroyed if "required by law" and "approved by the commission of public records." Id.

and was an intentional measure by the legislature to establish a separate category). Accordingly, the Public Records Act does not provide the Commonwealth with authority to destroy original documents, like the Letter, belonging to the Commonwealth and dated prior to the year 1870.

Finally, the Estate argues that the United States cannot prove the Letter was not "abandoned" by the Archives and, therefore, the Letter could have been lawfully possessed by the documents dealer that sold the Letter to R.E. Crane. This argument is unavailing. As an initial matter, the Estate has cited to no authority for the Commonwealth to have sold the historic Letter. The Estate cites to Mass. Gen. Laws ch. 66, § 8 for authority to abandon a public record, but § 8 provides authority only to destroy certain records under certain circumstances that, as discussed above, do not apply to history documents.[7] Moreover, even assuming that the Commonwealth could "abandon" a public record, the Public Records Act requires the preservation of documents dated earlier than 1870, and, therefore, any abandonment of the Letter would have been unlawful. The statutory scheme requires that to the extent that public records (unlike the Letter) can be destroyed, the destruction must be authorized. See, e.g., Mass. Gen. Laws ch. 66, § 8. The Estate has put forth absolutely no evidence or indication that the Commonwealth authorized the destruction or abandonment of the Letter.

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[7] At oral argument, counsel for the Estate raised the possibility that the Letter was old and brittle and had undergone photocopying as a means of preserving it, before being discarded. Section 9 of Chapter 66, however, provides for the preservation and copying of worn records, and likewise does not allow the abandonment of such records.

The Massachusetts statutory scheme is consistent with how numerous other jurisdictions treat historic public records, which "are the property of the state and not of the individual who has them in his or her possession." 66 Am. Jur.2d Records and Recording Laws, § 11 (August 2020). (See USA Mem. at 12, n. 7). As one court convincingly expressed the relevant principles:

> It is a well settled principle of law that title to government property may pass only in the manner prescribed by the duly constituted legislative body and that title to any such property may not be forfeited through the oversight, carelessness, negligence, or even intentional conduct of any of the agents of the government. *See U.S. v. Mallery*, 53 F. Supp. 564 (Wash.1944). This legal principle applies to government land, personal property or public records. The underlying rationale of this rule is that property owned by the government is held in trust for the people and that the intentional or negligent acts of the agents of the government should not serve to deny the people of the benefits and enjoyment of 'their' property. *See Bartholomew v. Staheli*, 86 Cal.App.2d 844, 195 P.2d 824 (1948).

State v. West, 31 N.C. App. 431, 441–42, 229 S.E.2d 826, 831–32 (1976), aff'd, 293 N.C. 18, 235 S.E.2d 150 (1977). For all these reasons, the Commonwealth is the rightful owner of the Letter.

E. The Innocent Owner Defense is Not Applicable

The Estate claims that the Letter is exempt from forfeiture under the innocent owner defense. The burden is on the Estate to prove that it is an innocent owner. 18 U.S.C. § 983(d)(1). For the reasons detailed herein, this defense is not available to the Estate.

Section 983(d) of CAFRA provides that,

> (1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving that the claimant is an innocent owner by a preponderance of the evidence.
>
> …
>
> (3)(A) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term "innocent owner" means a person who, at the time that person acquired the interest in the property –
>
> (i) Was a bona fide purchase or seller for value (including a purchaser or seller of good or services for value); and
>
> (ii) Did not know and was reasonably without cause to believe that the property was subject to forfeiture.

18 U.S.C. § 983(d). CAFRA also includes an exemption to the innocent owner defense:

> (4) Notwithstanding any provision of this subsection, no person may assert an ownership interest under this subsection in contraband or other property that it is illegal to possess.

18 U.S.C. § 983(d)(4). For the reasons detailed herein, this court concludes that the exemption applies, and the Estate cannot maintain possession of the Letter which it was required by statute to return upon demand.

The statute does not define a "bona fide purchaser for value," but some courts have looked to interpretations of similar language in the Continuing Criminal Enterprise Act, 21 U.S.C. § 853 (n)(6)(B), which generally construes a bona fine purchaser for value "liberally," as "'all persons who give value . . . in an arms'-length transaction with the expectation that they would receive equivalent value in return.'" U.S. v. 198 Training Field Road, 2004 WL 1305875, at *2 (D. Mass. June 14, 2004) (quoting U.S. v. Reckmeyer, 836 F.2d 200, 208 (4th Cir. 1987)). Here the Estate contends that it was a bona fide purchaser for value of the Letter based on family lore of R.E. Crane's alleged purchase of the Letter in around 1945 from John Heise Autographs, owned by Elmer V. Heise, a reputable historical documents dealer in Syracuse, New York. (See Estate Mem. at 15). As noted above, the only evidence the Estate has of this transaction is a post-marked envelope from John Heise Autographs addressed to R.E. Crane at his business address in Ford City, Pennsylvania. (Id.). The Estate further asserts that no member of the Crane family ever knew the Letter was stolen. (Id. at 17). The United States and the Commonwealth challenge the sufficiency of these conclusory assertions, and question whether a truly reputable dealer and buyer would not have known of the document's "true provenance" given the type of correspondence in question, the law preventing the Commonwealth from alienating such documents, and the publicity about the theft. (See Commonwealth Mem. at 3 & n. 1; USA Mem. at 14). In any event, these

disputed facts do not need to be resolved at this time, since, even assuming that the Estate qualifies as a bona fide purchaser for value,[8] the exemption to the bona fide purchaser defense applies.

As detailed above, the innocent owner defense is not available in the case of "contraband or other property that is illegal to possess." 18 U.S.C. § 983(d). "Contraband" is identified separately from "property that is illegal to possess" in the statute, and the latter is not limited to property that is *per se* illegal to possess. Rather, "illegal to possess" includes property that "becomes illegal to possess because of extrinsic circumstances." 144,774 Pounds of Blue King Crab,

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[8] In light of this assumption, this court will not address the Estate's argument that there has to be proofof actual knowledge of wrongdoing to preclude a purchaser for value from being a bona fide purchaserunder CAFRA. (See Estate Mem. at 16). This court does note, however, that the law is "well-settled" that "when a thief sells chattels, even to an honest purchaser, no title passes, and the owner may maintain an action for the property without a previous demand." Heckle v. Lurvey, 101 Mass. 344, 345 (1869). See also Farm Bureau Mut. Auto. Ins. Co. v. Moseley, 47 Del. 256, 90 A.2d 485, 488 (1952) ("Thegeneral rule is well established that no one can transfer a better title to personal property or chattels than he himself has. Even a bona fide purchaser acquires no title to property which has been stolen") (citing Heckle and other cases); Motors Ins. Corp. v. State of South Carolina, 313 S.C. 279, 282, 437 S.E.2d 555, 557 (1993) ("Because a person can pass to his successor no greater title than he acquired, a thief or one in the subsequent chain of title cannot grant good title to stolen property, even to a bona fide purchaser."); In re Paysage Bords De Seine, 1879 Unsigned Oil Painting on Linen by Pierre-Auguste Renoir, 991 F. Supp. 2d 740, 744-745 (E.D. Va. 2014) ("even a good-faith purchaser for value cannot acquire title to stolen goods"); Brown Univ. v. Tharpe, No. 4:10CV167, 2013 WL 2446527, at *11 (E.D. Va. June 5, 2013) ("a thief cannot pass title to stolen goods even to an innocent purchaser who pays for the stolen goods.") (citation omitted).

