

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

James Harper

v.

Civil No. 20-cv-771-JD
Opinion No. 2021 DNH 056

Charles P. Rettig,
in his official capacity
as Commissioner of the
Internal Revenue Service,
et al.

O R D E R

James Harper brought this civil rights suit against Commissioner Charles Rettig, the IRS, and various unknown officers of the IRS (John Does 1 through 10) (collectively, "the government"). Harper alleges that the government violated the Fourth Amendment, Fifth Amendment, and [26 U.S.C. § 7609\(f\)](#) by obtaining records of his financial transactions from third parties. The government moves to dismiss (doc. no. [12](#)) Harper's suit for lack of jurisdiction under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#) and for failure to state a claim upon which relief can be granted under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#). Harper objects.

Standard of Review

When resolving a challenge to the court's subject-matter jurisdiction under Rule 12(b)(1) or determining whether a claim

upon which relief can be granted has been stated under Rule 12(b)(6), the court construes the allegations in the complaint liberally, treats all well-pleaded facts as true, and resolves inferences in the plaintiff's favor. [Jalbert v. U.S. Securities & Exchange Comm'n](#), 945 F.3d 587, 590-91 (1st Cir. 2019); [Hamann v. Carpenter](#), 937 F.3d 86, 88 (1st Cir. 2019). The court, however, disregards conclusory allegations that simply parrot the applicable legal standard. [Manning v. Boston Med. Ctr. Corp.](#), 725 F.3d 34, 43 (1st Cir. 2013).

When addressing subject-matter jurisdiction, in addition to the complaint, the court may consider other evidence submitted by the parties without objection. [Hajdusek v. United States](#), 895 F.3d 146, 148 (1st Cir. 2018). The plaintiff, as the party invoking federal jurisdiction, bears the burden of showing that subject matter jurisdiction exists when challenged. [Lujan v. Defenders of Wildlife](#), 504 U.S. 555, 561 (1992).

Background

In 2013, Harper opened an account with "Coinbase," an entity that "facilitates transactions in virtual currencies such as bitcoin." Doc. 3 ¶ 18. Coinbase provided terms of agreement alongside its account, stating, in relevant part, that "Coinbase takes reasonable precautions, as described herein, to protect

your personal information from loss, misuse, unauthorized access, disclosure, alteration, and destruction." Id. ¶ 25.

In 2013 and 2014, Harper deposited bitcoin into his Coinbase account. Harper primarily received the bitcoin as income from consulting work. Harper alleges that he declared the transactions on his 2013 and 2014 tax returns and states that he declared all "appropriate income from bitcoin payments," including capital gains tax. Id. ¶¶ 30-33. Harper states that he also paid "appropriate capital gains on any bitcoin income for tax years 2015 and 2016." Id. ¶ 37. In 2015, Harper liquidated his holdings in the Coinbase account and by 2016 Harper no longer held any bitcoin in the Coinbase account. Harper also held bitcoin in accounts with "Abra" and "Uphold". Harper and his wife liquidated those accounts from 2016 through the date of the Amended Complaint (August 2020).

In 2016, the IRS sought to enforce an ex parte third-party "John Doe" administrative summons under [26 U.S.C. §§ 7602](#),¹

¹ Section 7602 generally authorizes the IRS to issue administrative summonses "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability"

7609(f),² and 7609(h)(2) against Coinbase in the Northern District of California. Coinbase opposed enforcement of the summons. Ultimately, the court ordered Coinbase to comply with a narrowed version of the summons. [United States v. Coinbase, Inc.](#), 2017 WL 5890052, at *1 (N.D. Cal. Nov. 28, 2017) (finding that the narrowed IRS summons "serves the IRS's legitimate

² Section 7609(f) details special prerequisites the IRS must satisfy before enforcing an ex parte "John Doe" third-party summons. It says:

Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

The Secretary shall not issue any summons described in the preceding sentence unless the information sought to be obtained is narrowly tailored to information that pertains to the failure (or potential failure) of the person or group or class of persons referred to in paragraph (2) to comply with one or more provisions of the internal revenue law which have been identified for purposes of such paragraph.

purpose of investigating Coinbase account holders who may not have paid federal taxes on their virtual currency profits").

