

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

ESTATE OF KATHERINE MONICA VICKERS,
by Rupa Vickers Russe, Executor,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Katherine M. Vickers, a 100% service-connected disabled veteran, died in 2018 after a large, inoperable brain tumor went undiagnosed for more than 10 years while she received her care at the Charles George VA Medical Center in Asheville, North Carolina, where her two requests for neurology consults were denied. The district court held that the Estate's FTCA suit was untimely but, aware that related litigation was pending in another court, wrote "the Court will nonetheless proceed to address the merits of the Plaintiffs' claims in the interest of assisting those who may hereafter need to review this record." The court of appeals held that her non-guardian agent's statement could be attributed to her for purposes of accrual under *Kubrick*. It also assumed without deciding the claims were timely under the continuous care doctrine, and proceeded to review the district court's non-decisional observations for clear error and affirmed them as cognizable merits findings.

The questions presented are:

1. Whether, under *United States v. Kubrick*, 444 U.S. 111 (1979), the FTCA claim of a claimant — whose physician determined she lacked mental capacity after the injury was discovered, and who had never been adjudicated incompetent — accrues upon a statement of her agent, who was not a court-appointed guardian and bore no legal duty under state law to act on the claim.
2. Whether, under *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985), clear-error deference extends to a district court's factual observations that were not offered as grounds for the judgment.

PARTIES TO THE PROCEEDING

Petitioner is the Estate of Katherine Monica Vickers, by Rupa Vickers Russe, Executor, which was Plaintiff-Appellant below.

Respondent is the United States of America, which was Defendant-Appellee below.

Rupa Vickers Russe, individually, was a plaintiff in the district court and is named as such in the caption of the court of appeals' opinion, but she did not appeal and is not a party to this petition.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner is not a corporation.

RELATED PROCEEDINGS

United States District Court for the Western District of North Carolina:

Estate of Katherine Monica Vickers, et al. v. United States, No. 1:20-cv-0092 (June 11, 2024)

United States Court of Appeals for the Fourth Circuit:

Estate of Katherine Monica Vickers v. United States, No. 25-1514 (May 4, 2026), *reh'g denied* (July 10, 2026)

United States District Court for the District of Columbia:

Estate of Katherine Monica Vickers, et al. v. United States, No. 1:22-cv-03860 (filed Dec. 26, 2022)(pending; stayed)

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (App., *infra*, 2a) is unpublished. The order of the United States Court of Appeals for the Fourth Circuit denying rehearing en banc and panel rehearing (App., *infra*, 31a) is unpublished. The opinion and order of the United States District Court for the Western District of North Carolina (App., *infra*, 33a) is not reported in the Federal Supplement.

JURISDICTION

The United States District Court for the Western District of North Carolina had jurisdiction over this action pursuant to 28 U.S.C. § 1346(b)(1). Following a bench trial, the district court entered its opinion and order on June 11, 2024. App., *infra*, 33a. On July 9, 2024, Petitioner timely filed a motion for a new trial pursuant to Federal Rule of Civil Procedure 59(a), and a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). The district court denied both motions on March 11, 2025. Petitioner filed a timely notice of appeal on May 5, 2025.

The United States Court of Appeals for the Fourth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. On May 4, 2026, the court of appeals affirmed the judgment of the district court in an unpublished, per curiam opinion. Petitioner timely filed a Combined Petition for Panel Rehearing and Rehearing En Banc, which the court of appeals denied on July 10, 2026.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

28 U.S.C. § 1346(b)(1) provides:

Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 2401(b) provides:

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 or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2674 provides, in relevant part:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

Federal Rule of Civil Procedure 52(a)(1) provides:

In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

Federal Rule of Civil Procedure 52(a)(6) provides:

Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

N.C. Gen. Stat. § 1-17(a) provides, in relevant part:

A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed For the purpose of this section, a person is under a disability if the person meets one or more of the following

conditions: (1) The person is within the age of 18 years[;] (2) The person is insane[; or] (3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

N.C. Gen. Stat. § 32A-19(d) provides:

The powers and authority granted to the health care agent pursuant to a health care power of attorney shall be limited to the matters addressed in it, and, except as necessary to exercise such powers and authority relating to health care, shall not confer any power or authority with respect to the property or financial affairs of the principal.