410 F.3d at 1135. It "includes items that may be legally possessed in some circumstances but that become illegal to possess in others." Id. (purchaser of king crab caught and imported into the United States in violation of federal law could not assert an innocent owner defense in forfeiture proceedings: while the possession of crab is not "inherently unlawful," it was "illegal to possess" the shipment in question because it was imported, received or acquired in violation of federal law). See also U.S. v. 186,675 Board Feet and 11 Doors and Casings, More or Less, of Dipteryx Panamensis Imported from Nicaragua, 587 F.Supp.2d 740, 751 (E.D. VA 2008) (claimants cannot assert innocent owner defense in forfeiture action because it was "illegal to possess" wood that was imported into the United States in violation of federal law), *aff'd sub nom.* U.S. v. Thompson, 332 F. App'x 882 (4th Cir. 2009). In the instant case, persons who have taken possession of a public record are obligated to return the public document to its governmental custodian on demand, and the failure to do so subjects the person retaining the public record to fines and/or imprisonment. Mass. Gen. Laws ch. 66, §§ 13, 15. It is illegal for the Estate to possess the original 1780 document that belongs to the Commonwealth. Therefore, the Estate cannot assert an innocent owner defense.[9]

The Estate argues that there is insufficient evidence to prove that the Letter was stolen. While this court does find the evidence submitted by the

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[9] Since this court concludes that it was illegal for the Estate to possess the Letter under CAFRA, it will not reach the claim of the United States that the Estate could be liable for possession of stolen or unlawfully converted property under 18 U.S.C. §§ 2314-15 and Mass. Gen. Laws ch. 266, § 60. (See USA Mem. at 17).

Commonwealth persuasive, this issue does not need to be finally resolved. Where, as here, there is no authority for the Commonwealth to divest itself of pre-1870 original documents maintained in its files, and it has demanded the return of the Letter, the Estate's possession of the Letter is illegal under CAFRA. 18 U.S.C. § 983(d)(4). See $75,000 in U.S. Currency, 97 F. Supp. 3d at 3 (holding that because lottery tickets could not be brought into the United States legally, they were illegal to possess under 18 U.S.C. § 983(d)(4) and granting government's motion to strike a claim under CAFRA for lack of standing as no ownership interest can be established in the seized property); U.S. v. Approx. 236 Firearms and 11,376 Rounds of Ammunition, No. 3:12-cv-00115, 2014 WL 12575724, *4 (S.D. Iowa Apr. 28, 2014) (where claimants are precluded from obtaining a federal firearms license as a matter of law, they cannot legally possess the guns and ammunition at issue, and cannot assert the innocent owner defense under 18 U.S.C. § 983(d)(4)).[10]

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[10] U.S. v. North Carolina's Original Copy of the Bill of Rights, No. 5:03-CV-2204-BO, 2004 WL 3609349 (E.D. North Carolina, Feb. 19, 2004), vacated (for lack of jurisdiction due to settlement) and remanded *sub nom.* In re Matthews, 395 F.3d 477 (4th Cir. 2005) is also instructive. There, the Court held that an allegedly stolen Original Copy of the Bill of Rights satisfied North Carolina's three-part test for official state documents. The Court explained that, "even if [the claimant] or any other party purchased or otherwise possessed North Carolina's Original Copy of the Bill of Rights outright, this illegal possession did not dissolve the State of North Carolina's lawful possessory interest in the document because there has never been a legally authorized means of selling, forfeiting or abandoning public documents of the State of North Carolina." 2004 WL 3609349 at *3. While the North Carolina public records law differs from that of the Commonwealth, the reasoning that the state need not prove a public record was actually stolen to retain its ownership interest in that document applies to the instant case, as the

The results are the same whether the Commonwealth was deprived of its property "by theft or other illegal act." U.S. v. Barnard, 72 F. Supp. 531, 532-33 (W.D. Tenn. 1947).

Finally, the Estate indicates that at a minimum it should be entitled to cash compensation in exchange for the Letter. (See Estate Mem. at 19, n.5). 18 U.S.C. § 983(d)(5)(B) provides that, "[i]f the court determines . . . that an innocent owner has a partial interest in property otherwise subject to forfeiture . . . the court may enter an appropriate order . . . transferring the property to the Government with a provision that the Government compensate the innocent owner to the extent of his or her ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets[.]" This Court finds that this provision does not apply here, where the Estate does not have any ownership interest in the Letter, and the item forfeited will not be liquidated.[11]

Massachusetts Public Records Act likewise does not provide for transferring ownership of a document of the Commonwealth dated earlier than 1870.

[11] The Estate also cites to a New Jersey Supreme Court decision, Okeeffe v. Snyder, 83 N.J. 478, 499, 416 A.2d 862, 873 (1980) for the proposition that "not all property claimed to have been stolen is automatically returned to its alleged rightful owner." (Estate Mem. at 16). In Okeeffe, the court held that the discovery rule governed the statute of limitations in an action for replevin of stolen artwork under New Jersey law. Okeeffe, 83 N.J. at 498, 416 A.2d at 872-73. Okeeffe, which has no precedential value in the instant case, does not address either public records or a statutory scheme such as that found here. The New Jersey court also fails to address the well-established line of cases holding that one who lacks good title cannot sell good title, even to a bona fide purchaser. According to the Okeeffe Court, "[u]nder the U.C.C. entrusting possession of goods to a merchant who deals in that kind of goods gives the merchant the power to

F. The Doctrine of Laches is Inapplicable

Finally, the Estate argues that the United States and Commonwealth "waited over 7 decades before doing anything to recover what it believed to be a stolen document" and that, as a result, the Commonwealth's claim and the United States' action are barred by the doctrine of laches. This argument is unsupported by the facts and the law.