In 2019, the IRS sent Harper a letter entitled "Reporting Virtual Currency Transactions." Doc. 3 ¶ 67; see also doc. 3-6 at 1. As relevant, the IRS's letter told Harper the following:

We have information that you have or had one or more accounts containing virtual currency but may not have properly reported your transactions involving virtual currency, which include cryptocurrency and non-crypto virtual currencies.

Doc. 3 ¶ 68; see also doc. 3-6 at 1. The IRS stated that if Harper had failed to properly report his "virtual currency transactions" then he "may be subject to future civil and criminal enforcement activity." Doc. 3 ¶ 69; see also doc. 3-6 at 1. Additionally, upon Harper's "information and belief," John Does 1 through 10 "issued an informal demand" to Abra and Coinbase for Harper's financial records. Harper believes that Abra or Coinbase complied with that demand.

Harper's Amended Complaint contains three counts: (I) violation of the Fourth Amendment; (II) violation of the Fifth Amendment; and (III) declaratory judgment/violation of 26 U.S.C. § 7609(f). As relief for the alleged violations of law stated in Counts I and II, Harper requests money damages from the defendants, as well as injunctive and declaratory relief. Specifically, Harper requests an order declaring § 7602, et

seq., unconstitutional as applied to him under the Fourth and Fifth Amendments, requiring the IRS to expunge Harper's financial records, and prohibiting the IRS and John Does 1 through 10 from seizing financial records from "virtual currency exchanges" under § 7602, et seq., in the future.

In Count III, Harper requests a declaratory judgment that the IRS is violating § 7609(f) and, like Counts I and II, requiring the IRS to expunge his financial records and prohibiting the IRS and John Does 1 through 10 from seizing similar financial records through § 7609(f) in the future. Commissioner Rettig is sued in his official capacity, while John Does 1 through 10 are sued in their personal capacities.

Discussion

The government moves to dismiss Harper's suit for lack of jurisdiction and for failure to state a claim upon which relief can be granted. Harper objects to dismissal. The government filed a reply.

A. Jurisdiction (Sovereign Immunity)

The government argues that, while Harper's suit is nominally against Commissioner Rettig and unidentified "John Doe" IRS officers, the suit is, in function, a suit against the

United States, so that the United States's sovereign immunity bars the suit. Harper does not contest that his claims against the IRS and Commissioner Rettig are functionally against the United States, but he argues that the Administrative Procedure Act ("APA") waives sovereign immunity to the extent he requests declaratory or injunctive relief. Harper also suggests that [Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics](#), 403 U.S. 388 (1971), provides an exception to the United States's sovereign immunity for claims for money damages. In its reply, the government argues that the APA does not waive the United States's sovereign immunity because, 1) another statute - the Anti-Injunction Act, 26 U.S.C. § 7421 - precludes judicial review; 2) the APA does not waive sovereign immunity if another statute that grants consent to suit expressly or implicitly forbids the relief sought; and 3) the agency action complained of by Harper has another adequate court remedy.

"It is elementary that the United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." [United States v. Mitchell](#), 445 U.S. 535, 538 (1980) (alterations and quotation marks omitted). The burden is on Harper to establish that a waiver of

sovereign immunity is applicable here. [In re Rivera Torres](#), 432 F.3d 20, 23 (1st Cir. 2005).

1. Counts I and II (Relief in Form of Money Damages)

In Counts I and II, in part, Harper appears to request money damages from the IRS and Commissioner Rettig, who was sued only in his official capacity. Contrary to Harper's apparent contention in his objection to the motion to dismiss, Bivens does not provide an exception to sovereign immunity for suits against the United States or official-capacity defendants for money damages. [Tapia-Tapia v. Potter](#), 322 F.3d 742, 746 (1st Cir. 2003) ("[T]he government's sovereign immunity does not vanish simply because government officials may be personally liable for unconstitutional acts."). Harper asserts no other basis for his argument that the United States has waived its sovereign immunity for his claims for money damages brought against the IRS or Commissioner Rettig. Therefore, Counts I and II are dismissed to the extent Harper seeks money damages from the IRS or Commissioner Rettig. See id.

