

Legal Memoranda: Private-Capacity Theories of Jurisdiction and Remedy

*A Four-Part Scholarly Analysis of Jurisdictional and Remedial Theories
Available to Natural Persons Acting in Purely Private Capacity*

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PREFATORY NOTE

This document comprises four separate analytical legal memoranda addressing theories of jurisdiction and remedy available to natural persons asserting a purely private legal capacity. Each memorandum is structured as a scholarly legal analysis — not as a court pleading, motion, or petition. None of the memoranda contains a caption, parties designation, prayer for relief, or advocacy on behalf of any named party.

The analysis is neutral and scholarly in tone. Each memorandum examines the relevant constitutional text, foundational precedent, structural doctrine, potential vulnerabilities, and strategic implications of a distinct jurisdictional or remedial theory. Citation format follows the conventions of the Bluebook: A Uniform System of Citation, as employed in law review practice.

The four theories examined are: (I) the Article III Private-Right Theory; (II) Diversity Jurisdiction with an Individual-Capacity Defendant; (III) the Bivens-Type Constitutional Tort in the Ultra Vires Context; and (IV) the State-Court Private-Capacity Equitable Theory. Together, these memoranda constitute a comprehensive survey of the available doctrinal landscape for private-capacity jurisdictional claims.

SERIES OVERVIEW

No.	Theory	Jurisdictional Basis	Primary Vulnerability	Analytical Strength
I	Article III Private-Right (Common Law)	Art. III inherent judicial power; private-right doctrine	No appellate precedent; standing / injury-in-fact	Historically grounded; avoids statutory frameworks
II	Diversity Jurisdiction — Individual-Capacity Defendant	28 U.S.C. § 1332	Citizenship characterization; federal removal (§ 1442)	Statutory basis; well-established individual-capacity doctrine
III	Bivens Constitutional Tort — Ultra Vires Misidentification	Implied constitutional remedy (Bivens); equity jurisdiction	Egbert v. Boule near-total restriction of new Bivens contexts	Equitable identity-correction claim survives Bivens analysis
IV	State-Court Private-Capacity Equity	State general equity jurisdiction; state declaratory judgment acts	Federal removal (§ 1442); Supremacy Clause preemption	General jurisdiction; broad status-declaration authority

Article III Private-Right Theory – Jurisdictional and Substantive Analysis

I. QUESTION PRESENTED

Whether Article III judicial power, grounded in common-law private rights that predate the Constitution, provides a self-executing jurisdictional basis for a natural person asserting purely private capacity, without invoking any statutory jurisdictional grant, where the injury alleged is the misattribution of a public or governmental capacity onto a private individual.

II. BRIEF ANSWER

Article III extends judicial power to "Cases" and "Controversies," a phrase that carries both historical common-law content and modern standing doctrine elaboration. The private-rights doctrine, most thoroughly developed in *Crowell v. Benson*, 285 U.S. 22 (1932), and more recently in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U.S. 325 (2018), draws a constitutional distinction between rights that originate in and are defined by federal law (public rights) and rights that exist independent of federal legislative action (private rights). The theory analyzed here asserts that a natural person's right to be identified and treated according to their actual legal status — as a private, non-governmental actor — is a private right cognizable at common law and therefore within Article III's irreducible judicial power.

The jurisdictional question is genuinely open on this precise framing. The substantive question — whether misattribution of capacity constitutes a cognizable common-law injury — faces significant analytical challenges but is not categorically foreclosed by existing precedent.

III. BACKGROUND AND LEGAL FRAMEWORK

The constitutional text of Article III, Section 2 extends judicial power to "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made." The phrase "arising under" has been interpreted to include cases where federal common law supplies the rule of decision. See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). But Article III's power also extends to cases between citizens of different states and to cases involving the law of nations — both domains that predate and operate independently of federal statutory law.

The private/public rights distinction is the analytical cornerstone of this theory. In *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272 (1856), the Supreme Court recognized that certain rights existing at common law before the Constitution's adoption carry forward as judicially cognizable interests. The Court in *Crowell v. Benson*, 285 U.S. 22 (1932), elaborated that "private rights" — defined as "the liability of one individual to another under the law as defined" — are the core subject matter of Article III adjudication, as distinguished from matters of public right arising between government and citizens in the regulatory context.

Oil States Energy Services, LLC v. Greene's Energy Group, LLC, 584 U.S. 325 (2018), reaffirmed this distinction while holding that inter partes patent review did not violate Article III because patents are public franchises, not

private rights. The Court's reasoning necessarily implies that genuine private rights — those not created by federal statute or government grant — occupy protected judicial territory.

The identity-misattribution theory posits that a natural person's legal status as a private actor is itself a private right: it antedates the Constitution, flows from the natural-law tradition embedded in the common law, and is not conferred by federal statute. On this view, a governmental actor who misidentifies a private individual as holding a public or statutory capacity inflicts a legal injury cognizable at common law — analogous to the wrong of false designation of status or misrepresentation of legal identity.

IV. ANALYSIS OF SUPPORTING AUTHORITIES

1. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Chief Justice Marshall's foundational holding that "where a specific duty is assigned by law, and individual rights depend upon the performance of that duty," the courts of justice must provide a remedy. Marbury's rights/remedy principle supports the proposition that a recognized legal right — including the right to correct legal status — carries with it judicial enforceability without requiring a separate statutory remedy provision. The Court's declaration that "the government of the United States has been emphatically termed a government of laws, and not of men" is the structural predicate upon which private-right jurisdictional theories rest.