N.C. Gen. Stat. § 32C-1-114(b) provides, in relevant part:

Except as otherwise provided in the power of attorney, an agent that has accepted appointment has no affirmative duty to exercise the powers or to continue to exercise the powers granted to the agent by the power of attorney, but if the agent exercises any of the granted powers, the agent shall, in the exercise of such powers, do all of the following: (1) Act loyally for the principal's benefit. (2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest. (3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances. (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.

N.C. Gen. Stat. § 35A-1101(7) provides:

"Incompetent adult" means an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

N.C. Gen. Stat. § 35A-1253 provides, in relevant part:

In addition to any other duties imposed by law or by order of the clerk, a general guardian or guardian of the estate shall have the following specific duties: (1) To take possession, for the ward's use, of all his estate. (2) To diligently endeavor to collect, by all lawful means, all bonds, notes, obligations, or moneys due his ward. . . . (5) To obey all lawful orders of the court pertaining to the guardianship and to comply with the accounting requirements of this Subchapter.

STATEMENT OF THE CASE

A. Factual Background

Katherine M. Vickers was a divorced 100% service-connected disabled Navy veteran of the Korean War who received her primary care from physicians at the Charles George VA Medical Center in Asheville, North Carolina (the "Asheville VA"). App., *infra*, 4a–6a; C.A. J.A. 2922, 2973. Over several years, her cognition declined, and her daughter, Rupa Vickers Russe, repeatedly reported that decline to the Asheville VA. App., *infra*, 8a. Her primary care physician since 2012, Dr. Lara Hume, twice denied requests for a neurology consult. App., *infra*, 7a–8a, 54a. In early July 2017, Dr. Hume noted that Ms. Vickers was confused and suspected cognitive impairment, and mailed Ms. Vickers a letter about her concern. App., *infra*, 8a–9a, 61a. Due to odd behaviors, Ms. Russe took Ms. Vickers to the emergency room where physicians at the Asheville VA identified a large abnormality in Ms. Vickers' brain, later diagnosed as an inoperable, stage two brain tumor that her then treating neuro-oncologist estimated had been present for between five and ten years. App., *infra*, 9a; C.A. J.A. 772, 1111.

Prior to final diagnosis Ms. Vickers executed a North Carolina statutory-form health care power of attorney and a durable power of attorney, each voluntarily naming Ms. Russe as her agent. App., *infra*, 63a; C.A. J.A. 3262, 3272. By its terms, the health care power of attorney became effective upon the physician's determination that Ms. Vickers "lack[ed] capacity to make or communicate decisions relating to [her] health care," and continued "in effect during that incapacity, or until [her] death." App., *infra*, 63a; C.A. J.A. 3273; *see* N.C. Gen. Stat. § 32A-25.1. In August 2017, Dr. Hume determined that Ms. Vickers lacked capacity to make her own health care decisions; the record reflects no later determination that her capacity was restored, and for the rest of her life her providers relied on Ms. Russe for her medical decisions. App., *infra*, 10a–12a, 63a–73a; C.A. S.A. 046–192.

