

SUPREME COURT OF THE UNITED STATES

25-6865
ROBERT ANDREW MULLINS *AM*

Petitioner,

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SUPREME COURT, U.S.

v.

UNITED STATES OF AMERICA, et al

ORIGINAL

Respondents.

PETITION FOR WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the United States Court of Appeals
for the Tenth Circuit

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January 2026

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No. ___ - ___

**In The
Supreme Court of the United States**

ROBERT ANDREW MULLINS,

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QUESTIONS PRESENTED

1. Whether the injury-occurrence rule under the FTCA should control accrual of a claim in a case where relevant exculpatory evidence was allegedly not available until years after the injury, and was purportedly concealed or inaccessible.
2. Whether the Tenth Circuit erred by failing to consider the application of the discovery rule or equitable tolling in an exceptional case where the plaintiff asserts the government withheld or failed to disclose material evidence that would have affected prosecution and civil claims.

3. Whether a settlement offer, explicitly stated in a Memorandum of Understanding and undisputedly received by the United States, may constitute an implied-in-fact contract when ignored beyond a stated response deadline.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is unpublished but available at *Mullins v. United States*, No. 24-4099 (10th Cir. Dec. 3, 2025).

The opinion of the United States District Court for the District of Utah is unpublished and available as *Mullins v. United States*, No. 4:22-CV-00046-DN-CMR (D. Utah 2025).

JURISDICTION

The judgment of the court of appeals was entered on December 3, 2025. Jurisdiction is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTES

28 U.S.C. § 2401(b): A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues.

28 U.S.C. § 2401(a): Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. This includes actions arising from either express or implied contractual agreements with the government.

28 U.S.C. § 1346(a)(2): The district courts shall have original jurisdiction of any civil action or claim against the United States founded upon the Constitution, any Act of Congress, or any express or implied contract with the United States.

STATEMENT OF THE CASE

Petitioner was convicted in 2010 in Utah state court based on evidence allegedly obtained by federal law enforcement and passed to local prosecutors. He asserts that this evidence was acquired in violation of a software license agreement as well as the evidence and all fruits thereof are unlawful under 18 U.S.C. § 2515 et seq., which prohibits the use of unlawfully obtained wire or oral communications in legal proceedings. The unlawful transfer of evidence from federal authorities to the Cache County Attorney's Office and the Fruits thereof and its subsequent use against Mullins directly violated this statute. and was used without legal process, violating his rights.

In 2022, Petitioner initiated an FTCA claim against multiple federal and state officials, arguing that newly discovered evidence in March 2022 (previously inaccessible) revealed unlawful conduct that formed the basis for his claims.

The district court dismissed all claims as time-barred under §§ 2401(a) and (b), and because claims against non-federal defendants were not cognizable under FTCA.

The Tenth Circuit affirmed, holding that the injury-occurrence rule applied and no discovery rule exception could extend the filing deadlines.

In April 2022 Petitioner initiated a settlement offer via a Memorandum of Understanding that was signed for and received within 2 days of mailing with a contractual trigger ignored by the United States, again in April of 2023 with a signed receipt to a second Memorandum of Understanding with a contractual trigger. The district court and the circuit court ignored the second MOU along with the United States. The district court and the circuit court erred in not stating that these were in-fact implied contractual agreements due to government conduct.

REASONS FOR GRANTING THE PETITION

I. CIRCUIT SPLIT AND INCONSISTENCY WITH SUPREME COURT PRECEDENT

Other circuits have recognized exceptions to the injury-occurrence rule in FTCA cases when government conduct is concealed or the plaintiff could not have discovered material facts until much later. The Tenth Circuit's decision here declines to apply the discovery rule, even when Petitioner claims that critical evidence was not available until March 2022 — undermining fair access to justice.