2. *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824). Marshall held that Article III jurisdiction attaches wherever a federal question forms an "ingredient" of the original cause, even if not the sole issue. By analogy, if a party's constitutional status as a private actor forms the fundamental basis of the jurisdictional assertion, Article III may attach

without requiring a freestanding statutory hook. The "ingredient" formulation is expansive enough to encompass constitutional status questions.

3. *Ex parte Young*, 209 U.S. 123 (1908). While arising in the equity context, *Ex parte Young*'s foundational holding — that a state officer who acts ultra vires strips the state's sovereign immunity and becomes subject to individual suit — supplies the structural template for claims against federal officers acting outside lawful authority. The theory analyzed here applies analogous reasoning: an officer who misidentifies a private actor as a statutory subject acts outside the scope of lawful authority and thereby becomes subject to suit in individual capacity.

4. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The Court recognized an implied right of action for constitutional violations by federal officers where no statutory remedy exists and no special factors counsel hesitation. While subsequent decisions have narrowed *Bivens* significantly (examined in full in Memorandum III infra), its underlying premise — that constitutional rights carry judicially enforceable remedies — reinforces the private-right theory's remedial logic.

5. *Common Law Antecedents — Quo Warranto and Slander of Title.* The common law writs of quo warranto (by what authority do you act) and the action for slander of title (false statements affecting legal status and property) both supply historical analogues to the capacity-correction claim. See generally Blackstone, *Commentaries on the Laws of England*, Book III, ch. 17 (1768). Neither requires statutory authorization; both are available in equity and at common law. Their existence as pre-constitutional writs reinforces the proposition that status-correction claims have deep common-law roots.

V. GAP AND VULNERABILITY ANALYSIS

The theory faces four principal vulnerabilities, each of which requires careful attention in any litigating posture:

1. **The Standing Problem.** Under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), Article III standing requires (a) a concrete and particularized injury in fact, (b) causally traceable to the defendant's conduct, and (c) redressable by a favorable decision. The "misattribution of capacity" injury must be concretized — a court will ask what specific, tangible harm flowed from the misidentification. Abstract dignitary or status injuries have had mixed reception. Compare *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016) (bare procedural violation insufficient) with *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) (concrete harm required even for statutory violations). The injury pleading must connect misattribution to specific, demonstrable harm that bears a close relationship to harms traditionally recognized at common law.
2. **The Cause of Action Gap.** The Supreme Court has been increasingly reluctant to recognize implied causes of action. *Ziglar v. Abbasi*, 582 U.S. 120 (2017), instructs courts to ask whether Congress has addressed the field. Even in the common-law space, a court will ask which recognized common-law cause of action the claim fits. The identity-misattribution theory needs to anchor in a recognized category — fraud, misrepresentation, interference with legal status, or the closest modern analogue — rather than asserting a freestanding "capacity-correction" right without doctrinal precedent.
3. **The Nonstatutory Review Gap.** While courts have recognized nonstatutory review of ultra vires executive action (see *Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996)), that doctrine applies to executive action exceeding statutory authority, not to the

absence of statutory authority as such. A claim grounded in the assertion that no statute authorizes the misidentification does not fit neatly within the existing nonstatutory review framework, which requires identification of a statutory violation rather than the mere absence of statutory conferral.

4. **The Published Precedent Gap.** No reported decision has sustained this precise posture through merits adjudication. That is not equivalent to categorical rejection — courts routinely consider genuinely novel legal theories, and the absence of precedent is not itself a ground for dismissal. However, it does mean the theory has no affirmative precedential support at the appellate level, and a court exercising its gatekeeping function will scrutinize the claim with heightened care precisely because of its novelty.

VI. CONCLUSION AND STRATEGIC OBSERVATIONS

The Article III private-right theory is the most analytically ambitious of the four theories examined in this memorandum series. It is also the most vulnerable because it requires the court to recognize both a new category of injury (capacity misattribution) and a new mechanism of jurisdiction (inherent common-law private-right adjudication without a statutory hook).

The theory's greatest strength is its alignment with historical common-law practice and its avoidance of statutory frameworks that carry their own definitional constraints. Its greatest weakness is the current federal judiciary's strong preference for textual statutory authorization before entertaining novel jurisdictional claims.

Strategic Observation

A litigant pursuing this theory would need an exceptionally well-developed factual record connecting the misattribution to specific, concrete, and quantifiable harm — ideally harm of the kind recognized at common law in analogous actions. The theory is most viable as a supplementary ground for jurisdiction advanced alongside a more established basis, rather than as a primary or sole jurisdictional theory. Its most productive deployment may be in support of a declaratory relief claim in equity, where the court's inherent jurisdiction is broader and the standing requirements are more flexible than in a claim for legal damages.

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MEMORANDUM II OF IV

Diversity Jurisdiction — Private Plaintiff, Individual-Capacity Defendant

I. QUESTION PRESENTED

Whether 28 U.S.C. § 1332 diversity jurisdiction is available for a claim by a plaintiff asserting purely private capacity against a federal officer sued exclusively in individual capacity, where the officer's conduct is alleged to be ultra vires and the amount in controversy exceeds \$75,000, and whether a

private-right identity-correction claim satisfies the substantive requirements for such a suit.

