25-7694

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

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

HOWARD LAWRENCE ELLSWORTH III, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA, et al.,

Respondent.

Howard Lawrence Ellsworth III
Theresa Lynn Ellsworth
5000 Crawford Drive
The Colony, Texas 75056
(330) 813-8914
Petitioners Pro Se

TABLE OF CONTENTS

QUESTIONS PRESENTED

1. **Whether a claim under the Federal Tort Claims Act accrues under United States v. Kubrick when the United States exercises exclusive control over diagnosis, testing, and medical records, cancels diagnostic testing, fails to disclose contradictory internal medical assessments, and denies access to care—thereby preventing a patient from reasonably discovering the existence of the injury.**
2. **Whether courts may resolve accrual and equitable tolling under the FTCA at the Rule 12 stage as a matter of law where the plaintiff plausibly alleges constructive concealment through government control of medical information and prolonged denial of care.**
3. **Whether divergence among the circuits regarding diagnosis-based accrual, constructive concealment, and the propriety of Rule 12 dismissal warrants this Court's review.**
4. **Whether the United States may treat later administrative claims identifying a newly discovered injury as "duplicative" of an earlier claim that did not identify that injury, while simultaneously arguing that the claim accrued years earlier.**

PARTIES TO THE PROCEEDING

Petitioners are

Howard Lawrence Ellsworth III and,

Theresa Lynn Ellsworth.

Respondent is

United States of America;

Dallas, Texas Department of Veterans Affairs,

Plano, Texas Department of Veterans Affairs.

TABLE OF AUTHORITIES

Cases

Statutes

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is unpublished and reproduced in the Appendix.

The judgment of the United States District Court for the Eastern District of Texas is reproduced in the Appendix.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 2026.

This Court has jurisdiction under **28 U.S.C. § 1254(1)**.

STATEMENT OF THE CASE

A. Background and Government Control of Diagnosis

From 2016 through 2022, Petitioner received medical care exclusively through the Department of Veterans Affairs ("VA"), which exercised **complete control over diagnosis, testing, medical records, and access to providers.**

In June 2016, a VA physician diagnosed Petitioner with Type 2 diabetes. Despite that diagnosis, VA providers failed for extended periods to perform routine A1c testing—an essential diagnostic measure. No meaningful monitoring occurred during significant portions of 2016, 2017, 2018, and 2019.

In September 2019, Petitioner's VA provider internally documented that the diabetes diagnosis was "**incorrect**." This contradictory assessment was **never disclosed** to Petitioner. No testing or explanation followed.

In early 2020, Petitioner's A1c values reached critically elevated levels (exceeding 13%). Rather than increase monitoring, the VA **cancelled scheduled diagnostic testing** and failed to provide follow-up care.

B. Ongoing Denial of Care (2020–2022)

The conduct at issue did not end in 2020. From June 2020 through April 2022, Petitioner repeatedly sought care, including requests for provider assignment and diagnostic evaluation. The VA:

- **failed to assign a primary care provider for over two years,**
- **failed to perform necessary diagnostic testing,**
- **failed to provide meaningful follow-up care**, and
- **failed to facilitate timely referral to community care despite repeated requests.**

During this period, the VA continued to exercise **exclusive control over diagnostic access**, while Petitioner lacked the ability to obtain independent testing or full medical records.

C. Diagnosis of Injury

In June 2022, after obtaining care outside the VA system, Petitioner was diagnosed with **chronic kidney disease**—the injury giving rise to this action. This was the first diagnosis of that condition.

Within months, Petitioners filed an administrative claim under the FTCA.

D. Proceedings Below

The United States moved to dismiss under Rules 12(b)(1) and 12(b)(6), asserting that the claim accrued years earlier. Petitioners alleged that accrual was delayed because the VA:

- **controlled access to diagnosis and testing,**
- **failed to disclose contradictory medical assessments,**
- **canceled diagnostic testing, and**
- **delayed and denied care for an extended period.**

The district court dismissed the action with prejudice, concluding that accrual occurred earlier as a matter of law. The Fifth Circuit affirmed, resolving accrual and tolling at the pleading stage without factual development.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW EXTENDS KUBRICK BEYOND ITS LIMITS

In ***United States v. Kubrick***, *444 U.S. 111 (1979)*, this Court held that accrual occurs when a plaintiff **knows of the injury *and* its cause**. That framework presumes access to the facts necessary to make that determination.

