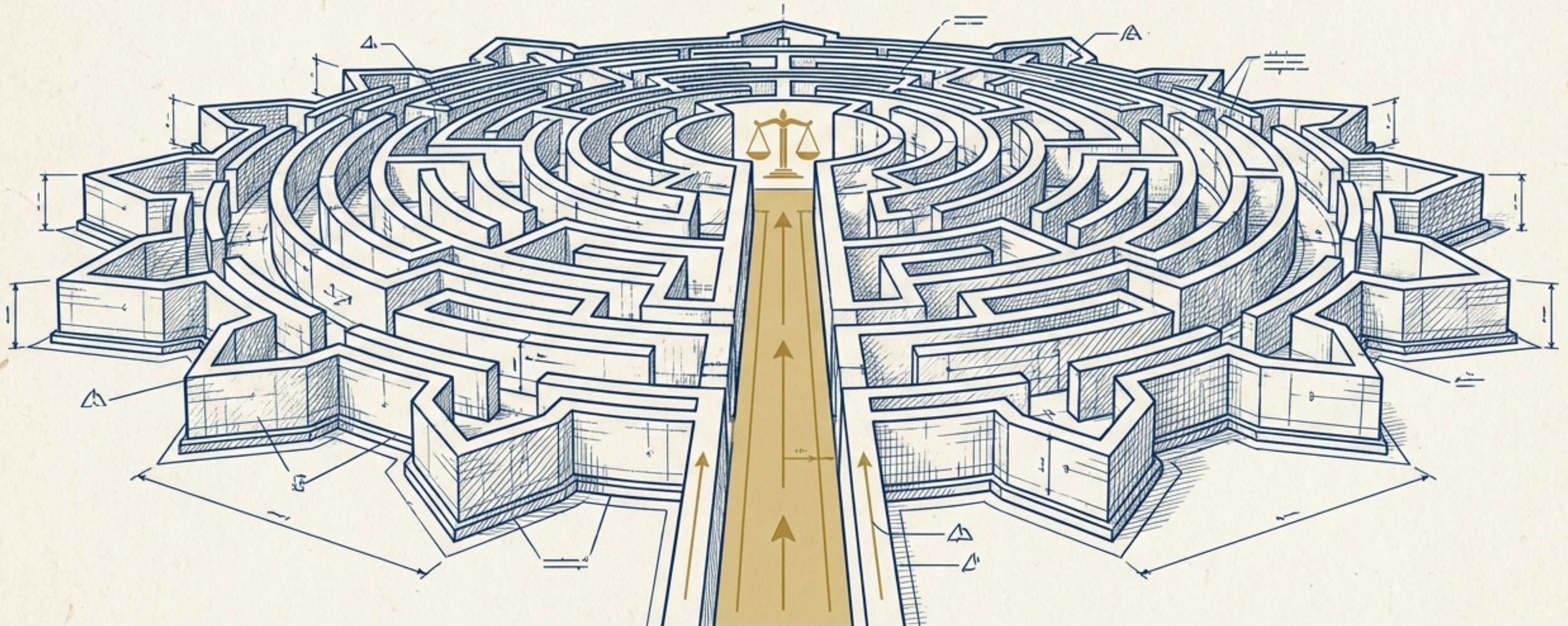
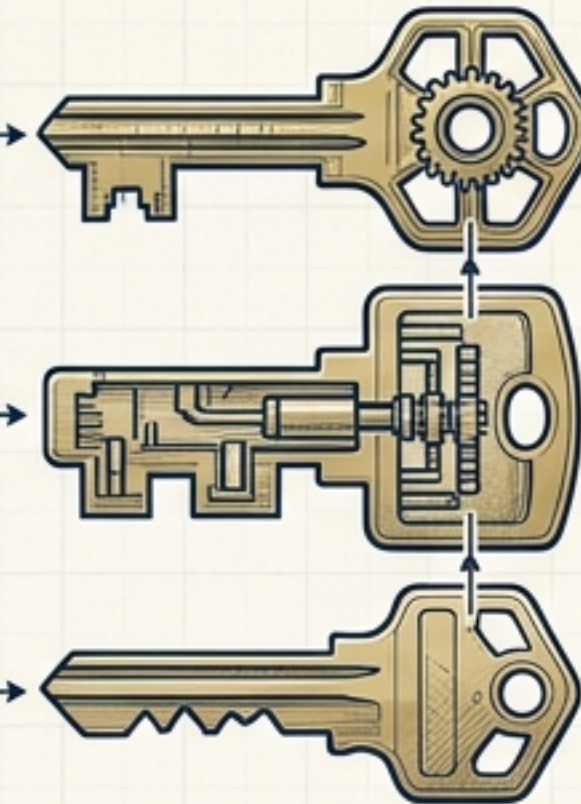