II. BRIEF ANSWER

Diversity jurisdiction under § 1332 does not depend on the nature of the claim — it is a jurisdictional grant based on the citizenship of the parties and the amount in controversy. A federal officer sued in individual capacity is treated, for diversity purposes, as any other private citizen domiciled in their state of residence. The identity-correction and ultra vires theories can, in principle, supply cognizable substantive claims sounding in state common law or federal common law without invoking federal statutory frameworks.

The critical analytical challenges are: (1) citizenship characterization for the plaintiff; (2) quantification of the amount in controversy for dignitary or status injuries; and (3) the federal officer's potential resort to federal defenses that would require federal question resolution, potentially complicating the well-pleaded complaint rule. Each of these challenges is analytically tractable but requires deliberate framing at the pleading stage.

III. BACKGROUND AND LEGAL FRAMEWORK

Section 1332 grants district courts original jurisdiction over civil actions between citizens of different states where the amount in controversy exceeds \$75,000, exclusive of interest and costs. For diversity purposes, "state citizenship" is determined by domicile — the place where a person is

physically present with the intent to remain indefinitely. *Mas v. Perry*, 489 F.2d 1396, 1399 (5th Cir. 1974). Domicile is a fact-intensive inquiry; a court will look to objective indicia such as voter registration, tax filings, driver's license, and stated intent.

The individual-capacity framing for federal officers is well-established and derives from *Ex parte Young*'s structural insight: a government officer who acts outside the bounds of lawful authority sheds the protection of sovereign immunity and is treated as a private wrongdoer. *Hafer v. Melo*, 502 U.S. 21, 25 (1991), confirmed that "officers sued in their personal capacity come to court as individuals." For diversity purposes, courts look to the officer's personal domicile, not the government's citizenship. The United States government is not a citizen for diversity purposes. See *United States v. Interstate Commerce Comm'n*, 337 U.S. 426 (1949).

The plaintiff's citizenship characterization is the first potential complication. If the plaintiff asserts a "nonresident alien" status under 26 U.S.C. § 7701(a) (31) and related provisions, a threshold question arises: for diversity purposes, is such a plaintiff a "citizen of a state" within § 1332? The statute requires that the parties be "citizens of different states" — which the Supreme Court has long held means U.S. state citizenship. *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). A plaintiff asserting foreign or nonresident alien status might inadvertently defeat § 1332(a)(1) jurisdiction, while potentially invoking § 1332(a)(2) jurisdiction over suits between "citizens of a State and citizens or subjects of a foreign state." The precise characterization matters enormously and must be analyzed with particularity before invoking this jurisdictional theory.

IV. ANALYSIS OF SUPPORTING AUTHORITIES

1. *Hafer v. Melo*, 502 U.S. 21 (1991). Definitively established that individual-capacity suits against government officers are distinct from official-capacity suits and do not implicate Eleventh Amendment or sovereign immunity protections. Individual-capacity defendants are personally liable and are treated as private parties for jurisdictional and procedural purposes. This case supplies the structural foundation for the individual-capacity defendant framing in the diversity context and is the controlling authority on the capacity-distinction question.

2. *Alden v. Maine*, 527 U.S. 706 (1999). While primarily addressing state sovereign immunity under the Eleventh Amendment, the Court's sustained analysis of the distinction between individual and sovereign capacity reinforces the principle that capacity characterization has concrete legal consequences in jurisdictional analysis. The majority's discussion of the historical practice of suits against officers in individual capacity supplies useful doctrinal context for the § 1332 framing.

3. *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824). Chief Justice Marshall's discussion of whether federal officers could be sued in ways that did not implicate sovereign immunity predates but anticipates the modern individual-capacity doctrine. The analysis in *Osborn* supports the proposition that suits against officers in their private capacity were historically understood as suits against individuals rather than against the government.

4. *Ultra Vires Doctrine – Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996). Nonstatutory review of ultra vires executive action is available where an officer has exceeded the scope of statutory authority. The theory in the diversity context extends this by arguing that misidentifying a private actor as a statutory subject is itself a form of ultra vires conduct — acting without lawful authority to impose a status that the law does not

authorize. The ultra vires framing gives the substantive claim doctrinal grounding beyond mere tort law.

5. Amount in Controversy — *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938). Courts look to the amount potentially recoverable at the time of filing, not at ultimate judgment. Where the injury is ongoing misidentification that results in financial obligations — including tax assessments, withholding, penalties, and related liabilities — those amounts may aggregate to satisfy the \$75,000 threshold. The *St. Paul Mercury* standard is plaintiff-protective: the amount claimed controls unless it appears to a legal certainty that the claim is for less than the jurisdictional amount. A detailed accounting of the specific financial consequences of the misidentification is the preferred method of establishing the amount in controversy.

V. GAP AND VULNERABILITY ANALYSIS

5. **The Citizenship/Alienage Tension.** If the plaintiff claims nonresident alien status, § 1332(a)(1) (state-versus-state diversity) is unavailable. Section 1332(a)(2) (citizen of a state versus citizen or subject of a foreign state) may apply, but only if the plaintiff is genuinely treated as a foreign national — a characterization that a court will scrutinize carefully and that may require evidence of foreign domicile, foreign national status, and consistent assertion of alien status in prior proceedings. A U.S.-born national asserting foreign or nonresident alien status will encounter a skeptical bench on this characterization, particularly if prior conduct is inconsistent with that posture.
6. **The Well-Pleaded Complaint Rule.** Under *Louisville & Nashville Railroad Co. v. Mottley*, 211 U.S. 149 (1908), federal question

jurisdiction must appear on the face of the plaintiff's complaint, not in anticipated defenses. In a § 1332 diversity case, the inverse problem arises: if the defendant's ultra vires conduct is necessarily defined by reference to federal law (e.g., the officer exceeded the scope of a federal statute), the plaintiff's claim may necessarily raise federal questions that complicate the diversity framing. Careful pleading should frame the ultra vires conduct in terms of the officer's individual wrongdoing rather than in terms of federal statutory violation.

