

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
CIVIL ACTION NO. 2285CV0971A

JOAO DEPINA,  
Plaintiff,

vs.

WORCESTER COUNTY DISTRICT  
ATTORNEY'S OFFICE; JOSEPH D.  
EARLY, JR., in his personal and  
official capacities; ANTHONY  
MELIA in his personal and official  
capacities; BOSTON POLICE  
DEPARTMENT; DANTE  
WILLIAMS in his personal and  
official capacities; and RACHAEL  
ROLLINS, in her personal capacity,  
Defendants.

**DEFENDANTS DANTE WILLIAMS AND BOSTON POLICE DEPARTMENT  
MOTION TO STAY DISCOVERY AND FOR A PROTECTIVE ORDER**

Defendants Detective Dante Williams and City of Boston (the "City Defendants")<sup>1</sup>  
hereby file this Motion to Stay Discovery and for a Protective Order. For the reasons stated  
herein, there can be no discovery in this matter until after the City Defendants' forthcoming

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<sup>1</sup> The City of Boston is properly a defendant because the Boston Police Department is a department of the City and not an independent legal entity capable of being sued. See Stratton v. City of Boston, 731 F. Supp. 42, 46 (D. Mass. 1989) ("[T]he Police Department is not an independent legal entity. It is a department of the City of Boston.").

Motion to Dismiss – raising defenses of qualified immunity, sovereign immunity, and lack of subject matter jurisdiction – is decided.

## I. FACTUAL BACKGROUND<sup>2</sup>

The Complaint, filed in August 2022, makes the following allegations with respect to Detective Williams and the City. On Tuesday, November 9, 2021, there was a shooting in Dorchester, Massachusetts. Complaint, ¶ 12. That evening, then Suffolk County District Attorney Rachael Rollins held a televised press conference regarding the shooting. *Id.* at ¶ 13. According to the Complaint, Plaintiff attended the press conference and questioned Rollins over “the continued gun violence in Boston and government incompetency, including the incompetency of the District Attorney’s Office to respond to his brother’s murder.” *Id.* at ¶ 14. The Complaint alleges that Plaintiff exercised his right to criticize Rollins for “abusing her power as a public official, opportunistically seeking higher office without caring for the people of Boston, and failing to take adequate care of Boston police officers.” *Id.* at ¶ 16.

The Complaint alleges that three days after the November 9, 2021, press conference, to retaliate for Plaintiff’s public criticism, District Attorney Rollins caused a criminal complaint to be filed against Plaintiff accusing him of Attorney Intimidation in violation of G.L. c. 268, §13B. *Id.* at ¶ 17. The Complaint further alleges that Plaintiff intended to intimidate Rollins because the Suffolk District Attorney’s Office, which Rollins was overseeing at the time, had three active pending criminal cases against Plaintiff. *Id.* According to the Complaint, Detective Williams, who is an employee of the Boston Police Department, was present at the press conference and was able to observe all the events, yet he “filed a knowingly false police report” at the behest of

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<sup>2</sup> For the limited purposes of the instant motion, the Defendants accept the facts cited in the Plaintiff’s motion as true.

District Attorney Rollins, for her benefit. *Id.* at ¶¶ 7, 18–19. The Complaint alleges that Detective Williams and District Attorney Rollins conspired to violate Plaintiff’s civil rights and civil liberties by jointly creating the knowingly false narrative in the police report. *Id.* at ¶ 21. Plaintiff denies that he engaged in unlawful intimidation within the meaning of G.L. c. 268, § 13B.

## II. RELEVANT PROCEDURAL BACKGROUND

The Plaintiff served the City of Boston on or about October 13, 2022 copies of the Complaint, Plaintiff’s First Request for Production of Documents and Plaintiff’s First Set of Requests for Admissions. These were also served on Detective Williams. The City Defendants are currently drafting a Motion to Dismiss that will seek dismissal of all claims against them on the grounds of, among other grounds, qualified immunity and sovereign immunity. The City sought an informal extension of time to respond to the Complaint due to the procedure for Detective Williams to secure legal representation through the City of Boston, which can take a number of weeks. The City Defendants will serve their Motion to Dismiss pursuant to Rule 9A after Detective Williams’ legal representation is finalized.