"The equitable doctrine of laches bars assertion of a claim where a party's delay in bringing suit was 1) unreasonable, and 2) resulted in prejudice to the opposing party." K-Mart Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 911 (1st Cir. 1989). Laches is an affirmative offense, and the Estate "has the burden of proving both unreasonableness of the delay and the occurrence of prejudice." Id. Significantly, "the laches defense is generally inapplicable against a State." Illinois v. Kentucky, 500 U.S. 380, 388, 111 S. Ct. 1877, 1883, 114 L. Ed. 2d 420 (1991) (and authorities cited).

In the instant case, the record is clear that the Commonwealth notified police when the theft was discovered and publicized the theft in a number of places. At some point the missing document was listed in a national database so that sellers could determine that the document was "missing" from the Archives. Once notified of the potential sale of the Letter by the Estate, the government acted swiftly in seeking its return. While no conclusive ruling needs to be made on this affirmative offense, the claim of laches does not appear to be supported by the factual record.

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transfer all the rights of the entruster to a buyer in the ordinary course of business." Id., 83 N.J. at 499, 416 A.2d at 873. Here, there is no evidence that the entruster ever had good title to the Letter. In any event, this court declines to follow the dicta in Okeefe.

Moreover, the Estate has not established any prejudice by the delay. The family enjoyed its possession of the Letter. No events over the years could change the fact that the Commonwealth could not legally give up its ownership of the Letter.

Finally, the public policy against applying laches to the government is particularly compelling in the instant case. "The public interest in preserving public rights and property from injury and loss attributable to the negligence of public officers and agents, through whom the public must act, justified a special rule for the sovereign." Block v. N. Dakota ex rel. Bd. Of Univ. & Sch. Lands, 461 U.S. 273, 294, 103 S. Ct. 1811, 1824, 75 L. Ed. 2d 840 (1983) (O'Connor, J. dissenting). Here, whether there was a theft (as the facts seem to indicate), or negligence which resulted in the Commonwealth losing possession of an historic document, the public should not be deprived of part of their history.

V. CONCLUSION

For the forgoing reasons, the United States' Motion to Strike (Docket No. 24) is ALLOWED and the Estate's Motion to Dismiss (Docket No. 28) is DENIED as moot.

/s/ Judith Gail Dein
Judith Gail Dein
United Magistrate Judge

Appendix E

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 20-2061

UNITED STATES OF AMERICA,

Plaintiff, Appellee,

v.

LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780,

Defendant in Rem,

ALDRICH L. BOSS, as personal representative for the estate of STEWART R. CRANE,

Claimant, Appellant,

COMMONWEALTH OF MASSACHUSETTS, Acting by and through The Massachusetts Archives,

Claimant, Appellee.

ERRATA SHEET

The opinion of this Court issued on October 6, 2021 is corrected as follows:

On page 3, line 10, replace "Investigations" with "Investigation".

On page 6, lines 2, 3, 5, and 8, replace "letter" with "Letter".

On page 12, footnote 4, replace "letter" with "Letter".

On page 19, line 9, add quotation marks around "shall".

On page 22, line 7, replace "Oneida Indian" with "Oneida Indian Nation".

Appendix F

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 19-11121
	)	
LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780	)	
Defendant.	)	

VERIFIED COMPLAINT FOR FORFEITURE *IN REM*

The United States of America, by its attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, in a civil action of forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C), alleges, upon information and belief, that:

I. NATURE OF THE ACTION

1. This action is brought by the United States of America seeking forfeiture of all light, title and interest in a Letter from Alexander Hamilton to the Marquis De Lafayette dated July 21, 1780 (the "Defendant *in rem*" or the "Letter"), which was illegally removed from the Commonwealth of Massachusetts Archives. The Defendant *in rem* is

located in a frame. On the back of the frame is a typed transliteration of the Letter's contents. Photographs of the Defendant *in rem* are attached as Exhibit A. The Defendant *in rem* is currently in the possession of Federal Bureau of Investigation ("FBI") in Boston, Massachusetts.

2. The Defendant *in rem* is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) because there is probable cause to believe that the Defendant *in rem* is property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 2314 and/or 18 U.S.C. § 2315.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355.

4. Venue is proper under 28 U.S.C. § 1395 because the Defendant *in rem* is located in the District of Massachusetts.

III. FACTUAL BACKGROUND

A. Theft from the Commonwealth of Massachusetts Archives

5. The Defendant *in rem,* along with many other historic documents, were stolen from the Commonwealth of Massachusetts' Archives ("Massachusetts Archives" or "Archives") between 1937 and 1945 by a former employee of the Archives. The Massachusetts Archives resides within the Office of the Secretary of the Commonwealth and is part of state government.

6. The theft, which also involved original papers of George Washington, Benjamin Franklin, Paul

Revere, and Benedict Arnold, among others, was not discovered for several years.

7. The Massachusetts Archives has several indices, created before the theft, that identify the Defendant *in rem* as property contained within the Archives' collection, including a handwritten chronological index from the Massachusetts Archives prepared in the late 19th century. The 19th century index lists, in chronological order, the "Letters from parties under named to the Council (etc.)."[1] The Defendant *in rem* is identified therein as document 382 in volume 202 of the Archives' collection. The Defendant *in rem* is also included on a name and a subject index, taken from the volume of which the Letter was a part (Mass. Archives Collection, Vol. 202, p. 382).

8. Years before the theft, in the 1920s, the Massachusetts Archives made a Photostat copy of the Letter. A copy of the Massachusetts Archives' Photostat of the Letter is attached as Exhibit B.

9. The former archive employee, who was arrested in 1950, sold the stolen documents to dealers in rare books and documents throughout the United States. On February 27, 1950, the then-Attorney General of the Commonwealth of Massachusetts sent a letter to leading dealers in rare books and documents advising them of the theft, in an effort to recover the documents and to gather evidence.

10. The Massachusetts Archives' Photostat copy of the Letter shows the Letter as having the reference

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[1] The Massachusetts Archives only has a Photostat of this handwritten index because the former employee also stole pages of the index.

number 382 on it, reflecting its location in the Archives' collection.

11. The Defendant *in rem* does not appear to contain the reference number 382, although it has not been removed from its frame. The Massachusetts Archives reports that other documents stolen by the fonner employee, and later recovered, had their reference numbers removed or razored off in an attempt to obscure any identifying tags from the original document. Archive personnel smmise that the reference number 382 could have been removed from the Defendant *in rem* for this purpose.

12. Information about the Letter is available on the publicly-accessible website, Founders.com. The website is a collaboration between the National Archives and The University of Virginia Press to "make freely available online the historical documents of the Founders of the United States of America." Founders.com is often used to confirm the authenticity and provenance of the papers of the Founding Fathers. The text of the Letter is reproduced on that website at https://founders.archives.gov/documents/Hamilton/01-02-02-0775, where it is also noted that the Letter is "missing" from the Massachusetts Archives.