7. **Federal Officer Removal Under 28 U.S.C. § 1442.** Even if the case is filed in federal court under § 1332, a federal officer defendant may invoke § 1442 as an alternative jurisdictional basis, which imposes its own procedural consequences. More significantly, even if filed in state court as a diversity-type case, the defendant may remove under § 1442, which grants removal rights to federal officers defending suits arising from acts taken under color of federal office. Courts have held that federal officers may invoke § 1442 even when sued in personal capacity if the claim arises from conduct taken in the course of federal employment. *Mesa v. California*, 489 U.S. 121 (1989). The individual-capacity framing reduces but does not eliminate this risk.
8. **Qualified Immunity.** Individual-capacity federal officer defendants routinely invoke qualified immunity under *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), which shields officers from damages liability unless they violated a "clearly established" statutory or constitutional right of which a reasonable person would have known. If the plaintiff's right — to be free from misidentification of legal status — is not clearly established in existing precedent, the immunity defense will

likely succeed at the motion-to-dismiss or summary judgment stage, regardless of the merits of the underlying claim.

VI. CONCLUSION AND STRATEGIC OBSERVATIONS

The diversity jurisdiction theory is more procedurally accessible than the pure Article III common-law theory because it relies on an established statutory jurisdictional grant rather than on inherent Article III power. Its critical vulnerabilities are the citizenship characterization problem for a plaintiff asserting nonresident alien status, the amount-in-controversy quantification challenge for dignitary and status injuries, and the federal officer removal mechanism that could reroute the case into federal statutory territory.

Strategic Observation

The theory is most viable when the plaintiff can document specific, quantifiable financial harm flowing directly from the misidentification — ideally in an amount that comfortably exceeds \$75,000 — maintain consistent and well-supported citizenship characterization, and anticipate and rebut the removal and immunity defenses at the pleading stage. The qualified immunity problem is the most serious immediate obstacle and should be addressed through careful pleading that identifies existing cases recognizing analogous rights with sufficient specificity to pass the "clearly established" threshold. An amicus strategy aimed at establishing the right in circuit court before full adjudication of the damages claim may be warranted.

MEMORANDUM III OF IV

Bivens-Type Constitutional Tort — Ultra Vires Capacity Misidentification

I. QUESTION PRESENTED

Whether a federal officer who misidentifies a private individual as a federal statutory subject — thereby imposing obligations, liabilities, or status classifications that the individual has not lawfully assumed — commits a constitutional tort cognizable under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), entitling the individual to compensatory damages and equitable identity correction, and whether such a claim survives the Supreme Court's post-*Bivens* restriction jurisprudence.

II. BRIEF ANSWER

The original *Bivens* decision recognized an implied damages remedy for Fourth Amendment violations by federal agents in the absence of any statutory cause of action. The theory analyzed here — a Fifth Amendment due process and liberty claim grounded in the misattribution of governmental or statutory capacity to a private individual — would constitute a "new context" under the post-*Bivens* restriction framework established in *Ziglar v. Abbasi*, 582 U.S. 120

(2017), and *Egbert v. Boule*, 596 U.S. 482 (2022). Under current doctrine, extension of *Bivens* to new contexts faces nearly insuperable obstacles.

However, the equitable identity-correction claim — seeking injunctive or declaratory relief rather than damages — operates outside *Bivens* entirely and is analyzed under the separate framework of equity jurisdiction and nonstatutory review. The equitable claim is analytically stronger than the *Bivens* damages claim under current doctrine and represents the superior strategic posture.

III. BACKGROUND AND LEGAL FRAMEWORK

Bivens itself was decided at a moment when the Court was willing to imply both rights and remedies from constitutional text. The original holding rested on the proposition that the Constitution requires a remedy for its own violations and that courts have inherent equitable power to fashion one when Congress has not. Justice Harlan's concurrence emphasized that the damages remedy serves a deterrence function distinct from injunctive relief — a distinction that has taken on renewed importance as the Court has restricted the damages remedy while leaving equitable relief largely intact.

The subsequent decades have produced dramatic contraction of the *Bivens* implied remedy. In *Bush v. Lucas*, 462 U.S. 367 (1983), the Court declined to extend *Bivens* to First Amendment claims by federal employees where a comprehensive statutory remedial scheme existed. In *Schweiker v. Chilicky*, 487 U.S. 412 (1988), the Court denied extension where Congress had established an alternative remedial scheme, even if that scheme provided less than full compensation.

Ziglar v. Abbasi, 582 U.S. 120 (2017), consolidated this restriction into a formal analytical framework: courts must first determine whether the claim arises in a "new context" — essentially, whether it differs in any meaningful way from the three surviving Bivens contexts (the Fourth Amendment claim in Bivens itself; the Fifth Amendment sex-discrimination-in-federal-employment claim in Davis v. Passman, 442 U.S. 228 (1979); and the Eighth Amendment prison-conditions claim in Carlson v. Green, 446 U.S. 14 (1980)). If a new context exists, courts must identify "special factors counseling hesitation" and decline to extend Bivens if any such factors are present.