The record reflects the extent of Ms. Vickers' incapacity. After the July 2017 imaging revealed the brain mass, she never again lived independently. App., *infra*, 63a, 65a, 70a. From her diagnosis onward, Ms. Vickers' medical providers relied on Ms. Russe for the medical decisions. C.A. J.A. 2851, 2885, 2887, 2888, 2890, 2892; C.A. S.A. 046–192. Ms. Vickers experienced delirium and extreme behaviors markedly out of her historical character, that her treating physicians believed were caused by the tumor. C.A. J.A. 2827, 3255, 3286, 2831, 3237, 3247, 3252, 3281, 3284. This "organic patholog[ical]" disturbance resulted in her placement in the Asheville VA's locked psychiatric ward and being prescribed antipsychotic medications to manage her behavior. C.A. J.A. 2827; App., *infra*, 11a, 71a–72a; C.A. S.A. 071–076.

The durable power of attorney authorized Ms. Russe to pursue legal claims on her mother's behalf, but there is no record that authority was exercised. App., *infra*, 9a; *see* Gov't C.A. Br. 13. No court ever appointed a guardian for Ms. Vickers or adjudicated her incompetent. *See* App., *infra*, 42a. Ms. Vickers died on October 16, 2018. App., *infra*, 73a.

B. Procedural History

On October 8, 2019 and December 12, 2019, Ms. Russe submitted duplicate administrative claims to the Department of Veterans Affairs on the Standard Form 95, asserting claims including wrongful death on Ms. Vickers' behalf pursuant to the Federal Tort Claims Act (FTCA). App., *infra*, 12a. Ms. Russe's identity and capacity as Executor were identified in Box 2 of the forms, along with her mailing address. App., *infra*, 36a. Only the December 12, 2019 form contained Ms. Russe's signature in the 13b "Claimant" signature box, as requested in the Department of Veterans Affairs' response to the October 8, 2019 claim. *Id.*

On July 16, 2020, the Estate pursued claims against the Asheville VA medical providers by suing the United States in the United States District Court for the Western District of North

Carolina, asserting claims for medical malpractice, wrongful death, and related theories arising from Ms. Vickers' treatment at the Asheville VA. App., *infra*, 4a. The complaint also asserted claims arising from Ms. Vickers' treatment at Veterans Affairs facilities in Durham and Washington, D.C., which the district court dismissed on December 6, 2021 on the ground that the claims against those specific facilities had not been expressly identified in Ms. Russe's SF-95s. App., *infra*, 13a. Those claims are not before this Court. The district court allowed the Estate's remaining claims against the Asheville VA medical providers to proceed to trial. *Id.*

A four-day bench trial began on March 16, 2023. App., *infra*, 13a. At that time, the Estate was separately pursuing its District of Columbia VA claims in the United States District Court for the District of Columbia. Prior to entry of judgment in this proceeding, the Estate filed an emergency motion alerting the district court that the Government was invoking the court's pretrial rulings in that pending District of Columbia proceeding and seeking clarification of its prior holdings for the benefit of the District of Columbia Court. ECF No. 208 (W.D.N.C. Mar. 13, 2024). The North Carolina district court denied that motion on April 1, 2024, and proceeded to issue its June 11, 2024 opinion and order. ECF No. 211 (W.D.N.C. Apr. 1, 2024); App., *infra*, 33a.

The district court held, and the court of appeals agreed, that the claims accrued no later than August 30, 2017, based on messages Ms. Russe sent Dr. Hume on August 28 and 30, 2017, and were therefore untimely under the FTCA's two-year limitations period. App., *infra*, 17a–18a. The court rejected the Estate's arguments that the continuous care doctrine tolled the FTCA's limitations period or that Ms. Vickers was entitled to equitable tolling based on mental incapacity. App., *infra*, 14a. The court stated that its timeliness ruling was, by its own terms, sufficient to resolve the action, but that it would nonetheless address the merits "in the interest of

assisting those who may hereafter need to review this record." App., *infra*, 42a. Having resolved the case on untimeliness, the court observed that the Estate had not proven that Ms. Vickers' treating physicians breached the applicable standard of care or that Ms. Vickers' brain tumor proximately caused her injuries or death under North Carolina law. App., *infra*, 90a–92a. The district court entered judgment for the Government on June 11, 2024. App., *infra*, 101a.

