

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-5375

September Term, 2013

1:13-cv-01849-UNA

Filed On: June 16, 2014

Gabriel B. Hemingway,

Appellant

v.

State and Federal Government,

Appellee

## ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**BEFORE:** Griffith and Srinivasan, Circuit Judges; Ginsburg, Senior Circuit  
Judge

### J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief and supplement thereto filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

**ORDERED AND ADJUDGED** that the district court's order filed November 22, 2013, be affirmed. Appellant has not identified any error in the district court's dismissal of the complaint based on his failure to satisfy the exhaustion requirement of the Federal Tort Claims Act ("FTCA"), a prerequisite to filing an FTCA complaint in district court. See McNeil v. United States, 508 U.S. 106, 113 (1993); 28 U.S.C. §§ 2401(b), 2675(a). Nor has appellant established a waiver of sovereign immunity by any State under the Eleventh Amendment. See Edelman v. Jordan, 415 U.S. 651, 663 (1974) ("[A]n unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State.").

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**