Egbert v. Boule, 596 U.S. 482 (2022), effectively held that if any alternative remedial structure exists, however inadequate in practice, Bivens extension is foreclosed. Justice Gorsuch's separate concurrence in Egbert invited the Court to reconsider and overrule Bivens entirely, signaling continued doctrinal contraction at the Court's conservative supermajority.

IV. ANALYSIS OF SUPPORTING AUTHORITIES

1. *Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971)*. The foundational holding recognizing that constitutional violations by federal officers generate implied remedies where no statute provides one. The rights/remedy principle of Marbury is embedded in Bivens' reasoning. The six-Justice majority held that the Fourth Amendment's prohibition on unreasonable searches and seizures gave rise to an implied cause of action for damages, not merely for prospective relief. The continuing doctrinal significance of Bivens lies less in its availability as a damages remedy — which has been severely contracted — and more in its recognition that constitutional rights are not self-executing without judicial enforcement mechanisms.

2. *Davis v. Passman*, 442 U.S. 228 (1979). Extended Bivens to Fifth Amendment due process and equal protection claims arising from sex discrimination in federal employment. Significant for the present theory because it confirms that Fifth Amendment liberty and due process claims can supply Bivens causes of action — the same constitutional home proposed for the capacity misidentification claim. The Fifth Amendment due process liberty interest is broad enough in principle to encompass the interest in correct legal status classification, though no court has so held.

3. *Ziglar v. Abbasi*, 582 U.S. 120 (2017). The controlling modern framework for new Bivens contexts. "Special factors" counseling hesitation include: the existence of alternative remedies (even inadequate ones), separation of powers concerns, the availability of congressional action, national security context, and institutional competence concerns. A capacity-misidentification claim would need to overcome the alternative-remedies analysis — courts would ask whether administrative processes (IRS appeals, Privacy Act requests, administrative review mechanisms) provide adequate alternatives, and under *Egbert*, the adequacy of the alternative is essentially irrelevant.

4. *Egbert v. Boule*, 596 U.S. 482 (2022). The most restrictive Bivens decision to date. Justice Thomas's majority opinion held that a Bivens remedy is unavailable against a Border Patrol agent for both Fourth Amendment excessive force and First Amendment retaliation claims because Congress had not authorized such a remedy and alternative remedial structures — including a DHS complaint process that plaintiffs argued was inadequate — foreclosed judicial extension. *Egbert* effectively reduces the special-factors analysis to a single inquiry: is there any alternative remedial structure? If yes, Bivens does not extend.

5. *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015). The Court recognized that courts retain equitable power to enjoin

unconstitutional executive action under their historic equity jurisdiction, independent of whether a statutory cause of action exists. This case is the critical authority distinguishing the equitable identity-correction claim from the Bivens damages claim. Armstrong supports the equitable claim as a distinct remedy not subject to Bivens' restriction framework — the court's equitable power predates Bivens and does not depend on it.

6. *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010). The Court sustained a constitutional challenge to executive structure without requiring any statutory cause of action, relying instead on the plaintiff's right to be governed by officers appointed consistently with the Constitution. The structural logic — that constitutional violations of status and authority carry judicial remedies — analogizes to the capacity-correction theory. *Free Enterprise Fund* demonstrates that courts can and do grant structural constitutional relief without requiring a Bivens-type damages cause of action.

V. GAP AND VULNERABILITY ANALYSIS

9. **The Egbert Obstacle.** Under *Egbert*, any alternative remedial structure forecloses a new Bivens context. A court will identify the IRS administrative process, the Privacy Act, 5 U.S.C. § 552a, and potentially 26 U.S.C. § 7433 (civil damages for unauthorized collection actions) as alternative remedies — even if the plaintiff has deliberately avoided invoking them and even if those remedies provide incomplete relief. The *Egbert* majority does not require that the alternative be adequate, only that it exist. This is effectively a categorical bar for any new Bivens context in a domain where any federal statutory remedy scheme operates.

10. The "Clearly Established" Baseline for the Constitutional Right.

The liberty interest in correct legal status classification is not clearly established in *Bivens* jurisprudence or in broader constitutional law. Courts will apply the *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), qualified immunity standard and find the right insufficiently defined in existing precedent. The plaintiff would need to identify cases recognizing, with particularity, a right to be free from governmental misidentification of private legal status — a right that has not been recognized in published appellate decisions.

11. Separation of Powers Concern as a Special Factor. Courts

applying Abbasi's "special factors" analysis will note that Congress has comprehensively legislated the field of tax status, employment classification, and federal actor identification. Congressional silence as to a particular remedy may be read as deliberate preclusion rather than as an invitation to judicial remedy-creation — particularly where, as here, the plaintiff seeks to opt out of a comprehensive statutory scheme rather than obtain a remedy within it. The separation of powers concern is heightened when the plaintiff asks the court to effectively override a legislative classification decision.

12. The Equitable Remedy's Redressability Limit. Even if the

equitable identity-correction claim survives *Bivens* analysis under the *Armstrong* framework, a court must determine whether it can actually order the relief sought — correction of records, cessation of status-based obligations — without effectively nullifying a statutory scheme or directing the executive branch's exercise of discretion. Courts are reluctant to grant equitable relief that functionally defeats comprehensive Congressional frameworks, even where individual constitutional rights are implicated.

VI. CONCLUSION AND STRATEGIC OBSERVATIONS

The Bivens damages claim faces essentially insurmountable obstacles under current Supreme Court doctrine. *Egbert v. Boule* has contracted the available space for new Bivens contexts to near zero, and Justice Gorsuch's invitation to overrule Bivens entirely suggests the doctrine may contract further. The persistence of the three surviving Bivens contexts is almost certainly more the product of stare decisis inertia than of doctrinal endorsement.