2. Count I, II, and III (Relief in Form of Injunctions & Declaratory Judgments)

Harper also requests that the court declare § 7602, et seq., unconstitutional as applied to him and order Commissioner

Rettig, the IRS, and John Does 1 through 10 to expunge any financial records they obtained about Harper's cryptocurrency transactions via § 7602, et seq., and enjoin John Does 1 through 10 from violating the Fourth Amendment, Fifth Amendment, and § 7609(f) in the future. In its motion to dismiss, the government contends that these requests for relief are barred by the United States's sovereign immunity and the Anti-Injunction Act. Harper objects, arguing that the APA waives the United States's sovereign immunity and that the Anti-Injunction Act does not prohibit the injunctive and declaratory relief he seeks in this case.

"The APA generally waives the Federal Government's immunity from a suit 'seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority.'" [Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak](#), 567 U.S. 209, 215 (2012) (quoting 5 U.S.C. § 702). That waiver, however, contains two exceptions: (1) if another limitation on judicial review requires the court to deny relief; or (2) "if any other statute that grants consent to suit expressly or impliedly forbids the relief" sought by the plaintiff. [5 U.S.C. § 702](#).

The Anti-Injunction Act provides such a limitation on judicial review, as it states, in relevant part, that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person[.]" [26 U.S.C. § 7421\(a\)](#);³ see also [Nat'l Fed'n of Indep. Bus. v. Sebelius](#), 567 U.S. 519, 543 (2012) ("This statute protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes. Because of the Anti-Injunction Act, taxes can ordinarily be challenged only after they are paid, by suing for a refund."); [Fostvedt v. United States](#), 978 F.2d 1201, 1203-04 (10th Cir. 1992) ("Contrary to Petitioner's assertions, § 702 of the APA does not override the limitations of the Anti-Injunction Act and the Declaratory Judgment Act."). If a claim "called in question a specific provision of the Internal Revenue Code, or to a ruling or regulation issued under the Code, the claim would clearly come under the general bars to jurisdiction and declaratory relief" [McCarthy v. Marshall](#), 723 F.2d

³ Harper does not argue that any of the enumerated statutory exceptions to the Anti-Injunction Act apply here. See [26 U.S.C. § 7421\(a\)](#) (stating that the act applies "[e]xcept as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436"). Rather, he contends that the Anti-Injunction Act does not apply considering the circumstances of his claims.

1034, 1037 (1st Cir. 1983). "Conversely, if jurisdiction were otherwise established and the controversy concerned essentially nontax matters, there would be no question of dismissing the case merely because a decision on the merits might have some collateral tax repercussions." Id.

The Anti-Injunction Act applies to Harper's claims for declaratory and injunctive relief because they implicate provisions of the Internal Revenue Code and would restrain the assessment or collection of a tax. See id. Although Harper's suit ostensibly challenges the validity of nontax activity - the IRS's enforcement of a John Doe third-party summons - the effect of Harper's requested declaratory and injunctive relief would be to prevent the IRS from assessing Harper's or others' taxes using the information it has obtained through the John Doe third-party process. Consequently, his suit, to the extent it seeks injunctive and declaratory relief, is barred by the Anti-Injunction Act. See Bob Jones Univ. v. Simon, 416 U.S. 725, 738 (1974) (rejecting argument that suit was not intended to restrain the assessment or collection of any tax because the "complaint and supporting documents" revealed the plaintiff's concern about how the challenged IRS action would affect its future federal tax liability); Gulden v. United States, 287 F. Appx. 813, 816 (11th Cir. 2008) ("[T]he Anti-Injunction Act bars

not only suits that directly seek to restrain the assessment or collection of taxes, but also suits that seek to restrain IRS activities 'which are intended to or may culminate in the assessment or collection of taxes.'"); [Dickens v. United States](#), 671 F.2d 969, 971 (6th Cir. 1982) ("A suit designed to prohibit the use of information to calculate an assessment is a suit designed 'for the purpose of restraining' an assessment under the [Anti-Injunction Act]."). Therefore, the Anti-Injunction Act bars consideration of Harper's claims for injunctive and declaratory relief. See [McCarthy](#), 723 F.2d at 1037; [Breton v. I.R.S.](#), 2013 WL 1788536, at *2 (D.N.H. Apr. 10, 2013) (finding that Anti-Injunction Act prohibited court from enjoining administrative tax levy when plaintiff argued the levy violated the Fourth and Fifth Amendments); see also [Fostvedt](#), 978 F.2d at 1203-04 ("Although disguised as a procedural challenge, the essence of Petitioner's action is an attempt to delay and/or prevent the IRS from assessing and collecting the income tax Actions in the nature of Petitioner's suit are prohibited by the Anti-Injunction Act").⁴