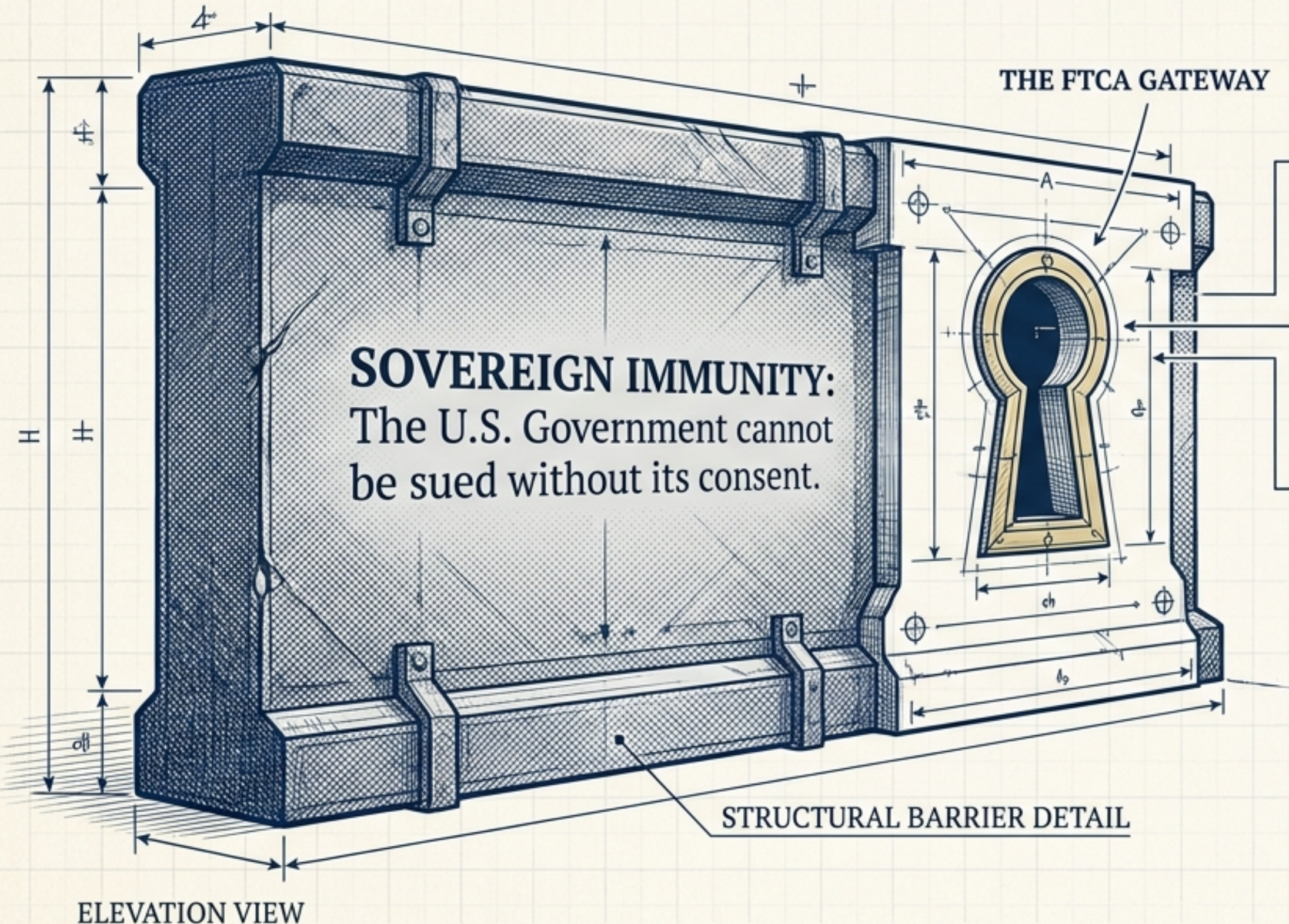