The equitable identity-correction claim, however, operates on substantially stronger analytical ground because it invokes the court's historic equity jurisdiction — recognized in *Armstrong*, *Free Enterprise Fund*, and the broader tradition of equity as a pre-constitutional source of judicial power — rather than the implied-remedy logic of Bivens.

Strategic Observation

A litigant pursuing this theory would be best served by bifurcating the claims: abandoning the Bivens damages theory entirely (or preserving it only for appellate record purposes) and focusing exclusively on equitable relief under *Armstrong*'s nonstatutory equity jurisdiction framework. The strategic priority is to avoid triggering the *Abbasi/Egbert* new-context analysis by grounding the equitable claim in the court's inherent equity power rather than in Bivens. The claim should be pled as: courts of equity have always had power to correct official misidentification of a party's legal status; that power derives from Article III and the historical equity jurisdiction that Article III incorporates; and no act of Congress has stripped that power in the context presented. This framing avoids the

Bivens machinery entirely while preserving the core equitable remedy.

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MEMORANDUM IV OF IV

State-Court Private-Capacity Equitable Theory

I. QUESTION PRESENTED

Whether a state court of general equity jurisdiction may entertain a private-capacity suit seeking declaratory and equitable relief to correct the misclassification of a natural person's legal status — from private actor to public or statutory subject — without invoking federal jurisdiction, the federal Declaratory Judgment Act, the Administrative Procedure Act, or any federal tax statute, and whether state common law and equity provide adequate substantive grounds for such relief.

II. BRIEF ANSWER

State courts of general jurisdiction retain broad equity powers that predate and operate independently of the federal judicial system. A suit for declaratory relief and status correction under state law does not require invocation of federal frameworks. State courts routinely

adjudicate questions of legal status, identity, and capacity in contexts including probate, corporate law, domestic relations, and real property. The theory analyzed here seeks to use state equity jurisdiction to obtain a judicial declaration of private legal status and an order requiring correction of official misclassification.

The primary vulnerabilities are: (1) federal officer immunity from state court process; (2) federal removal jurisdiction under 28 U.S.C. § 1442; (3) Supremacy Clause preemption of state remedies that conflict with federal statutory classifications; and (4) the likelihood that a state court will decline to rule on what amounts to a federal status question under principles of comity and institutional restraint.

III. BACKGROUND AND LEGAL FRAMEWORK

State courts of general equity jurisdiction derive their power from state constitutional grants and from the historical equity jurisdiction exercised by English chancery courts. Unlike federal courts — which are courts of limited jurisdiction requiring affirmative statutory grants, see *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994) — state courts of general jurisdiction are courts of general competence with authority to hear any claim not specifically excluded by law. See *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) (state courts presumptively have concurrent jurisdiction over federal claims; a fortiori they have jurisdiction over common-law claims).

State equity courts have historically entertained suits for correction of public records (through state-law analogs to *quo warranto*, *mandamus*, and *certiorari*), identity and status declarations (name changes, probate status, capacity determinations), and relief against individuals who act without legal

authority in ways that harm private rights. The equity court's power to declare status — status in the Latin sense of one's legal position in relation to other persons and to the law — is among the most ancient of equity's competencies.

The theory does not invoke the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, which applies only in federal courts and requires an independent basis of federal jurisdiction. Instead, it relies on state declaratory judgment acts, which exist in all fifty states and follow the Uniform Declaratory Judgments Act template. State declaratory relief is available to persons who demonstrate a justiciable controversy over legal rights and status without requiring the degree of ripe, concrete injury-in-fact demanded by federal Article III standing doctrine — though states vary meaningfully in their standing requirements and courts should analyze the relevant state's doctrine specifically.

The claim does not invoke the APA, which applies only to federal agencies and only in federal courts, 5 U.S.C. §§ 551–706, or any federal tax statute. The injury is framed in state common-law terms: wrongful interference with legal status, misrepresentation of capacity, or the common-law analogue of slander of title applied to legal identity. The state-law framing is both a jurisdictional choice and a substantive one: it grounds the claim in legal categories that state courts are familiar with and empowered to adjudicate.

IV. ANALYSIS OF SUPPORTING AUTHORITIES

1. *Tafflin v. Levitt*, 493 U.S. 455 (1990). Confirmed that state courts have concurrent jurisdiction to hear federal civil RICO claims in the absence of explicit congressional preclusion. The case's underlying principle — that state courts retain general jurisdiction absent affirmative exclusion — supports the theory that state courts may entertain private-capacity status

claims not preempted by federal law. The presumption of concurrent jurisdiction is a structural feature of American federalism that favors the state-court theory.

2. *Howlett v. Rose*, 496 U.S. 356 (1990). The Supreme Court held that state courts may not refuse to adjudicate federal claims within their jurisdiction based on state immunity rules that would not apply to analogous state claims. The decision's underlying logic reinforces the principle that state courts are courts of general competence and that their jurisdiction is presumptively broad. By extension, a state court may not categorically refuse to adjudicate a private-capacity status claim simply because the opposing party is a federal officer, without a specific legal basis for that refusal.