13. Since at least 1920, before the time of the theft, Massachusetts law has provided that the Commonwealth is charged with preserving and safely keeping all original documents dated before 1870 in its possession. Mass. Gen. L. c. 66, § 8; *see also* Mass. Acts and Resolves, St. 1920, c. 2 and St. 1943, c. 128. Thus, Massachusetts law regarding public records prohibits the lawful removal or alienation of such documents from the Commonwealth's custody, and, as a result, only the Commonwealth can lawfully own

original documents from its collection dated before 1870, including, but not limited to, the Defendant *in rem*.

B. The Proposed Sale of the Letter

14. On or about November 15, 2018, an auction house located in Alexandria, Virginia received the Defendant *in rem* from a family in South Carolina that wished to consign the Letter for sale, along with other documents. The Defendant *in rem* was transported by a moving company from South Carolina to Virginia.

15. The auction house had the Defendant *in rem* valued at an auction estimate of $25,000 to $35,000.

16. A researcher at the auction house located a copy of the Defendant *in rem* on the Founders.com website, and noted that the Letter was listed as "missing" from the Massachusetts Archives. The auction house contacted the Archives, and the Archives confirmed that the letter had been stolen from its collection in or around the 1940s and supplied documentation about the theft. Thereafter, the auction house contacted the FBI.

17. The family from South Carolina that consigned the Defendant *in rem* believes that a relative, who was a document collector and who is now deceased, obtained the Letter from Elmer Heise, who is believed to have been a rare book and document dealer in Syracuse, New York, in the 1940s. When the relative died, his collection, including the Defendant *in rem,* was divided among his children. As of the date of this verified complaint, the United States has no knowledge of any documentation regarding their relative's acquisition of the Defendant *in rem*.

IV. CLAIM FOR FORFEITURE

18. The allegations contained in paragraphs 1 through 17 are incorporated herein.

19. Title 18, United States Code, Section 2314, provides in pertinent part that "[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, the value of $5,000 of more, knowing the same to have been stolen, converted or taken by fraud," shall be subject to criminal penalties.

20. Title 18, United States Code, Section 2315, provides in pertinent part that "[w]hoever receives, possesses, conceals, stores, batters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of $5,000 or more ... which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken," shall be subject to criminal penalties.

21. Pursuant to 18 U.S.C. § 98l(a)(1)(C), "any property, real or personal, which constitutes or is derived from proceeds traceable," to a violation of 18 U.S.C. §§ 2314 and/or 2315 is subject to forfeiture to the United States. Both 18 U.S.C. §§ 2314 and 2315 are forfeiture predicates through 18 U.S.C. § 98l(a)(1)(C), which, by reference, incorporates offenses listed in 18 U.S.C. § 1961(1), including 18 U.S.C. §§ 2314 and 2315.

22. The Defendant *in rem* is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) because there is probable cause to believe that the Defendant *in rem* is property, real or personal, which constitutes or is derived from a violation of 18 U.S.C. § 2314 and/or 18 U.S.C. § 2315.

WHEREFORE, the United States of America respectfully requests:

1. That a Warrant and Monition, in the form submitted herewith, be issued to the United States Marshals Service for the District of Massachusetts, commanding it to retain custody of the Defendant *in rem* and to give notice to all interested parties to appear and show cause why the forfeiture should not be decreed;

2. That judgment of forfeiture be decreed against the Defendant *in rem;*

3. That thereafter, the Defendant *in rem* be disposed of according to law; and

4. For costs and all other relief to which the United States may be entitled.

Respectfully submitted,

ANDREW E. LELLING
United States Attorney,

By: /s/ Carol E. Head
CAROL E. HEAD, BBO No. 652170
Assistant United States Attorney
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100
carol.head@usdoj.gov

May 15, 2019

VERIFICATION

I, Marc D. Hess, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and as such has responsibility for the within action; that he has read the foregoing complaint and knows the contents thereof; and that the same is true to the best of his own knowledge, information and belief.

The sources of deponent's information and the ground of his belief are official records and files of the FBI, and information and documents obtained and/or reviewed by deponent during an investigation of alleged violations of 18 U.S.C. §§ 2314 and 2315.

/s/ Marc D. Hess
Marc D. Hess
Special Agent
Federal Bureau of Investigation

Dated: May 14, 2019

Jurat

Suffolk, ss. Boston, Massachusetts

On this 14th day of May, 2019, before me, Marc D. Hess, the undersigned notary public, personally appeared Marc D. Hess, Special Agent with the Federal Bureau of Investigation, proved to me through satisfactory evidence of identity, which was Virginia Driver's License, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

/s/ Karen T. Back
Karen T. Back
Notary Public

My commission expires: 7/19/2024

[SEAL]
KAREN T. BACK
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
July 19, 2024

Appendix G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff,	)
v.	) Civil Action No. 19-11121-JGD
LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780 Defendants.	)

NOTICE OF CLAIM AND VERIFIED STATEMENT OF INTEREST

Now comes the claimant Aldrich L. Boss, in his capacity as Personal Representative for the Estate of Stewart R. Crane ("Claimant"), pursuant to Rule G5(a)(1) Supplemental Rules Maritime and Admiralty Claims, and gives notice of their ownership interest to the property known as the Letter from Alexander Hamilton to the Marquis De Lafayette dated July 21, 1780 ("Hamilton Letter"). Claimant asserts an ownership claim to the property as described in the Verified Complaint of the United States of America for *In Rem* Forfeiture, dated May 15, 2019 ("Complaint").

1. The property claimed is the said Hamilton Letter.

2. Claimant is the owner of record of the above described property.

Now comes claimant Aldrich L. Boss and being duly sworn hereby asserts the above information is true under the pains and penalties of perjury.

/s/ Aldrich L. Boss
ALDRICH L. BOSS, as Personal Representative

Dated: August 22, 2019

Appendix H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	C.A. No. 1:19-cv-11121
LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780,	)	
Defendant.	)	

VERIFIED CLAIM BY THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth of Massachusetts hereby submits a claim pursuant to Supp. R. G(5)(a) to assert its interest in the Defendant *in rem* in this case, a Letter from Alexander Hamilton to the Marquis de Lafayette dated July 21, 1780 (Asset ID#: 19-FBI-001709). Photographs of the Defendant *in rem* have been attached as Exhibit A to the Verified Complaint of the United States of America. The Defendant *in rem* is currently in the possession of the Federal Bureau of Investigation in Boston, Massachusetts.

