

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
C.A. NO. 2285CV00971-A

JOAO DEPINA,

Plaintiff,

v.

WORCESTER COUNTY DISTRICT
ATTORNEY'S OFFICE, JOSEPH D. EARLY,
JR., ANTHONY MELIA, BOSTON POLICE
DEPARTMENT, DANTE WILLIAMS, and
RACHAEL ROLLINS,

Defendants.

**DEFENDANTS WORCESTER COUNTY DISTRICT ATTORNEY'S OFFICE,
JOSEPH D. EARLY, JR., ANTHONY MELIA, AND RACHAEL ROLLINS'
MOTION TO STAY DISCOVERY AND FOR A PROTECTIVE ORDER**

Defendants the Worcester County District Attorney's Office, Joseph D. Early, Jr., Anthony Melia, and Rachael Rollins (collectively, the "Commonwealth Defendants") hereby file this Motion to Stay Discovery and for a Protective Order. For the reasons described herein, there can be no discovery in this matter until after the Commonwealth Defendants' forthcoming Motion to Dismiss—which will raise defenses of absolute immunity, qualified immunity, sovereign immunity, and lack of subject matter jurisdiction—is decided:

1. This case, which was filed in August 2022, generally relates to the Worcester County District Attorney's Office's prosecution of the plaintiff on charges pursuant to G. L. c. 268, § 13B(b) – intimidating an attorney to interfere with a criminal

proceeding. See *Commonwealth v. DePina*, Case No. 2107CR003064 (BMC Dorchester). The Complaint here alleges claims of malicious prosecution, malicious abuse of process, retaliation, and intentional and negligent infliction of emotional distress in connection with that prosecution.

2. On September 21, 2022, the Commonwealth Defendants filed their Assented Motion to Extend Time to Respond to the Complaint to November 15, 2022.

3. The Commonwealth Defendants are currently drafting a Motion to Dismiss that will seek dismissal of all claims against them on grounds of, *inter alia*, absolute immunity and qualified immunity. Indeed, the Plaintiff has already filed a Notice of Plaintiff's Certification Pursuant to Rule 11(a)(1), acknowledging that his claims are subject to absolute immunity defenses, and announcing 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. The Worcester County District Attorney's Office and the Individual Defendants in the official capacities will also seek dismissal of all claims for lack of subject matter jurisdiction on the basis of sovereign immunity.

4. On October 6, 2022, the Plaintiff served a First Set of Requests for Admissions and a First Set of Requests for Production of Documents on each Defendant—including Defendants Dante Williams and the Boston Police Department, whom do not yet have counsel appearing in this matter.

5. Pursuant to Mass. R. Civ. P. 26(c), the Court may enter a protective order for good cause shown whenever necessary "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."

6. As the Commonwealth Defendants will raise substantial defenses of absolute and qualified immunity, no discovery can properly be taken from them until after a ruling on the forthcoming Motion to Dismiss. The rule in this regard is as straightforward as it is firmly entrenched. See *Hornibrook v. Richard*, 488 Mass. 74, 83-84 (2021) (“[T]he question of whether a defendant is entitled to absolute immunity is not one that should be determined through narrowly tailored discovery”) (internal citations and quotations omitted). See also *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (“[T]he driving force behind the creation of the qualified immunity doctrine was a desire to ensure that insubstantial claims against government officials [will] be resolved prior to discovery.”) (internal citations and quotation marks omitted); *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”); *Johnson v. Fankell*, 520 U.S. 911, 915 n.2 (1997) (“Of course, when a case can be dismissed on the pleadings or in an early pretrial stage, qualified immunity also provides officials with the valuable protection from the burdens of broad-reaching discovery[.]”) (internal citations and quotation marks omitted); *Hegarty v. Somerset Cty.*, 25 F.3d 17, 18 (1st Cir. 1994), quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (“The immunity from suit includes protection from the burdens of discovery. Until this threshold immunity question is resolved, discovery should not be allowed.”); *Maldonado v. Fontanes*, 568 F.3d 263, 268 (1st Cir. 2009) (“The basic thrust of the qualified immunity doctrine is to free officials from concerns of litigation, including avoidance of disruptive discovery.”) (internal citations and quotation marks

omitted); *Hudson v. Comm’r of Correction*, 46 Mass. App. Ct. 538, 549 (1999), *aff’d*, 431 Mass. 1 (2000) (protective order properly entered to stay discovery until after a ruling on motion to dismiss raising qualified immunity); *Dinsdale v. Com.*, 424 Mass. 176, 181 n.10 (1997) (questions of immunity for government officials are to be “resolved at the earliest possible stage of litigation” as “the entitlement is an immunity from suit, rather than a mere defense to liability”) (internal citations and quotation marks omitted).

7. Similarly, as the Commonwealth Defendants will raise substantial defenses of lack of subject matter jurisdiction based on sovereign immunity, no discovery can properly be taken from them until those questions of subject matter jurisdiction are resolved. *See* Mass. R. Civ. P. 12(h)(3) (“Whenever it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”); *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 320 n.4 & 322 n.6 (1998) (“[T]he question of subject matter jurisdiction goes to the power of the court to hear and decide the matter.”); *HSBC Bank U.S.A., N.A. v. Matt*, 464 Mass. 193, 199 (2013) (“Courts . . . have both the power and the obligation to resolve questions of subject matter jurisdiction whenever they become apparent [.]”) (citations and quotation marks omitted); *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.”); *Liverman v. Comm. On The Judiciary, U.S. House Of Representatives*, 51 F. App’x 825,

827-28 (10th Cir. 2002) (trial court properly stayed discovery until after ruling on motion to dismiss raising sovereign immunity).

8. Finally, Plaintiff can offer no sound justification for seeking immediate, pre-Motion to Dismiss discovery in this case. The underlying criminal case against the Plaintiff was dismissed on May 25, 2022. Compl. ¶ 45. The Plaintiff has offered no persuasive basis to conclude that he will be prejudiced by any delay in discovery.

WHEREFORE, for the foregoing reasons, the Commonwealth Defendants respectfully request that the Court enter a protective order and stay all discovery in this matter until after their Motion to Dismiss is decided.

Defendants,

WORCESTER COUNTY DISTRICT
ATTORNEY'S OFFICE, JOSEPH D. EARLY,
JR., ANTHONY MELIA, and RACHAEL
ROLLINS

By their Attorneys

MAURA HEALEY
ATTORNEY GENERAL

/s/ Jesse M. Boodoo _____

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Date: October 11, 2022

**CERTIFICATE OF COMPLIANCE
WITH MASSACHUSETTS SUPERIOR COURT RULE 9C**

Undersigned counsel for the moving party hereby certifies that the conference required by Massachusetts Superior Court Rule 9C was held by telephone on October 7, 2022 by and between undersigned counsel and counsel for the Plaintiff, Jay Wolman.

/s/ Jesse M. Boodoo
Jesse M. Boodoo
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Jesse M. Boodoo, Assistant Attorney General, hereby certify that I have this day, October 11, 2022, served the foregoing document, upon the attorney of record for the plaintiff by emailing a copy to:

Marc J. Randazza, Esq.
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/s/ Jesse M. Boodoo
Jesse M. Boodoo
Assistant Attorney General