⁴ The federal declaratory judgment statute, 28 U.S.C. § 2201(a), includes a similar carve out for declaratory judgments "with respect to Federal taxes." Similar to the Anti-Injunction Act, that exception prevents Count III of Harper's complaint, which requests a declaratory judgment "with respect to Federal taxes," from moving forward. See 28 U.S.C. § 2201(a); [Thompson/Center Arms Co. v. Baker](#), 686 F. Supp. 38,

In an attempt to evade that conclusion, Harper argues that, because he alleged in the Amended Complaint that he has paid all taxes that were due, his request for injunctive relief expunging his financial records is not an attempt to preemptively stop assessment or collection of his taxes and therefore does not fall within the Anti-Injunction Act's scope. Harper, however, also alleged in his Amended Complaint that the IRS sent him a letter informing him that it had information - information that Harper wants the court to direct the IRS to expunge - that he may have additional tax liability. Therefore, Harper's allegation that he paid all taxes that were due is an unsupported conclusory statement and not well pled. See [A.G. ex rel. Maddox v. Elsevier, Inc.](#), 732 F.3d 77, 80 (1st Cir. 2013) (observing that a conclusory statement "presented as an ipse dixit" and "unadorned by any factual assertions that might lend it plausibility" need not be taken as true at the motion to dismiss stage).

Moreover, in enforcing the IRS's summons on Coinbase that resulted in the IRS's acquisition of Harper's financial records, the court found that "the IRS's purpose is related to tax

41 (D.N.H. 1988) ("[A] finding that the plaintiff's claim is barred by the Anti-Injunction Act necessitates a finding that the claim is similarly barred by the Declaratory Judgment Act.").

compliance, not research" and that the summons "serves the legitimate investigative purpose of enforcing the tax laws against those who profit from trading in virtual currency." [Coinbase](#), 2017 WL 5890052, at *6, *8. Therefore, Harper's argument that his proposed injunction and declaratory judgment are not aimed at restraining the assessment or collection of taxes is incorrect. See [McCarthy](#), 723 F.2d at 1037; [Dickens](#), 671 F.2d at 971.

Harper also argues that, because he has no other remedy for the IRS's constitutional or statutory violations, the Anti-Injunction Act does not bar his suit even if it otherwise would apply. See [South Carolina v. Regan](#), 465 U.S. 367, 378 (1984) ("In sum, the [Anti-Injunction] Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy."). Harper, however, had an alternative remedy to contest the third-party summons at issue in this case: A taxpayer who is a target of a John Doe third-party summons under § 7609(f) "may intervene and challenge enforcement of the summons." [United States v. Ritchie](#), 15 F.3d 592, 597 (6th Cir. 1994); cf. [United States v. Coinbase](#), 2017 WL 3035164 (N.D. Cal. July 18, 2017) (pertaining to the summons challenged by Harper in this case and granting

motion by John Doe to intervene as of right and permissively). Furthermore, if the IRS determines that Harper does have additional tax liability, additional processes are available to challenge the IRS's actions. See 26 U.S.C. §§ 6213, 7422. Therefore, Harper has failed to demonstrate that he lacks an adequate remedy for the violations he claims in this suit.

Because Harper has not demonstrated the applicability of any exception to the United States's sovereign immunity and because the Anti-Injunction Act prohibits the court from granting any of the injunctive and declaratory relief sought by Harper in this suit, Counts I and II, to the extent Harper seeks injunctive or declaratory relief against any defendant or money damages from Commissioner Rettig or the IRS, are dismissed for lack of jurisdiction. Count III of the Amended Complaint is dismissed in its entirety for lack of jurisdiction.

B. Personal Capacity Claims / Bivens

Harper's remaining unaddressed claims are Counts I and II, to the extent he seeks money damages from John Does 1 through 10 in their individual capacities. The government moves to dismiss Harper's claims against the John Does in their individual capacities on the ground that Harper seeks recognition of Bivens claims in new contexts. The government contends that "the

existence of the Internal Revenue Code, and its comprehensive scheme governing taxpayer remedies" is a special factor that prohibits extending Bivens to the new context here, such that Harper's claims do not state a claim upon which relief can be granted. Doc. 12-1 at 17. Harper objects, contending that his claims in Count I (Fourth Amendment violation) and Count II (procedural due process violation) are not applications of Bivens in a new context. Harper adds that, even if Counts I and II do apply Bivens in a new context, Bivens should be extended to this new context.