IDENTITY OF THE CLAIMANT

1. This claim is submitted on behalf of the Commonwealth of Massachusetts, acting by and

through the Massachusetts Archives, a division of the Office of the Secretary of the Commonwealth (hereinafter the "Archives"), which has a business address of One Ashburton Place, Room 1719, Boston, MA 02108.

2. The Archives is statutorily charged with preserving, managing, and making accessible the records of the Commonwealth in its possession. *See* G.L. c. 9, § 2.

CLAIMANT'S INTEREST IN THE PROPERTY

3. The Defendant *in rem*, a letter from Alexander Hamilton to the Marquis de Lafayette dated July 21, 1780, is a well-documented part of the collection of the Archives.

4. The Defendant *in rem* was initially sent to the Massachusetts Council by General William Heath as an enclosure with his letter dated July 25, 1780 discussing military strategy during the Revolutionary War. *See* Exhibit 2. The Council's records from July 26, 1780 note the receipt of General Heath's letter along with the Defendant *in rem*. Based on the information supplied by General Heath's letter, including the information outlined in the Defendant *in rem*, the Council discussed moving the militia in response to an expected enemy attack upon Rhode Island. *See* Exhibit 3.

5. As items from a Massachusetts General in the Continental Army directed to the Massachusetts Council, General Heath's correspondence and the enclosed Defendant *in rem* were duly received and retained by an administrative division of the Massachusetts government in the normal course of its recordkeeping.

6. On behalf of the Commonwealth, the Archives succeeded to and maintained possession and ownership of the Defendant *in rem*.

7. The Commonwealth's ownership of the Defendant *in rem* through its Archives is well-supported by historical documentation, including the following documents:

a. The Defendant *in rem* is listed in a chronological index of items within the Archives Collection that was compiled in the 1880s. *See* Exhibit 4.

b. The internal table of contents and attendant name index for Volume 202 of the *Massachusetts Archives Collection* (SC1/Series 45x) identifies the Defendant *in* rem as part of the Archives Collection in the mid-19th Century. *See* Exhibits 5 & 6. Indeed, the internal table of contents the *Massachusetts Archives Collection* specifically references General Heath's letter to the Council and the Defendant *in rem*, stating: "Gen. William Heath to the Council in support of Rochambeau's request with a letter (382) from Alexander Hamilton." *See* Exhibit 5.

c. In the 1920s, select volumes of the Archives Collection were chosen for reproduction on the basis of their historical significance and use. A Photostat copy of the Defendant *in rem* was created by the Archives at that time and reproduced and bound within a facsimile of Volume 202. *See* Exhibit 7.

d. A transcription of the Defendant *in rem* also appears on the website Founders Online (available at https://founders.archives.gov/documents/Hamilton/

01-02- 02-0775), a resource created by the National Archives that makes available historical documents of the Founders of the United States of America. *See* Exhibit 8. A footnote to the entry relating to the Defendant *in rem* indicates that this document was missing from the Archives.

8. The Defendant *in rem* was illegally stolen from the Archives section at the Massachusetts State House by a former employee of the Archives. The theft has been attributed to Harold E. Perry who had been hired by the Archives as a cataloger in 1938. Mr. Perry allegedly stole several rare documents from the Archives Collection at various times between 1938 and 1946, including items signed by George Washington, Benjamin Franklin, Paul Revere, Benedict Arnold, and Peter Stuyvesant. The thefts first came to light in March of 1950. During the ensuing investigation, Mr. Perry admitted having stolen documents from the Archives. Following detection of the thefts, and failed efforts to locate the documents among dealers in New England, then-Massachusetts Attorney General Francis E. Kelly circulated letters about the document thefts to police departments in New York, Philadelphia, and Chicago. *See* Exhibit 9. Several contemporaneous news articles detail the theft of historical documents from the Archives. *See* Exhibit 10.

9. Massachusetts state law requires that documents in the Commonwealth's possession from the period before 1870 be kept and maintained in the custody of the Commonwealth. This law specifically provides, in pertinent part, that "Every original paper belonging to the files of the commonwealth … bearing date earlier than the year eighteen hundred and seventy … shall be preserved and safely kept." *See* G.L. c. 66, § 8 (attached hereto as Exhibit 1); *see also*

Mass. Acts and Resolves, St. 1920, c. 2 and St. 1943, c. 128. Accordingly, state law prohibits the lawful removal or alienation of such documents from the Commonwealth's custody, and as a result, only the Commonwealth can lawfully own original documents from its collection from the period before 1870, including the Defendant *in rem*.

10. The Commonwealth has never recovered all or a portion of its losses from the theft of the Defendant *in rem*, either via an insurance claim and/or via some other source of recovery.

11. A copy of this document will be served on the government attorney designated by the warrant and monition and by Supp. R. G(4)(b)(ii)(D), Assistant United States Attorney Carol E. Head.

12. Based on the foregoing, the Commonwealth submits that it is the sole rightful owner of the Defendant *in rem*. On behalf of the Commonwealth, the Archives has a valid, good faith, and legally recognizable interest in this asset. Accordingly, the Commonwealth submits this claim pursuant to Supp. R. G(5)(a) to assert its interest in the Defendant *in rem* in this case.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

By its Attorneys

MAURA HEALEY
ATTORNEY GENERAL

By: /s/ Adam Hornstine

Adam Horstine, BBO# 666296
Assistant Attorney General
Government Bureau/Trial Division
One Ashburton Place, Room 1813
Boston, MA 02108
(617) 963-2200, Ext. 2048
Adam.Hornstine@mass.gov

Date: August 23, 2019

CERTIFICATE OF SERVICE

I, Adam Hornstine, Assistant Attorney General, hereby certify that I have this day, August 23, 2019, served the foregoing claim upon all parties by electronically filing to all ECF registered parties and by sending a copy, first class mail, postage prepaid, to all unregistered parties

/s/ Adam Hornstine

Adam Hornstine, Assistant Attorney General

Appendix I

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 19-11121-JGD

UNITED STATES OF AMERICA, Plaintiff,	)
v.	)
LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780 Defendant.	)

CLAIMANT'S ANSWERS TO PLAINTIFF'S SPECIAL INTERROGATORIES

Now comes claimant, the Estate of Stewart R. Crane ("Claimant"), by and through counsel, Fox Rothschild LLP, and hereby submits its objections and responses to plaintiff United States of America's ("Plaintiff") Special Interrogatories to Claimant, dated August 30, 2019 ("Interrogatories"), as follows:

GENERAL OBJECTIONS

1. Claimant objects to the Interrogatories to the extent that they seek to impose obligations in excess of those obligations imposed by the Federal Rules of Civil Procedure ("FRCP").