On July 9, 2024, the Estate timely moved for a new trial pursuant to Federal Rule of Civil Procedure 59(a) and to alter or amend the judgment pursuant to Rule 59(e). C.A. J.A. 578, 634. The district court denied both motions on March 11, 2025. C.A. J.A. 634. The Estate timely appealed on May 5, 2025. App., *infra*, 15a.

On May 4, 2026, a panel of the United States Court of Appeals for the Fourth Circuit affirmed in an unpublished, per curiam opinion. App., *infra*, 29a. The panel assumed, without deciding, that the continuous care doctrine rendered the Estate's claims timely, and declined to reach the Estate's equitable tolling argument. App., *infra*, 15a, 20a n.5. The panel reviewed the district court's factual observations as cognizable merits findings under the clear error standard. App., *infra*, 23a. The panel affirmed those observations. App., *infra*, 29a. The Estate timely petitioned for panel rehearing and rehearing en banc, which the court of appeals denied on July 10, 2026. App., *infra*, 31a.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEALS ARE DIVIDED OVER WHETHER THE FTCA CLAIM OF AN INCAPACITATED CLAIMANT WITHOUT A GUARDIAN ACCRUES UPON HER AGENT'S STATEMENT

A. The Question Presented Is Important, Recurring, and Has Divided the Courts of Appeals

The population of elderly and incapacitated Americans who rely on family members acting under powers of attorney — long before, if ever, a court appoints a guardian — is

substantial and growing. The question arises with particular force in claims against the Department of Veterans Affairs, which serves an aging patient population largely through these arrangements and itself encourages veterans to execute advance directives naming a health care agent. See U.S. Dep't of Veterans Affairs, VA Form 10-0137, *VA Advance Directive: Durable Power of Attorney for Health Care and Living Will* (March 2024); Veterans Health Admin., U.S. Dep't of Veterans Affairs, VHA Directive 1004.02, *Advance Care Planning and Management of Advance Directives* (December 12, 2023). Whether such a claimant's FTCA claim accrues upon the statement of an agent who has no legal duty to act on it is a question of broad and recurring importance.

United States v. Kubrick, 444 U.S. 111 (1979), ties accrual to the claimant's own knowledge of both the injury and its cause. When a claimant's physician has determined she lacks capacity, courts must decide whose knowledge, if anyone's, may as a matter of law stand in for hers. They have answered by asking who bore a legal duty to act on her behalf: a parent for a minor, a guardian for a ward. *Booth v. United States*, 914 F.3d 1199 (9th Cir. 2019); *Clifford v. United States*, 738 F.2d 977, 980 (8th Cir. 1984). Those relationships and duties are creatures of state law, and when a federal rule turns on such a relationship, federal courts look to state law to define it. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98 (1991)(presumption of incorporating state law "is particularly strong in areas in which private parties have entered legal relationships with the expectation that their rights and obligations would be governed by state law standards"); *De Sylva v. Ballentine*, 351 U.S. 570, 580–81(1956)("[A term] as used in this provision of the [Federal] Act, is to be determined . . . under state law"). A power of attorney is such a legal relationship, the scope of which is defined by state law.

The courts of appeals have reached conflicting results on how to determine who may

stand in the shoes of a mentally incapacitated claimant for the purpose of determining accrual. The Eighth and Ninth Circuits, and the Third Circuit in *Miller v. Philadelphia Geriatric Center*, 463 F.3d 266, 273–75 (3d Cir. 2006), decline to charge an incapacitated adult with the knowledge of a family member who is not her guardian. *Clifford*, 738 F.2d at 979–80; *Washington v. United States*, 769 F.2d 1436, 1438–39 (9th Cir. 1985). An earlier Third Circuit decision took the opposite view. *Barren v. United States*, 839 F.2d 987, 991–92 (3d Cir. 1988).