A claim seeking money damages from federal officers in their individual capacities for alleged constitutional violations is cognizable only if it fits within the existing contexts in which the Supreme Court has applied Bivens or if there are no special factors that counsel against extending Bivens to a new context. [Ziglar v. Abbasi](#), --- U.S. ---, 137 S. Ct. 1843, 1857-59 (2017). A court examining a claim seeking a damages remedy under Bivens must first determine whether the claim applies Bivens in a new context. Id. at 1859. "If the case is different in a meaningful way from previous Bivens cases decided by [the Supreme Court], then the context is new." Id. at 1859-60. "A case might differ in a meaningful way because of the rank of the officers involved; the constitutional right at

issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous Bivens cases did not consider." [Id. at 1859–60](#). Moreover, "[a] claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized." [Hernandez v. Mesa, 140 S. Ct. 735, 743 \(2020\)](#).

If the claim is in a new context, the court must then consider whether any "special factors counsel[] hesitation" in extending Bivens "in the absence of affirmative action by Congress." [Abbasi, 137 S. Ct. at 1857](#). Only if there are no such special factors may the court conclude that Bivens provides a remedy for constitutional violations alleged by the plaintiff. See id.

1. Applicability of Bivens to Count I (Fourth Amendment)

The government argues that Harper's Fourth Amendment claim is dissimilar to Bivens. Harper responds that his claim in Count I under the Fourth Amendment is not different in a

meaningful way from Bivens itself, which also involved a Fourth Amendment claim.

Harper's claim here, however, applies Bivens in a "new context." Harper's lawsuit is a broad challenge "largely aimed at official IRS conduct and policy," while Bivens, in contrast, was a narrowly-focused suit that challenged the acts of a few individual officers. Doc. 14 at 6; Bivens, 403 U.S. at 389 ("The agents manacled petitioner in front of his wife and children, and threatened to arrest the entire family. They searched the apartment from stem to stern. Thereafter, petitioner was taken to the federal courthouse in Brooklyn, where he was interrogated, booked, and subjected to a visual strip search."). Additionally, the John Doe defendants here are alleged to have violated the Fourth Amendment because they obtained without a warrant Harper's electronically-stored financial records from a third party that Harper believes was contractually obligated to withhold those records. By contrast, the Fourth Amendment claim in Bivens was based on federal agents' unlawful entrance and ransacking of a home, their threats to its occupants, and the strip search of the petitioner. 403 U.S. at 389. These contextual differences are sufficient to differentiate Harper's case from Bivens under Abbasi. See Attkisson v. Holder, 925 F.3d 606, 621 (4th Cir.

2019) ("The plaintiffs' Fourth Amendment Bivens claim . . . differs meaningfully from the claim raised in Bivens in numerous ways that are material under Abbasi [A] claim based on unlawful electronic surveillance presents wildly different facts and a vastly different statutory framework from a warrantless search and arrest.").

The existence of the Internal Revenue Code, which contains a statutory remedial scheme covering the alleged wrongful conduct here, as well as the inherent ability of a taxpayer who is a target of a John Doe third-party summons to intervene in an enforcement proceeding, is a "special factor" that counsels against extending Bivens into the new context. See, e.g., Harvey v. U.S. Postal Serv., 52 F.3d 309, at *1 (1st Cir. Apr. 25, 1995) (per curiam) (declining to extend Bivens because a "comprehensive scheme" provides an "exclusive remedy" for wrongful personnel practices by the federal government); McMillen v. U.S. Dep't of Treasury, 960 F.2d 187, 190-91 (1st Cir. 1991) (per curiam) (observing that while the Internal Revenue Code is not "perfectly comprehensive," Congress has determined that it provides "adequate remedial mechanisms for constitutional violations that may occur in the" enforcement of tax laws). For those reasons alone, the court declines to find that Bivens extends to the new context asserted by Harper here.

