

District Judge Angel Kelley: ELECTRONIC ORDER entered.

Plaintiff Kang Lu challenges Massachusetts' statutory scheme regulating the licensure and carrying of firearms, as is articulated under state law. [Compl. at ¶¶ 6-7, 10]. Lu seeks declaratory judgment to prevent the Commonwealth from prosecuting him for the unlicensed possession of firearms under Mass. G.L. c. 269, § 10. [Compl. ¶¶ 8-10]. The Defendants the Executive Office of Public Safety and Security (EOPSS); Terrance Reidy, in his official capacity as Secretary of EOPSS; the Office of the Attorney General; and Andrea Joy Campbell, (together "Defendants") seek to dismiss this matter, in part, because it is a collateral attack on a firearm related conviction which Plaintiff is challenging on appeal.

Plaintiff was found guilty of violating Mass. G.L. c. 269, § 10(a) and 10(h) for carrying a firearm without a license and having ammunition without an identification card. *Commonwealth v. Lu*, No. 2179CR00067 (Hampden Super. Ct.). During those proceedings, he filed an unsuccessful motion to dismiss the indictment on the grounds that he could not be prosecuted for unlicensed possession under the Second Amendment. *Id.* at Dkt. 24-25, 33. Lu has since appealed his conviction. *Id.* at Dkt. 111. Plaintiff's arguments regarding the constitutionality of the relevant statutes should, and will, be adjudicated in his state court appeal. Under the Younger abstention doctrine, when "there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013). Though the case is on appeal, it is still considered a parallel pending state criminal proceeding. See *Maymó-Meléndez v. Álvarez-Ramírez*, 364 F.3d 27, 34-35 (1st Cir. 2004).

Since parallel criminal proceeding falls within the ambit of Younger, the Court must next look to the Middlesex factors to determine whether they support abstention and then whether any exceptions apply. *Sprint*, 571 U.S. at 193 (citing *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 432 (1982)). The Middlesex factors support abstention here because the state-court litigation is ongoing, there is an important state interest in the enforcement of its laws, and Lu can raise any claims in those proceedings just as Lu did through his unsuccessful motion to dismiss. See *Sirva Relocation, LLC v. Richie*, 794 F.3d 185, 196 (1st Cir. 2015) (describing the Middlesex factors). There is no indication from Plaintiff's complaint that any exception to Younger should apply because there is no allegations that the charges Lu was convicted were brought in bad faith or "for the purpose of harassment," there is no indication that "the state forum provides inadequate protection of federal rights," and the statutes here are not flagrantly violating express constitutional protections. See *Sirva Relocation, LLC v. Richie*, 794 F.3d at 192 (describing recognized exceptions to Younger).

Plaintiff retorts that he was acquitted of Mass. G.L. c. 269, § 10(m). [Dkt. 46 at 1-2]. Section 10 (m) is a subpart of the same section of the same statute whose applicability Lu is seeking to have adjudicated in the parallel state proceeding and there is no indication as to why the outcome would be any different as to § 10(m). Plaintiff's arguments regarding § 10(m) suffer the same fate. The Court reads Lu's challenge to § 10(m) as challenging Massachusetts's licensing scheme as a violation of the Second Amendment. Lu's claim challenging licensing requirements is not viable under the Supreme Court's decision in *Bruen* which explicitly upheld such licensing schemes. *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2138, 2161-62 (2022)

Accordingly, the Court GRANTS Defendants Motion to Dismiss [Dkt. 30], Younger abstention applies, and Plaintiff's Complaint is DISMISSED.

(Pacho, Arnold) (Entered: 01/11/2024) (citation omitted).