2. Claimant objects to the Interrogatories insofar as they seek information that is protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other privilege and/or immunity. Claimant will produce a privilege log for all such documents created prior to the filing of the Complaint in this matter. Inadvertent production of such information shall not waive any privilege or protection.

3. Claimant objects to the Interrogatories insofar as they seek documents already requested and produced.

4. Claimant objects to the Interrogatories insofar as they seek information that is neither relevant to any party's claim or defense nor proportional to the needs of the case.

5. Claimant objects to the Interrogatories insofar as they seek information which requires Claimant to speculate or provide information that is not in its possession, custody, or control.

6. Claimant objects to the Interrogatories insofar as they are overly broad, burdensome, harassing, vague, and/or ambiguous.

7. Claimant objects to the Interrogatories insofar as they seek documents already in the possession of the Plaintiff or equally available to the Plaintiff.

8. Claimant objects to the Interrogatories insofar as they fail to contain a reasonable restriction or limitation regarding time, location or scope and to the extent that these Interrogatories are not limited to legitimate causes or defenses.

9. Claimant objects to the Interrogatories insofar as they seek information protected from disclosure on

the grounds that the documents sought are confidential or proprietary business information of Claimant and/or affiliated persons or entities. Claimant will only produce documents containing confidential or proprietary business information pursuant to a confidentiality agreement.

10. Claimant objects to the Interrogatories to the extent that they seek information that is redundant, duplicative, and/or call for the disclosure of cumulative information.

11. Nothing in these answers to Interrogatories shall be construed as a waiver of any right or objection that otherwise might be available to Claimant. The answers herein shall not be deemed to be any admission of the relevancy, materiality, or admissibility in evidence of the Interrogatories or Claimant's responses to them. Claimant's answers herein are based upon investigation and discovery undertaken as of the date hereof, and its investigation and discovery is ongoing.

12. Claimant reserves the right to supplement, modify, or amend its answers at any time before trial.

13. The answers herein are provided solely for purposes of, and in relation to, this action.

14. Each answer is given subject to each of the foregoing general objections. All such objections and grounds therefore are reserved and may be interposed at the time of trial. Asserting a specific objection in response to any discovery request does not waive Claimant's right to assert any applicable general objection to that request.

SPECIAL INTERROGATORY NO. 1:

Describe, in detail, the role, duties, obligations and responsibilities of the Personal Representative, Aldrich L. Boss, the date and full circumstances of his appointment as the Personal Representative, and identify any documents concerning the appointment of the Personal Representative with specificity, including the name, address and telephone number of its custodian.

Answer: Claimant objects to the Interrogatory on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant to any party's claim or defense nor proportional to the needs of the case. Claimant additionally objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion that is solely within the province of the court and the jury to determine. Without waiving these objections, the role, duties, obligations and responsibilities of Aldrich Boss as Personal Representative for the Estate of Stewart R. Crane are set forth in the Last Will and Testament of Stewart R. Crane dated March 16, 2004 (as amended by that certain First Codicil to Last Will and Testament of Stewart R. Crane dated May 31, 2016, the "Will") and the South Carolina Probate Code (the "Probate Code"), and Claimant craves reference to the Will and Probate Code for a complete and substantive description of such role, duties, obligations and responsibilities. A copy of the Certificate of Appointment on file with the South Carolina Probate Court (Greenville County) under Case Number 2019ES2300103 is attached in further response to this Special Interrogatory No. 1. The Will is likewise

on file with the South Carolina Probate Court (Greenville County).

SPECIAL INTERROGATORY NO. 2:

Identify the circumstances of the probate of the Estate of Stewart R. Crane, including the dates, court and location of any probate proceedings, the name(s) of the executor(s) or personal representative(s), and any records or documents filed in such probate proceedings that concern the Letter from Alexander Hamilton to the Marquis De Lafayette dated July 21, 1780, seized from the Potomack Company on December 19, 2018 (hereinafter the "Hamilton Letter") with specificity, including the name, address and telephone number of its custodian.

Answer: Claimant objects to the Interrogatory on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant to any party's claim or defense nor proportional to the needs of the case. Claimant additionally objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion that is solely within the province of the court and the jury to determine. Without waiving these objections, Stewart R. Crane passed away on December 21, 2018. His estate was submitted to probate in Greenville County, South Carolina as Case Number 2019ES2300103. The Co-Personal Representatives are Alrdrich Boss and Joanne R. Crane, as evidenced by the Certificate of Appointment filed under such Case Number. The Hamilton Letter and similar historical documents of Stewart R. Crane are inventoried as assets of his estate as reflected on the final inventory of estate assets, which is produced herewith or hereafter.

Claimant is aware of no other probate documents relating to the Hamilton Letter.

SPECIAL INTERROGATORY NO. 3:

State with particularity the nature of the Claimant's current interest in all or any portion of the Hamilton Letter, and the full circumstances under which that interest arose.

Answer: Claimant objects to the Interrogatory on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant to any party's claim or defense nor proportional to the needs of the case. Claimant additionally objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion that is solely within the province of the court and the jury to determine. Without waiving these objections, Claimant submits, upon information and belief, that Raymond E. Crane (hereinafter, R. E. Crane) purchased for fair market value the Hamilton Letter from John Heise Autographs (Elmer V. Heise) a reputable dealer in rare books and documents in the year 1945. R. E. Crane was a collector of historical documents. A portion of R. E. Crane's collection (including the Hamilton Letter) passed down to his last surviving son Robert F. Crane, Sr. In turn, Robert F. Crane, Sr., transferred the Hamilton Letter along with a number of other historical documents to Stewart R. Crane by inter vivos gift in the early 1980's. Simultaneously, the balance of Robert F. Crane, Sr.'s collection was gifted to Stewart's brother, Robert F. Crane, Jr. An exact date of the gifts is not known/recollected, but the Declaration of Robert F. Crane, Jr. is attached hereto in response to this Special Interrogatory No. 3.

Subsequently, on November 2, 2018, Stewart R. Crane (through his agent and attorney William B. Swent) contracted with The Potomack Company for sale of his historical documents collection. The United States District Court for the Eastern District of Virginia issued a Warrant of Seizure on December 19, 2018, and under authority of such Warrant, Special Agent for the Federal Bureau of Investigation, Marc Hess, took possession of the Hamilton Letter on that same day. On December 21, 2018, Stewart R. Crane passed away, and as such, his interest in the Hamilton Letter devolved to Claimant. As of the date of these responses, administration of the Estate of Stewart R. Crane continues (with no final Receipts and Releases having yet issued). As such, the legal right, title and interest of Stewart R. Crane (as successor to, and assignee of, R. E. Crane, a bona-fide purchaser for value and without prior knowledge of facts or circumstances leading to forfeiture) in and to the Hamilton Letter is presently vested in Claimant.

