UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

KEVIN FENNICK,)
Plaintiff,))
v.)
COMMONWEALTH OF MASSACHUSETTS et al.,)))
Defendants.)

Civil Action No. 21-2920 (UNA)

MEMORANDUM OPINION

This matter, brought *pro se*, is before the Court on review of Plaintiff's application to proceed *in forma pauperis* ("IFP") and "Complaint for a Criminal Case." Plaintiff, a resident of Boston, Massachusetts, "moves for a criminal action," Compl. ¶ 9, apparently against the Commonwealth of Massachusetts, a Massachusetts State Police Trooper, and at least one Superior Court Judge in Massachusetts. *See* Compl. Caption and Compl. ¶¶ 1, 6-8.

Apart from the fact that "a private citizen lacks a judicially cognizable interest in the [criminal] prosecution or nonprosecution of another," *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973), the Eleventh Amendment to the U.S. Constitution immunizes a State from suit in federal court, unless immunity is waived.¹ Plaintiff has not demonstrated Massachusetts' waiver of immunity from this suit. *See Khadr v. United States*, 529 F.3d 1112, 1115 (D.C. Cir. 2008)

¹ The amendment provides in pertinent part: "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State." U.S. Const. amend. XI. The amendment applies equally to suits brought by citizens against their own states. *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974); *Hans v. Louisiana*, 134 U.S. 1, 13-15 (1890).

("[T]he party claiming subject matter jurisdiction . . . has the burden to demonstrate that it exists.") (citation omitted)). Consequently, this case will be dismissed. *See* Fed. R. Civ. P. 12(h)(3) (requiring the court to dismiss an action "at any time" it determines that subject-matter jurisdiction is lacking). A separate Order accompanies this Memorandum Opinion.

/s/

Date: November 17, 2021

COLLEEN KOLLAR-KOTELLY United States District Judge