This case presents the question in sharper form than *Miller*. Unlike the caregiver there, Ms. Russe held voluntary authority: she was Ms. Vickers' health care agent and her agent under a durable power of attorney. But authority is not duty, and in neither capacity did North Carolina impose a duty to act on Ms. Vickers' legal claims. Under State law, a health care agent holds no authority over the principal's property or financial affairs, including her legal claims, N.C. Gen. Stat. § 32A-19(d), and an agent under a power of attorney "has no affirmative duty to exercise the powers" granted. *Id.* § 32C-1-114(b). Only a court-appointed legal guardian bears that duty in North Carolina, and no such guardian was ever appointed for Ms. Vickers.

The statements on which the courts below found accrual were two messages Ms. Russe sent Dr. Hume through the VA's online messaging portal. C.A. J.A. 2882–85. The record contains no evidence that Ms. Vickers ever accessed that portal, and neither court below cited any statement by Ms. Vickers herself showing that she understood her injury or its cause. *See App.*, *infra*, 17a–18a, 66a. The court of appeals nonetheless measured accrual by Ms. Russe's knowledge, concluding that "Appellant" — whom it defined as Ms. Russe, *App.*, *infra*, 4a — "knew or should have known of the alleged injuries and their general causes no later than August 30, 2017," and that "Appellant's claims thus accrued" on that date. *App.*, *infra*, 18a. But the claims were Ms. Vickers'. Under *Kubrick*, their accrual turned on her knowledge, not her agent's.

B. The Decision Below Is Incorrect

1. North Carolina Law Imposed No Duty on Ms. Russe to Act on a Legal Claim

North Carolina draws a deliberate line between authority and duty — a guardian must act; an agent need not — and that defined line determines whether an agent's knowledge can start the FTCA's limitations clock against a claimant who cannot know for herself. *See N.C. Gen. Stat. §§ 35A-1253, 32C-1-114(b); Kamen, 500 U.S. at 98.* A court-appointed guardian "shall" take possession of the ward's estate and "diligently endeavor to collect, by all lawful means," what is due the ward, subject to the court's orders. §§ 35A-1250(a), 35A-1253(1), (2), (5). An agent under a voluntarily granted durable power of attorney, by contrast, "has no affirmative duty to exercise the powers" granted, and the duties attach only if the agent chooses to exercise them. § 32C-1-114(b). A health care agent holds no authority over the principal's property or financial affairs, including her legal claims. § 32A-19(d). Ms. Russe held both roles, and neither carried a duty to act on a legal claim. She never exercised her powers under the durable power of attorney, so none of its duties ever attached.

Because the federal accrual inquiry asks who bore a legal duty to act for a claimant who cannot know for herself, *supra*, at 9, the State's allocation of that duty determines whose knowledge may be charged to her. The decision below disregards that distinction, treating a voluntary grant of authority by a principal as though it were court ordered. The consequence falls on the families the State's scheme is designed to serve: to intervene on an incapacitated relative's claim, they would have to seek guardianship, via a court proceeding that adjudicates the relative incompetent and removes her legal rights. This necessary process ensures that the guardian understands the duties she is being legally charged with — something a principal's voluntary designation of an agent under a durable power of attorney does not impose.

2. North Carolina Applies a Strict Line When the Principal Is Incompetent

North Carolina enforces the line between guardianship and agency most strictly where the principal is mentally incompetent. In the State's own law of limitations, the operative event is the appointment of a guardian, not the existence of an agent: the limitations period on an incompetent person's claim runs only "upon the appointment of a guardian or upon the removal of the disability . . . whichever shall occur first." *First-Citizens Bank & Trust Co. v. Willis*, 257 N.C. 59, 62 (1962); see *Matter of Estate of Owens*, 117 N.C. App. 118, 121 (1994); *Lee v. City of Fayetteville*, No. 5:16-CV-759-FL, slip op. at 17 (E.D.N.C. May 24, 2017)(noting that court-appointed guardianship requires judicial adjudication of incompetency and a guardian's sworn oath of fiduciary duty); N.C. Gen. Stat. § 1-17(a). The Estate does not ask this Court to decide whether these state tolling rules govern § 2401(b). They show how deliberately States like North Carolina allocate responsibility for an incompetent person's claims: to a court-appointed fiduciary who is supervised by and accountable to the court, N.C. Gen. Stat. § 35A-1253(5), not to a family member holding a voluntarily executed power of attorney, which does not even require that the agent be notified of her appointment. See *id.* § 32C-1-113.