SPECIAL INTERROGATORY NO. 4:

List any fact establishing that the Claimant is the owner of the Hamilton Letter.

Answer: See response to Special Interrogatory No. 3.

SPECIAL INTERROGATORY NO. 5:

Identify the source from which the Claimant claims that the Hamilton Letter was obtained, including the exact transactions and chain of custody. Your answer should also include: the date the Claimant purchased or obtained the Hamilton Letter, the value the Claimant paid for the Hamilton Letter, and from whom (name, address and telephone number) the

Claimant obtained the Hamilton Letter, the reason why the Claimant obtained the Hamilton Letter, and where the Claimant obtained the Hamilton Letter, as well as the location of the Hamilton Letter from the date that Claimant obtained it until December 2018. If any portion of the Hamilton Letter was purchased by the Claimant using a check or money order, list the payer and payee of the check(s) or money order, the amount thereof, and the approximate date thereof. Identify each witness (by name, address and telephone number) and each document with specificity (and the name, address and telephone number of the custodian of the document) that supports your answer as to how the Claimant obtained the Hamilton Letter.

Answer: See response to Special Interrogatory No. 3. Also, as indicated by a post-marked envelope from John Heise Autographs (Elmer V. Heise), which envelope has consistently been maintained with the Hamilton Letter, Claimant declares, on information and belief, that R. E. Crane purchased the Hamilton Letter in the year 1945. Claimant further submits that the Hamilton Letter was initially delivered to R. E. Crane at his business address in Ford City, Pennsylvania. R. E. Crane subsequently moved his residence to Florida, where he resided in Miami Beach. Robert F. Crane, Sr. likewise maintained his residence in Florida (Miami Beach and Winter Park). Stewart Crane lived in Winter Park, FL; Dallas, TX; Atlanta, GA and finally passed away as a resident of Greenville, SC.

SPECIAL INTERROGATORY NO. 6:

Describe the full circumstances concerning the Claimant's contention in its Answer that the

Hamilton Letter "was purchased by R. E. Crane from Mr. Elmer Heise, and upon, Mr. Crane's death, went to his heirs." Your answer should also include: the date R. E. Crane purchased the Hamilton Letter, the value R. E. Crane paid for the Hamilton Letter, and from whom (name, address and telephone number) R. E. Crane obtained the Hamilton Letter, the reason why R. E. Crane obtained the Hamilton Letter, and where R. E. Crane obtained the Hamilton Letter, as well as the location of the Hamilton Letter from the date that R. E. Crane obtained it until the Claimant obtained an interest in the Hamilton Letter. If any portion of the Hamilton Letter was purchased by R. E. Crane using a check or money order, list the payer and payee of the check(s) or money order, the amount thereof, and the approximate date thereof. Your answer should further include: the date the Hamilton Letter "went to his heirs," the identities of the heirs or heir whom you contend inherited the Hamilton Letter, and the location of the Hamilton Letter when it "went to his heirs." Identify each witness (by name, address and telephone number) and each document with specificity (and the name, address and telephone number of the custodian of the document) that supports your answer as to how R. E. Crane obtained the Hamilton Letter and how it "went to his heirs."

Answer: See Answers to Special Interrogatories 1 through 5. Additionally, Claimant submits that R. E. Crane was a collector and investor in historical documents. Claimant submits that R. E. Crane's document collection was maintained at his personal residence. Likewise, Robert F. Crane, Sr. maintained the Hamilton Letter at his personal residence, and Stewart R. Crane maintained the Hamilton Letter in plain view, in a frame, on the wall in his personal residence in Winter Park, Florida for many years,

until such residence was sold in June of 2015. After the sale of his home in Florida, Stewart moved to Highlands, North Carolina, and then to Greenville, South Carolina. During his tenure as a resident in North and South Carolina, the Hamilton Letter was stored in Stewart R. Crane's household files.

SPECIAL INTERROGATORY NO. 7:

Identify the circumstances of the probate of the Estate of R.E. Crane, including the dates, court and location of any probate proceedings, the name(s) of the executor(s) or personal representative(s), and any records or documents filed in such probate proceedings that concern the Hamilton Letter with specificity, including the name, address and telephone number of its custodian.

Answer: Claimant objects to the Interrogatory on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant to any party's claim or defense nor proportional to the needs of the case. Claimant additionally objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion that is solely within the province of the court and the jury to determine. Without waiving these objections, Claimant submits that R. E. Crane passed away as a resident of Miami Beach, Florida. Claimant is not aware of any R. E. Crane probate proceedings that concern the Hamilton Letter, but to the extent there are such probate records, they are publicly available.

SPECIAL INTERROGATORY NO. 8:

Describe the circumstances under which the Claimant consigned, or caused to be consigned the

Hamilton Letter for auction or sale by the Potomack Company. If the Claimant did not consign the Hamilton Letter for auction or sale, identify by name, address and telephone numbers the person(s) who did consign the Hamilton Letter for auction or sale. Identify any documents concerning the consignment of the Hamilton Letter with specificity, including the name, address and telephone number of its custodian.

Answer: Claimant objects to the Interrogatory on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant to any party's claim or defense nor proportional to the needs of the case. Claimant additionally objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion that is solely within the province of the court and the jury to determine. Without waiving these objections, William Swent, an attorney with the firm Fox Rothschild LLP assisted the Claimant with contracting for consignment of the Hamilton Letter and other items for sale by the Potomack Company. The contract for consignment is best evidence of this undertaking. A copy of the contract for consignment is attached.

SPECIAL INTERROGATORY NO. 9:

If you have any records, documents, or tangible items that reflect or are relevant to the Claimant's claimed interest in the Hamilton Letter or the Claimant's claim to the Hamilton Letter, identify each record, document or other tangible item with specificity, including the name, address and telephone number of its custodian.

Answer: See prior responses.

SPECIAL INTERROGATORY NO. 10:

State the names, current addresses and telephone numbers of all persons known or believed by you to have knowledge of or information pertaining to the Claimant's claimed interest in the Hamilton Letter, and summarize what information you believe they have pertaining to the Claimant's interest in the Hamilton Letter.