II. DUE PROCESS CONCERNS WARRANT EQUITABLE TOLLING

Petitioner's claim is that key evidence was obtained only in 2022, suggesting possible Brady violations or official misconduct. In *Wong v. United States*, this Court held that § 2401(b) is not jurisdictional, and equitable tolling is available. The Tenth Circuit ignored this, failing to even consider tolling.

III. THE CIRCUIT COURT ERRED IN DISMISSING THE UNDISPUTED SETTLEMENT OFFER AS NON-BINDING DESPITE THE GOVERNMENT'S FAILURE TO RESPOND

Petitioner respectfully submits that the Tenth Circuit erred in concluding that the Memorandum of Understanding sent to the United States in April 2022 lacked legal force or mutual assent, despite the government's undisputed receipt of the document and failure to respond within the accelerated time frame proposed by Petitioner.

This Court should grant review to clarify whether silence in the face of a clearly defined settlement proposal — particularly where an explicit response deadline was provided — can give rise to contractual obligation under public law doctrines akin to 'shrinkwrap' or unilateral contracts.

The April 2022 Memorandum of Understanding (MOU) expressly conveyed the scope of Petitioner's claims, a proposed resolution for monetary and equitable relief, and a deadline of three days for response. The MOU was sent via certified mail and received at the Salt Lake office of the U.S. Attorney, confirmed by a signature from a federal secretary two days after mailing. The United States made no response within the stated timeframe and remained silent for over two months.

A second MOU, substantively reaffirming the terms of the first, was sent to the U.S. Attorney's Office after the lawsuit was filed. This second MOU included a binding clause stating that if the United States failed to audit Petitioner's former employer, Inovar Inc., by June 2023, then the United States 'agrees to compensate Petitioner in the amount of \$68,000,000.' The second MOU was received and signed for, yet ignored by all parties — the United States, the District Court, and the Tenth Circuit.

Under well-established principles of unilateral contract theory and exceptions akin to shrinkwrap agreements, silence can constitute assent where an offer clearly defines the terms and imposes an explicit timeframe for objection. Petitioner relied in good faith on the lack of response and expected at minimum a formal reply, if not meaningful engagement.

The lower courts erred in stating that 'nothing supports the conclusion the United States agreed to it, even implicitly.' This conclusion ignores the factual evidence of receipt and inaction in the face of a defined deadline and contractual trigger. Petitioner argues that such conduct, in context, constitutes at minimum a disputed material fact or legal ambiguity warranting further judicial review.

This issue merits review by this Court to determine whether government silence and failure to reject a settlement demand within a fixed deadline — after documented receipt — can give rise to an implied-in-fact agreement or bar dismissal at the pleading stage.

The lower court held that there was no enforceable settlement agreement because "nothing supports the conclusion the United States agreed to it, even implicitly" (Judgment at p. 7). However, Petitioner did not allege a bilateral meeting of the minds in the traditional sense, but rather a unilateral offer that was not rejected in the face of a fixed deadline — after documented receipt — thus creating a colorable implied-in-fact agreement.

Such reasoning is consistent with this Court's broader jurisprudence on implied agreements (*Baltimore & Ohio R. Co. v. United States*, 261 U.S. 592 (1923)) and cases like *United States v. Winstar Corp.*, 518 U.S. 839 (1996), which acknowledge that **government conduct, not merely explicit assent, may give rise to binding obligation.**

CONCLUSION

The petition raises important legal questions about when FTCA claims accrue in cases involving delayed access to government-held evidence, and whether equitable tolling should have been considered to avoid injustice, and whether signed receipt by Federal authorities of a Memorandum of Understanding settlement offer with a contractual trigger is in-fact an expressed or implied contract. This case merits the Supreme Court's review to resolve the misapplication of statutory time bars in exceptional circumstances involving potentially unconstitutional conduct, and the reaffirmation of assent to contract by government conduct to a binding obligation.

PRAYER FOR RELIEF

Petitioner respectfully prays that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

Signature: /s/ Robert Andrew Mullins

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Dated: December 15, 2025