As noted in Defendants Worcester County District Attorney’s Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins’s (“Commonwealth Defendants”) similar Motion to Stay Discovery and for a Protective Order filed October 26, 2022, “the Plaintiff has already filed a Notice of Plaintiff’s Certification Pursuant to Rule 11(a)(1), acknowledging his intent to use the claims as ‘impact litigation to challenge these immunity doctrines as a matter of public interest.’ Dkt. No. 3 at 1-2.” *Id.*

### III. ANALYSIS

The City Defendants will raise substantial defenses of qualified immunity and sovereign immunity – meaning that, if granted, they would be not only immune from liability but immune from suit. *See Dinsdale v. Com.*, 424 Mass. 176, 181 n.10 (1997). Therefore, no discovery can properly be taken from them until after a ruling on the forthcoming Motion to Dismiss. *See Hornibrook v. Richard*, 488 Mass 74, 83-84 (2021). The Supreme Court has held that until “the threshold immunity question is resolved, discovery should not be allowed.” *Siegert v. Gilley*, 500 U.S. 226, 232 (1991) (citing *Harlow v. Fitzgerald*, 457 U.S. 800 (1982)). This is because “the purpose of such immunity is to protect public officials from the burden of litigation itself.” *Patel v. Martin*, 481 Mass. 29, 33 (2018); *see also Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (where qualified immunity defense is raised in a motion to dismiss, a trial court “should resolve that threshold question before permitting discovery” so that “officials are not subjected to unnecessary and burdensome discovery or trial proceedings”). In this case, the threshold immunity question – the City Defendants’ defenses of qualified immunity and sovereign immunity – cannot be resolved until a decision on its forthcoming Motion to Dismiss is ordered. *See Hudson v. Comm’r of Correction*, 46 Mass. App. Ct. 538, 549 (2000) (finding the court was within its discretion to grant a protective order staying discovery in connection with defendants’ defense of qualified immunity); *Kramer v. Zoning Bd. of Appeals of Somerville*, 65 Mass. App. Ct. 186, 196 (2005) (noting no abuse of discretion in granting a “protective order to limit potentially expensive and time consuming discovery before the judge had ruled on the motion to dismiss.”); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d

1249, 1252 (11th Cir. 2004) (per curiam) (“The defense of sovereign or qualified immunity protects government officials not only from having to stand trial, but from having to bear the burdens attendant to litigation, including pretrial discovery.”).

This issue was previously raised in the above-mentioned motion filed by the Commonwealth Defendants. Following this Court’s denial of the stay and Protective Order, a single Justice of the Appeals Court reversed the decision on November 16, 2022. The single Justice found that the Commonwealth Defendants “set forth reasonable grounds to stay discovery pending an initial determination of their motion to dismiss” *See* Order p. 3, attached hereto as Exhibit 1. The Single Justice further stated that “[s]ome of the protection conferred by immunity from suit would be lost if the petitioners were required to engage in discovery prior to the determination of their motion.” *Id.* (citing *Lynch v. Crawford*, 483 Mass. 631, 634-35 (2019)). Likewise, the City Defendants will raise immunity defenses with the Court and the protection conferred by such immunity would be lost if the City Defendants are required to engage in discovery prior to decision on the Motion. *See id.*

#### **IV. CONCLUSION**

For the aforementioned reasons, the City of Boston and Detective Dante Williams request that the Court enter a protective order and stay all discovery in this matter until after their Motion to Dismiss is decided.

Date: November 23, 2022

Respectfully submitted,

**DEFENDANTS CITY OF BOSTON  
AND DANTE WILLIAMS,**

By their attorneys:

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Corporation Counsel

/s/ Sarah J. McAteer  
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#### **Certificate of Service**

I, Sarah J. McAteer, hereby certify that on November 23, 2022, a true copy of the above document was served on the Plaintiff by electronic mail.

/s/ Sarah J. McAteer  
Sarah J. McAteer

#### **Superior Court Rule 9C Certificate**

I, Sarah J. McAteer, hereby certify that in compliance with Superior Court Rule 9C, I conferred with Plaintiff by telephone on November 21, 2022, in a good-faith effort to narrow the issues in dispute in the present motion.

/s/ Sarah J. McAteer  
Sarah McAteer