Answer: Claimant objects to the Interrogatory on the grounds that it is premature because Claimant has not yet determined all of the persons and/or entities that will or may provide evidence concerning or otherwise supporting any of the allegations in the Complaint. Without waiving this objection, Claimant submits the following persons list:

1. Aldrich Boss, Co-Personal Representative of the SRC Estate with knowledge described above.

[Address: Johns Island, SC 29455/Phone:];

2. William Swent, attorney for SRC Estate with knowledge described above.

[Address: Greenville, SC 29601/Phone:];

3. Robert F. Crane, Jr. with knowledge described above and in his Declaration.

[Address: Alachua, FL 32615/Phone: ;

4. Joanne R. Crane with knowledge described above.

[Address: Greenville, SC 29605/Phone:];

5. Elizabeth Crane Swent with knowledge described above.

[Address: Greenville, SC 29605/Phone:];

6. Anne-Stewart Crane Boss with knowledge described above.

[Address: Johns Island, SC 29455/Phone:];

7. Todd Sigety, certified appraiser with valuation knowledge in respect of the Hamilton Letter.

[Address: 425 South Washington Street, Alexandria, VA 22314/Phone: 703-836-1020]; and

8. Elizabeth Haynie Wainstein of The Potomac Auction Company, with knowledge described above.

[Address: 1120 North Fairfax Street, Alexandria, VA 22314/Phone: 703-684-4550]

SPECIAL INTERROGATORY NO. 11:

State in detail whether you believe any other person or entity has an interest in the Hamilton Letter and the basis therefor. Your response to this interrogatory should include, but not be limited to, the name, address, telephone number of every individual or entity who may have an in interest in the Hamilton Letter, and a specific description of their interest, especially as it relates to the interest the Claimant may have.

Answer: Claimant objects to the Interrogatory on the grounds that it is overly broad and unduly burdensome and seeks information that is neither relevant to any party's claim or defense nor proportional to the needs of the case. Claimant additionally objects to the Interrogatory on the grounds that the Interrogatory calls for a legal conclusion that is solely within the province of the court and the jury to determine. Without waiving these objections, Claimant submits that it is the singular holder of any lawful interest in the Hamilton

Letter, as successor in interest to R. E. Crane, a bona-fide, innocent purchaser for value and without knowledge of facts of circumstances giving rise to the subject forfeiture.

Respectfully submitted,

By: /s/ Ernest Edward Badway, Esq.
Ernest Edward Badway
BBO #562641
Fox Rothschild LLP
101 Park Avenue, Suite 1700
New York, New York 10178
Telephone: (212) 878-7986
Facsimile: (212) 692-0940
Email: ebadway@foxrothschild.com

CERTIFICATE OF SERVICE

I, Ernest Edward Badway, Esq., do hereby certify that I have served a copy of the foregoing via CM/ECF to Assistant United States Attorney Carol E. Head, United States Attorney's Office, Asset Forfeiture Unit, 1 Courthouse Way, Suite 9200, Boston, MA 02210; and Adam Hornstine, Esq., Assistant Attorney General, Government Bureau/ Trial Division, Office of Attorney General Maura Healey, One Ashburton Place, Boston, MA 02108, this 27th day of September 2019.

/s/ Ernest Edward Badway
Ernest Edward Badway

Appendix J

[Transcript Pages 1-4, 49]

UNITED STATES DISTRICT COURT DISTRICT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Civil Action
	)	No. 1:19-cv-11121-JGD
LETTER FROM ALEXANDER HAMILTON TO THE MARQUIS DE LAFAYETTE DATED JULY 21, 1780, Defendant.	)	

BEFORE THE HONORABLE
JUDITH G. DEIN
UNITED STATES MAGISTRATE JUDGE

MOTION HEARING

February 26, 2020

John J. Moakley United States Courthouse
Courtroom No. 15
One Courthouse Way
Boston, Massachusetts 02210

Linda Walsh, RPR, CRR
Official Court Reporter
John J. Moakley United States Courthouse
One Courthouse Way, Room 5205
Boston, Massachusetts 02210

lwalshsteno@gmail.com

APPEARANCES:

On Behalf of the Plaintiff:

UNITED STATES ATTORNEYS OFFICE
By: AUSA Carol E. Head
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210
617-748-3100
Carol.Head@usdoj.gov

On Behalf of the Claimant Commonwealth of Massachusetts:

ATTORNEY GENERAL'S OFFICE
By: Adam Hornstine, Esq.
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
617-963-2048
adam.hornstine@state.ma.us

On Behalf of the Interested Parties Ann-Stewart Boss and Estate of R.E. Crane:

FOX ROTHSCHILD LLP
By: Ernest E. Badway, Esq.
100 Park Avenue, Suite 1500
New York, New York 10017
212-878-7986
ebadway@foxrothschild.com

Proceedings recorded by sound recording and produced by computer-aided stenography

P R O C E E D I N G S

THE CLERK: The United States District Court for the District of Massachusetts is now in session on February 26th, the year 2020, in the matter of the

United States of America versus the Letter from Alexander Hamilton, Civil Action Number 2019-1121.

Could counsel please identify themselves for the record.

MS. HEAD: Good afternoon, Your Honor. Carol Head for the United States.

THE COURT: Good afternoon.

MR. BADWAY: Good afternoon, Your Honor. Ernest Badway for the estate.

MR. HORNSTINE: Good afternoon, Your Honor. Adam Hornstine. I'm an assistant attorney general from the Office of the Massachusetts Attorney General, and with me here today is Rebecca Murray from the office of the Commonwealth and Michael Como, who is from the Massachusetts State Archives.

THE COURT: Welcome.

I think a lot of people thought this would be interesting today. Welcome to everybody.

Okay. I think it makes probably the most sense to address the motion to strike which seems to encompass all of the big issues, so why don't we do that first.

MS. HEAD: Yes. Thank you, Your Honor, and I agree, it's an interesting matter here. It takes us back to the Revolutionary War and to the early days of the Commonwealth of Massachusetts.

We're here today about a letter from Alexander Hamilton to the Marquis de Lafayette from July of 1780 that was then forwarded on by a Massachusetts general, General William Heath, to the then governing body of the Commonwealth, the executive, as part of a request for military support -- sorry, from

the Colonial government in Massachusetts, which then was provided, and that's all according to records in the Massachusetts State Archives, now public records in the Massachusetts State Archives.

We have two competing claimants here. We have the estate and we have the Commonwealth of Massachusetts for the Massachusetts Archives and the Secretary of the Commonwealth.

The United States has moved to strike the claim of the estate for lack of standing. And here, as a matter of law, it's our contention that the estate cannot have an ownership interest in the letter, and thus there is no possible way that the estate can be injured by the forfeiture and thus it cannot have standing to assert a claim here.

And there is essentially three reasons for that.

The first is that because the letter is a public record of Massachusetts, only Massachusetts can own a historic Massachusetts public record.

CERTIFICATE OF OFFICIAL REPORTER

I, Linda Walsh, Registered Professional Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the audio recorded proceedings held in the above-entitled matter to the best of my skill and ability.

Dated this 5th day of March, 2020.

/s/ Linda Walsh

Linda Walsh, RPR, CRR

Official Court Reporter