The State's allocation reflects the extraordinarily demanding realities of family caregiving for an incapacitated principal. Agents under powers of attorney are typically relatives serving without compensation, and when the principal is incapacitated, the principal's daily care consumes their attention. As in this case, with mental incapacity, the principal is not a reliable historian of information upon which an agent can rely to properly investigate whether an injury was caused at all, or what facilities may need to be investigated. This case illustrates the point. Ms. Russe served as the health care agent and was designated as the durable power of attorney agent for a mother whose brain tumor had infiltrated more than a quarter of her brain, C.A. J.A.

2792, 2797, 2783. Her days were spent coordinating providers, authorizing treatment and securing extensive VA approvals for treatment and transportation amongst multiple facilities, and managing her mother's complex medical needs to help her survive her brain tumor. *See App., infra*, 10a–11a. North Carolina does not ask a caregiver in that position to serve also as a litigation fiduciary unless a court appoints her to that role, defines her duties, and supervises her in it. The decision below charges the claimant as though it did.

3. The Decision Below Cannot Be Reconciled with Kubrick or with North Carolina's Allocation of Duty

Kubrick ties accrual to the claimant's own knowledge of her injury and its cause, and it assumes a claimant who, "armed with the facts," can protect herself by seeking medical and legal advice. 444 U.S. at 124; *supra*, at 9. A physician's determination that a claimant cannot make or communicate decisions about her own medical care is a determination that she cannot do what *Kubrick* presumes: act on the facts of her own condition by seeking medical and legal advice. When that premise fails, accrual can rest only on the knowledge of someone legally responsible for acting on her behalf. That requires a legal basis. Under ordinary agency principles, an agent's knowledge is charged to the principal only when it is material to the agent's duties to her. Restatement (Third) of Agency § 5.03 (2006). Whether an agent owes such duties is defined by the law that creates the agency relationship, which is state law. *Supra*, at 9–10.

The courts of appeals divide on whether *Kubrick's* ordinary rule applies at all to an incapacitated adult who has no guardian. *Supra*, at 10. The decision below illustrates the consequence of skipping that question. The court of appeals found that Ms. Vickers "knew" of her injury because her agent's "own words prove" it, *App., infra*, 18a, without asking on what legal basis her agent's words could be charged to her, or whether *Kubrick's* ordinary rule could apply to a claimant whose physician had determined she lacked capacity.

Neither court below cited any statement by Ms. Vickers herself showing that she understood her injury or its cause. *See App., infra*, 17a–18a, 66a–67a. No court below addressed whether she had the capacity to understand the information she had been given at her medical appointments. The district court considered only whether Ms. Vickers suffered from a "disability" or "incompetence" sufficient to toll the statute of limitations, not incapacity, and found that neither was shown. *App., infra*, 42a. That finding concerned only whether the limitations period should be tolled; it did not consider whether Ms. Vickers' agent's knowledge could be charged to her, the question presented here. The district court did not mention Dr. Hume's determination under N.C. Gen. Stat. § 32A-20(a), and the court of appeals declined to reach the question at all. *App., infra*, 20a n.5.

Under North Carolina law, an agent owes the principal no duty to pursue her legal claims. *Supra*, at 11. There was therefore no legal basis to charge Ms. Vickers with her agent's knowledge for purposes of accrual under the FTCA.