Additionally, Harper's suit, as discussed above, implicates the federal government's power to assess and collect taxes. That is also a "special factor" that counsels against extending the Bivens remedy to this context. Cf. [Cameron v. I.R.S.](#), 773 F.2d 126, 129 (7th Cir. 1985) ("Congress has given taxpayers all sorts of rights against an overzealous officialdom, including, most fundamentally, the right to sue the government for a refund if forced to overpay taxes, and it would make the collection of taxes chaotic if a taxpayer could bypass the remedies provided by Congress simply by bringing a damage[s] action against Treasury employees. It is hard enough to collect taxes as it is; additional obstructions are not needed."). As discussed above, Congress specifically exempted suits that implicate its taxing power from the Declaratory Judgment Act and, through the Anti-Injunction Act, affirmatively prohibited injunctions that restrain that power. Considering Congress's limitations on injunctive and declaratory relief in tax suits like the one brought by Harper, as well as the statutory remedial scheme that includes processes to challenge the conduct complained of by Harper in this suit, the court declines to imply a money damages remedy under Bivens.

For the foregoing reasons, the court dismisses Count I to the extent Harper seeks money damages from the John Doe defendants named in their individual capacities.

2. Applicability of Bivens to Count II (Procedural Due Process)

As with Count I, the government argues that Count II, which raises a claim for violation of Harper's due process rights under the Fifth Amendment, extends Bivens to a new context and that special factors counsel against expansion. Harper responds that, in [Davis v. Passman](#), 442 U.S. 228 (1979), the Supreme Court recognized a Bivens remedy for Fifth Amendment violations such that his Fifth Amendment claim in Count II does not apply Bivens in a new context.

The circumstances of Harper's Fifth Amendment procedural due process claim are distinguishable from the Fifth Amendment claim in Davis. In Davis, "the Court held that the Due Process Clause of the Fifth Amendment permitted a damages action where a staffer sued a Member of Congress for cashiering her because of her gender." [Gonzalez v. Velez](#), 864 F.3d 45, 53 (1st Cir. 2017). By contrast, here, Harper asserts that unidentified government agents deprived him of a property right that he held in his financial records or the privacy thereof by seizing those records without providing him sufficient notice and an

opportunity to challenge the seizure. The equal-protection type claim made in Davis was unlike the procedural due process claim made by Harper here. See [Air Sunshine, Inc. v. Carl](#), 663 F.3d 27, 33-34 (1st Cir. 2011) ("While the Supreme Court has extended Bivens to the Due Process Clause, it has only done so in the context of '[t]he equal protection component' of that clause.") (quoting Davis, 442 U.S. at 235). Therefore, Davis does not suffice to bring Harper's claim within an existing context in which a Bivens action has been recognized.⁵

For the same reasons as discussed above as to Count I, the court finds that special factors counsel against extending the Bivens remedy. Specifically, the existence of a remedial scheme under the Internal Revenue Code for violations of the law and Congress's hesitancy to allow injunctions or declaratory judgments that would interfere with the collection of taxes counsel against implying a money damages remedy under the same circumstances. Therefore, the court dismisses Count II of

⁵ Harper also cites [Abdelfattah v. U.S. Dep't of Homeland Sec.](#), 787 F.3d 524, 533-34 (D.C. Cir. 2015), in support of his argument his claim does not extend Bivens into a new context. Abdelfattah is not relevant to this issue, however, because it rejected the plaintiff's damages claim under Bivens, while allowing a claim for a declaratory relief requiring the Department of Homeland Security to expunge certain information it had collected. See id. The court addressed Harper's claims for declaratory and injunctive relief above in Part A.

Harper's complaint to the extent it raises a claim for money damages against the John Doe defendants named in their individual capacities.

Conclusion

For the foregoing reasons, the government's motion to dismiss (doc. no. 12) is granted. Counts I and II, to the extent injunctive or declaratory relief is sought from any defendant or money damages are sought from Commissioner Rettig and the IRS, are dismissed for lack of jurisdiction. Counts I and II, to the extent money damages are sought from John Does 1 through 10, are dismissed for failure to state a claim upon which relief can be granted. Count III is dismissed for lack of jurisdiction.

Because all claims in this case have been dismissed, the Clerk of Court is directed to close the case.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

March 23, 2021

cc: Counsel of Record