3. *Alden v. Maine*, 527 U.S. 706 (1999). While primarily holding that Congress cannot subject states to private suits in their own courts without consent, the decision extensively analyzes the historical relationship between state courts and individual-capacity suits against officers of government. The majority opinion's discussion of the common-law practice of suits against officers in personal capacity — predating the Constitution — supplies important historical grounding for the state-court theory's reliance on pre-constitutional equity jurisdiction.

4. *Uniform Declaratory Judgments Act — State Implementations.* Adopted in substantially similar form across all fifty states, the UDJA authorizes courts to "declare rights, status, and other legal relations whether or not further relief is or could be claimed." The "status" language is directly applicable to a suit seeking declaration of private-actor legal status. State courts have used this authority to declare legal identity, capacity, and status in a wide range of non-federal contexts — including, in many jurisdictions, declarations of identity status in commercial law, probate, and domestic relations contexts. The UDJA's broad scope is the primary substantive vehicle for the state-court theory.

5. State Common Law – Quo Warranto Analogs. Several states maintain common-law or statutory quo warranto proceedings through which courts examine by what authority a person or entity exercises a claimed legal position. See, e.g., Cal. Code Civ. Proc. §§ 803–811 (California quo warranto); Tex. Civ. Prac. & Rem. Code §§ 66.001–66.004 (Texas quo warranto). While typically used against public officers who claim an office without legal entitlement, the conceptual analogue — judicial examination of the legal basis for a claimed authority or status — supports the theory's request for judicial examination of the basis on which a private actor has been classified as a statutory subject.

6. Slander of Title / Injurious Falsehood – Restatement (Second) of Torts § 623A. At common law, an action lies for false statements about a person's legal interest in property that cause specific damage. The Restatement (Second) of Torts § 623A (1977) recognizes injurious falsehood as a cause of action for false statements of fact that the publisher either knows to be false or makes in reckless disregard of their truth or falsity, and that cause economic harm by misrepresenting a person's legal status or interest. Some jurisdictions have extended analogous protection to false statements about legal status and capacity beyond the property context. This authority supplies the tort-law analogue for a state-law damages claim arising from misidentification.

V. GAP AND VULNERABILITY ANALYSIS

13. The Federal Removal Problem. Under 28 U.S.C. § 1442, a federal officer sued in state court for acts taken under color of federal office may remove the case to federal district court as of right. The individual-capacity framing does not eliminate this risk — courts have held that federal officers may invoke § 1442 even when sued in

personal capacity if the claim arises from conduct taken in the course of federal employment. *Mesa v. California*, 489 U.S. 121, 124–25 (1989). Upon removal, the case is heard in federal district court, which would reintroduce the very federal statutory frameworks the plaintiff sought to avoid and would also implicate the Article III standing requirements that state declaratory judgment acts may not require. Removal is the single greatest strategic vulnerability of the state-court approach and must be anticipated at the drafting stage.

14. Supremacy Clause Preemption. If the misclassification at issue involves a federal statutory determination — for example, that a person is a "taxpayer," a "U.S. person," or an "employee" as those terms are defined by federal statute — a state court declaration to the contrary may be preempted under the Supremacy Clause, U.S. Const. art. VI, cl. 2. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), established that states cannot interfere with federal operations. A state court declaration that a person is not subject to a federal statutory classification may be read as an impermissible state interference with federal law administration, even in a nominally private-capacity proceeding. The claim must be carefully framed to seek state-law relief (damages, correction of state records) rather than a declaration purporting to bind federal officers or agencies with respect to federal law obligations.

15. Political Question and Comity Doctrines. State courts are generally reluctant to issue declarations that effectively purport to bind federal officers or agencies with respect to federal law obligations. Under principles of judicial comity and the political question doctrine (as applied in state courts through their own constitutional traditions), a state court judge is unlikely to declare

that a federal agency must treat a plaintiff as a nonresident alien if the relevant federal statute, as administered, classifies the plaintiff otherwise. Even in a nominally private-capacity proceeding, the practical effect of the declaration would be to supervise federal law administration — a function state courts have historically declined to exercise.

16. State Court Unfamiliarity and Procedural Risk. Unlike federal courts, which regularly encounter constitutional and structural challenges to federal executive action, state courts have limited exposure to these legal theories. The risk of misapplication, dismissal for failure to state a recognized cause of action, or wholesale analogizing to more familiar domestic relations or probate precedents — rather than engaging the theory on its own terms — is elevated. State court judges who are unfamiliar with the federal constitutional framework underlying the private-right and ultra vires theories may resolve the case on procedural grounds without reaching the merits, foregoing the opportunity to establish the theory in even a limited precedential posture.

VI. CONCLUSION AND STRATEGIC OBSERVATIONS

The state-court private-capacity equitable theory has genuine structural advantages: state courts of general jurisdiction are not courts of limited jurisdiction; state declaratory judgment acts broadly authorize status declarations; and state equity jurisdiction predates and operates independently of the federal statutory frameworks the plaintiff seeks to avoid. The theory also benefits from the fact that state courts are presumptively

competent to adjudicate any claim not specifically excluded by law — a presumption that operates in the plaintiff's favor at the threshold stage.

The theory's most serious vulnerability is federal removal under § 1442, which can defeat the entire strategic purpose of the state-court approach by returning the case to the very federal forum the state-court filing sought to avoid. A carefully structured complaint — one that avoids any allegation arising from a federal officer's official acts and focuses entirely on the private-law consequences of the misclassification rather than on the officer's conduct as a federal actor — may reduce but cannot eliminate the removal risk. The Supremacy Clause preemption concern is the second most serious vulnerability and requires the claim to be framed entirely in terms of state-law rights and remedies, with no request that the state court directly override a federal classification decision.