4. Ms. Vickers' Incapacity Was Medically Determined and Corroborated

A claimant's incapacity is not a matter of speculation. Ms. Vickers' long-serving treating physician determined that Ms. Vickers was without mental capacity — a determination Respondent's own expert witness testified a primary care physician would ordinarily make without a formal document in North Carolina. C.A. J.A. 1634, 2851, 2885, 2888. The court of appeals declined to address whether that medical determination, which transfers decision-making authority to a third party because the principal cannot make those decisions herself, is sufficient, on its own, to toll the FTCA's limitations period under this Court's equitable tolling framework. *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990); *United States v. Wong*, 575 U.S. 402 (2015); *App., infra*, 20a n.5. The Government's own SF-95 — the form it provides for presenting

an FTCA claim — distinguishes between a "Claimant" and a "Claimant's Representative," C.A. J.A. 3305, confirming that the two are not interchangeable for the Government's own purposes, even as the panel treated them as one for purposes of accrual.

C. This Case Is an Excellent Vehicle for Resolving the Question Presented

The two questions presented are connected. The judgment below rests on the court of appeals' affirmance of the district court's merits observations, which the second question challenges. If that affirmance is set aside, timeliness again becomes dispositive, and the court of appeals' accrual holding would control. That holding rests entirely on the August 2017 statements of Ms. Vickers' agent. If those statements cannot be charged to her, the only accrual date the courts below identified falls away, and the Estate's presentment in October 2019 was timely under any later accrual date measured by Ms. Vickers' own knowledge, without regard to any tolling doctrine.

This case presents the question cleanly. The relevant facts are undisputed: that Ms. Vickers' long-serving VA physician determined in writing, by August 28, 2017, that Ms. Vickers lacked capacity to make her own health care decisions; that her medical providers acted on that determination until her death; that the durable power of attorney was never exercised; and that no court ever appointed a guardian — the point at which North Carolina, by deliberate choice, imposes a legal duty to act that a grant of authority under a power of attorney does not — or adjudicated her incompetent. Under North Carolina law, Ms. Russe, in either role, bore no duty to act on a legal claim. The question is purely legal: whether, when a claimant's physician has determined she lacks capacity and no guardian has been appointed, a court may charge her with knowledge drawn from the statements of an agent on whom state law imposed no duty to act on her claims.

II. THE COURT SHOULD DECIDE WHETHER CLEAR-ERROR DEFERENCE EXTENDS TO A DISTRICT COURT'S FACTUAL OBSERVATIONS THAT WERE NOT OFFERED AS GROUNDS FOR THE JUDGMENT

A. The Question Presented Is One of General Importance to the Administration of Bench Trials

Federal Rule of Civil Procedure 52(a)(1) requires a court, in an action tried without a jury, to "find the facts specially and state its conclusions of law separately." Findings serve a defined purpose: "to aid the appellate court by affording it a clear understanding of the ground or basis of the decision of the trial court." *Lyles v. United States*, 759 F.2d 941, 945 (D.C. Cir. 1985) (quoting 9 C. Wright & A. Miller, *Federal Practice and Procedure* § 2571, at 679 (1971)). Clear-error review under Rule 52(a)(6) is calibrated to that purpose. Deference rests on the trial judge's institutional position: the judge who hears live testimony, observes demeanor, and oversees the adversarial testing of evidence is better placed than a reviewing court to resolve the factual disputes on which a judgment depends. *Anderson v. City of Bessemer City*, 470 U.S. 564, 574–75 (1985).

District courts frequently address the merits after resolving a case on a threshold ground, and they do so in two different ways. Sometimes they rule in the alternative, holding that even if the threshold ruling is wrong, the claim fails on the merits and the same judgment follows. Sometimes they do something else: having decided the case, they discuss the merits for the benefit of later readers without offering that discussion as a ground for the judgment. The two look alike on the page, but they are not the same. An alternative holding is a basis on which the judgment rests and is typically identified as such, so that a court of appeals can affirm it if the primary ground fails. A non-decisional observation is not, and because the court has not adopted it as a basis for its decision, it may not reflect the careful resolution of disputed facts that deference presupposes.