This case presents a materially different circumstance:

the United States **exercised control over the information necessary to discover the injury**.

Petitioners allege that the VA:

- **exercised exclusive control over diagnosis and testing,**
- **cancelled diagnostic monitoring,**
- **failed to disclose contradictory internal medical findings, and**
- **denied access to care and records for an extended period.**

The courts below nonetheless held that accrual occurred years earlier—before any diagnosis of kidney disease and while the VA continued to control access to diagnostic information.

This Court has never held that accrual may occur where the defendant's conduct **prevents reasonable discovery of the injury itself.**

II. THE FIFTH CIRCUIT IMPROPERLY RESOLVED FACT-INTENSIVE ACCRUAL AND TOLLING ISSUES AT RULE 12

This Court has emphasized that statutory prerequisites should not be treated as jurisdictional absent clear congressional intent. See *Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006); *United States v. Wong*, 575 U.S. 402 (2015); *Fort Bend County v. Davis*, 587 U.S. ___ (2019)

Accrual, reasonable diligence, and equitable tolling are **fact-dependent inquiries.** Yet the Fifth Circuit resolved these issues at the pleading stage despite allegations that the government:

- **controlled diagnosis and testing,**
- **failed to disclose material information, and**
- **denied care for years.**

Other courts have recognized that such allegations preclude dismissal under Rule 12 and require factual development. The decision below permits dismissal ***before*** **the plaintiff has any opportunity to establish the facts governing accrual.**

III. THE DECISION BELOW CREATES A STRUCTURAL PARADOX IN FTCA ACCRUAL

The rule applied below creates a doctrinal paradox:

- **A plaintiff must file suit promptly upon suspicion,**
- **even while the government continues to provide (*or deny*) care,**
- **and while the plaintiff lacks access to diagnosis or records necessary to confirm the injury.**

Under this approach, accrual may occur:

- **before diagnosis,**
- **during ongoing treatment**, and
- **while the defendant continues to control access to information.**

That rule effectively allows the United States to benefit from **its own control over medical information and access to care**, in tension with the remedial purpose of the FTCA.

IV. THE QUESTION PRESENTED IS RECURRING AND OF NATIONAL IMPORTANCE

The issue presented extends beyond this case. Federal agencies provide medical care to:

- **veterans,**
- **federal prisoners,**
- **immigration detainees, and**
- **other populations dependent on government-controlled healthcare systems.**

In each context, the government often exercises **exclusive control over diagnosis, testing, and records.**

If accrual may occur notwithstanding cancellation of testing, nondisclosure of material information, and prolonged denial of care, then access to judicial review will depend not on reasonable notice, but on **information asymmetry controlled by the government.**

This Court's guidance is necessary to ensure uniform application of FTCA accrual principles.

V. THE GOVERNMENT'S POSITIONS ARE IRRECONCILABLE

The United States argues that Petitioner knew of his injury in 2020, yet the VA later rejected claims identifying kidney disease as "duplicative."

If the injury was known in 2020, it would have been included in the 2022 claim. If it was not identified until later, accrual could not have occurred earlier.

This contradiction deprives Petitioners of both administrative and judicial remedies.

CONCLUSION

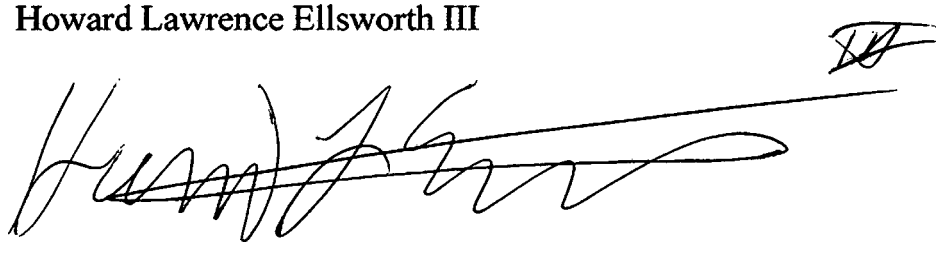
The Federal Tort Claims Act was enacted to ensure that individuals injured by federal negligence are not left without recourse.

The decisions below permit dismissal of such claims without factual development where the government's control over diagnosis and medical information prevents reasonable discovery of the injury.

For the sake of uniform federal law and the proper application of accrual principles under the FTCA, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Howard Lawrence Ellsworth III



Theresa Lynn Ellsworth

Petitioners, Pro Se