Strategic Observation

The most viable version of this theory seeks state-law damages for harm caused by misidentification — analogous to defamation or injurious falsehood under the Restatement (Second) of Torts § 623A — rather than a declaration purporting to establish that federal law does not apply to the plaintiff. This damages-oriented framing: (a) grounds the claim in a recognized state-law tort category; (b) reduces the Supremacy Clause preemption risk because it does not purport to override a federal classification, only to remedy its tortious consequences; (c) reduces the federal-question dimension of the claim; and (d) provides a concrete, quantifiable measure of damages that satisfies even demanding state standing requirements. The quo warranto analog may be available in some jurisdictions as a supplementary procedural vehicle for examining the basis of the classification, but should be pursued as a parallel track

rather than the primary theory.

SYNTHESIS AND CROSS-CUTTING ANALYSIS

Comparative Assessment of the Four Theories

ANALYTICAL SUMMARY

Each of the four theories analyzed in this memorandum series addresses a distinct dimension of the jurisdictional and remedial challenge facing a natural person asserting purely private legal capacity. None of the theories is individually sufficient as a complete solution to that challenge; each has significant vulnerabilities that require careful strategic management. The following synthesis identifies the key cross-cutting themes and the relative strength of each theory across the principal analytical dimensions.

Dimension	Theory I (Art. III Private-Right)	Theory II (§ 1332 Diversity)	Theory III (Bivens / Equity)	Theory IV (State Court Equity)
Jurisdictional Basis Strength	Weak — novel; no appellate precedent	Moderate — established statutory basis; citizenship issues	Very Weak (Bivens damages); Moderate (equitable relief)	Moderate — general jurisdiction presumption; removal risk
Standing /	High	Moderate —	Moderate —	Lower

Dimension	Theory I (Art. III Private-Right)	Theory II (§ 1332 Diversity)	Theory III (Bivens / Equity)	Theory IV (State Court Equity)
Injury-in-Fact	difficulty — must concretize misattribution harm	financial quantification required; tractable	equitable claim may have lower threshold	threshold — state standing doctrine often broader
Sovereign Immunity Exposure	Low — private-right theory bypasses government	Low — individual capacity framing; Hafer controls	Low — equitable claim; Armstrong framework	Low — individual capacity; state court jurisdiction
Federal Removal Risk	N/A — already in federal court	N/A — already in federal court	N/A — already in federal court	High — § 1442 creates right of removal for federal officers
Qualified Immunity Exposure	High — right not clearly established	High — Harlow applies to individual-capacity damages	High (damages); Low (equitable relief)	Varies by state law; potentially lower than federal standard
Preemption / Supremacy Risk	Moderate — federal common law may apply	Moderate — federal officer removal possible	Low — equity operates independently	High — state declaration vs. federal classification
Overall Viability for Damages	Low	Moderate (with strong factual record)	Very Low (Bivens); N/A (equity)	Moderate (injurious falsehood theory)
Overall Viability for Equitable/Declaratory Relief	Moderate	Low (§ 1332 is a damages vehicle)	Moderate-High (Armstrong framework)	Moderate (removal risk limits state-court advantage)

RECOMMENDED APPROACH — LAYERED THEORY STRUCTURE

Based on the foregoing analysis, the most analytically defensible strategy is a layered approach that combines multiple theories in a single pleading, ordered by strength:

- 17. Primary Equitable Theory (Federal):** Nonstatutory equity jurisdiction under *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320 (2015), seeking injunctive and declaratory relief for ultra vires misidentification. This theory does not require a Bivens analysis, avoids the special-factors framework, and is analytically grounded in the court's pre-statutory equity power. It is the most defensible theory for equitable relief in federal court.
- 18. Alternative Jurisdictional Theory (Federal):** Section 1332 diversity jurisdiction with individual-capacity defendant framing, supported by a detailed accounting of quantifiable financial harm from the misidentification. This theory provides a statutory jurisdictional basis and access to a damages remedy, subject to the citizenship characterization and qualified immunity challenges identified in Memorandum II.
- 19. Supplementary Damages Theory (State):** State-law injurious falsehood / misrepresentation claim in state court, framed as a common-law tort claim for damages caused by status misidentification, without requesting that the state court override the federal classification. This theory is insulated from the Bivens framework and may be less vulnerable to Supremacy Clause preemption than a declaratory-status approach.
- 20. Reserved Historical Theory (Federal):** Article III private-right theory, preserved for appellate development and presented as the constitutional-structural foundation for all three of the foregoing theories. This theory is not viable as a primary jurisdiction theory in

the current doctrinal environment but supplies the deepest historical and constitutional grounding for the overall framework.

FINAL OBSERVATION ON DOCTRINAL DIRECTION

The private-capacity jurisdictional theories analyzed in this series are at varying stages of doctrinal development. None has achieved appellate recognition in the precise form presented here. The theories most likely to make doctrinal progress in the current judicial environment are the equitable theories (Theories I and III as to equitable relief, and the state-court damages theory under Theory IV), because the Supreme Court has consistently been more hospitable to equitable relief than to damages remedies in the context of constitutional challenges to executive action. The *Bivens* line of cases continues to contract, while the equity jurisdiction line — from *Ex parte Young* through *Armstrong* and *Free Enterprise Fund* — remains vital. A litigant who grounds the theory in equity rather than in implied damages remedies is better aligned with the direction of current doctrine.