Whether clear-error deference extends to non-decisional observations is a question this Court has not addressed, and it arises in every bench trial in which a district court comments on the merits after resolving a threshold issue. Treating such observations as findings gives them a weight the district court itself declined to give them, and allows a court of appeals to affirm on a basis the district court did not rely on.

B. The Decision Below Is Incorrect

1. Clear-Error Deference Presupposes a Finding Entered to Support the Judgment

Rule 52(a)(6) directs deference to "[f]indings of fact," and *Anderson's* rationale explains why: a trial judge who observed the evidence is better positioned than a reviewing court to resolve the disputes on which the judgment turns. 470 U.S. at 574–75. That rationale has no application to observations a trial court did not rely on to decide the case. Without findings issued to explain the basis of the decision, "a reviewing court simply is unable to determine whether or not those findings are clearly erroneous." *Lyles*, 759 F.2d at 945; *see EEOC v. United Va. Bank/Seaboard Nat'l*, 555 F.2d 403, 406 (4th Cir. 1977). Deference follows the decision; it does not attach to observations the court did not use to reach it.

2. The District Court's Merits Discussion Was Not a Finding Entered to Support the Judgment

The district court resolved this action on timeliness, and it said so:

While the Court has concluded that these claims are time-barred, in light of the sheer volume of the record . . . the Court will nonetheless proceed to address the merits of the Plaintiffs' claims in the interest of assisting those who may hereafter need to review this record.

App., *infra*, 42a. That is not the language of an alternative holding. The court did not say that, even if the claims were timely, they would fail on the merits and the same judgment would follow. Having decided the case on timeliness, it would "nonetheless" discuss the merits, for a stated purpose that had nothing to do with deciding the case. And the court acknowledged

uncertainty about the record it was describing, noting that "the relevance of many records [presented at trial] is often unclear." App., *infra*, 44a n.11. Observations offered for that purpose, on a record the court itself described in those terms, are not findings entered to support the judgment.

The court of appeals described the district court's merits discussion as "alternative," App., *infra*, 4a, 14a, but did not explain how observations undertaken for the court's stated purpose could be an alternative ground for the judgment.

3. The Court of Appeals Never Asked the Threshold Question

The court of appeals did not resolve timeliness. Although it agreed that the claims accrued no later than August 30, 2017, it assumed, without deciding, that the continuous care doctrine rendered them timely. App., *infra*, 17a–20a. It then affirmed on the district court's merits observations under clear-error deference, citing only circuit precedent stating the general bench-trial standard, without reference to Rule 52(a)(6)'s requirement of "[f]indings of fact" or to *Anderson*. App., *infra*, 22a–29a. It never asked whether the observations were findings at all. The result is a judgment affirmed on a basis the district court did not adopt, reviewed under a standard designed for findings the district court did not make.

C. This Case Is an Excellent Vehicle for Resolving the Question Presented

The relevant facts come from the district court's own opinion and are not in dispute. The district court stated that its timeliness ruling resolved the action and that it addressed the merits for the benefit of later readers. App., *infra*, 42a. The court of appeals assumed timeliness without deciding it and affirmed those observations as merits findings under clear-error review. App., *infra*, 19a–20a, 22a–29a. Those are matters of record requiring no further factual development.

The consequence extends far beyond this case. What a district court declined to decide, a

court of appeals may now affirm as decided. *Cf. Bobby v. Bies*, 556 U.S. 825, 834–35 (2009) (determinations not necessary to the judgment do not carry preclusive effect). Resolving the question presented requires only a determination of the legal standard governing the scope of Rule 52 deference, not a reweighing of any factual finding or credibility determination.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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