Piercing the Veil

A Tactical Blueprint to Sovereign Immunity
and FTCA Claims Against the VA



THE SOVEREIGN SHIELD



- 1. FEDERAL EMPLOYEE:**
Must be a direct government employee, not an independent contractor.
- 2. SCOPE OF EMPLOYMENT:**
Act must occur during official duties.
- 3. NEGLIGENT ACT:** Medical malpractice or wrongful omission causing harm.

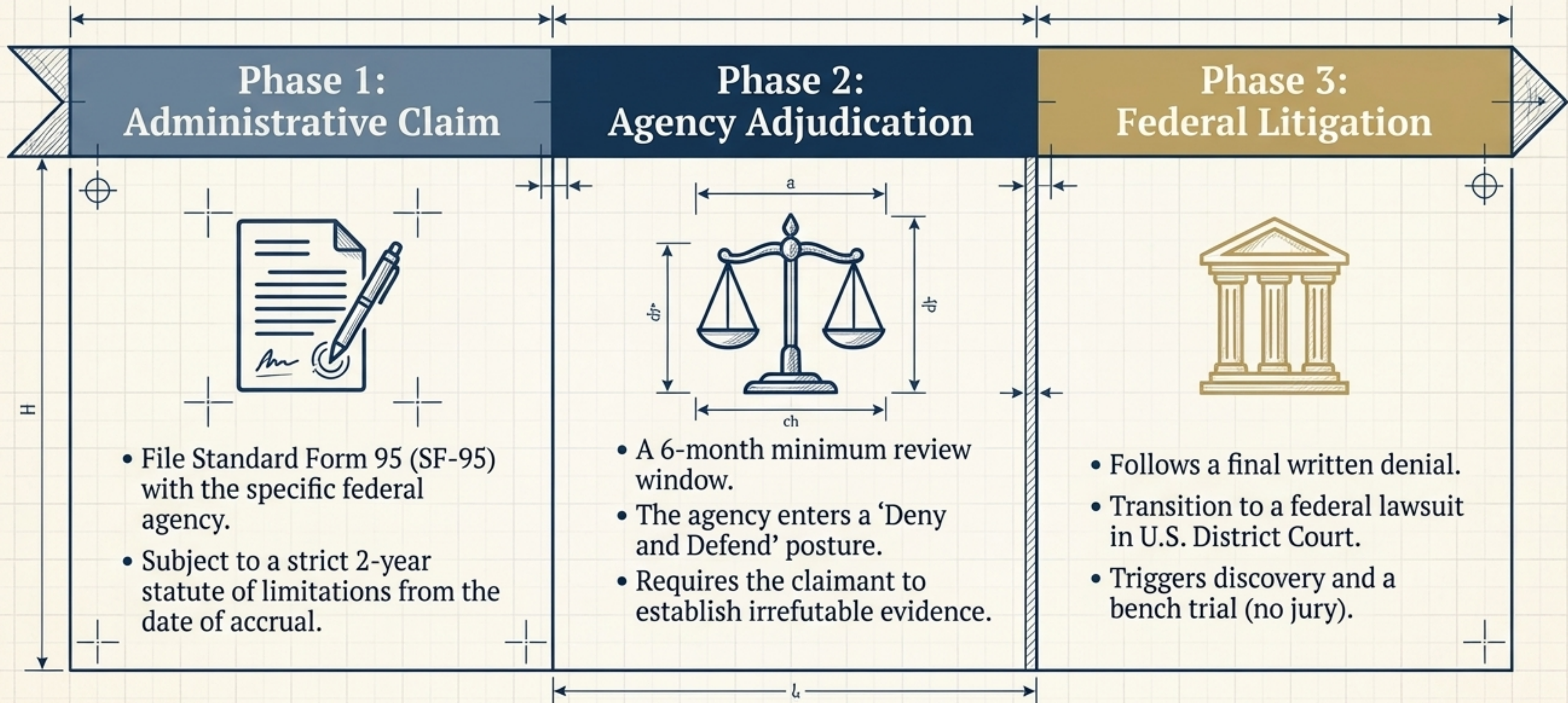
Dossier Callout

WARNING: THE CONTRACTOR TRAP

The most common VA defense is the Independent Contractor Exception. Under VA Community Care, private surgeons are often classified as contractors, barring direct FTCA claims.



The 3-Phase Tactical Roadmap



Step 1: The SF-95 Administrative Claim

1. The Accrual Date

The clock starts when the injury and its cause are known. You must file within exactly 2 years.

2. The Sum Certain

Must demand an exact dollar amount (e.g., \$95,000 for specific damages or \$30,000 for compromised expense reimbursement). Failure to state a precise sum voids the claim.

3. Initial Evidence

Attach comprehensive medical records proving negligence at the time of filing.

CASE FILE: STUART

Oct 30, 2021 VA CT Scan documented "lucency around transpedicular screws."
SF-95 filed detailing the VA's failure to address this known hardware failure.

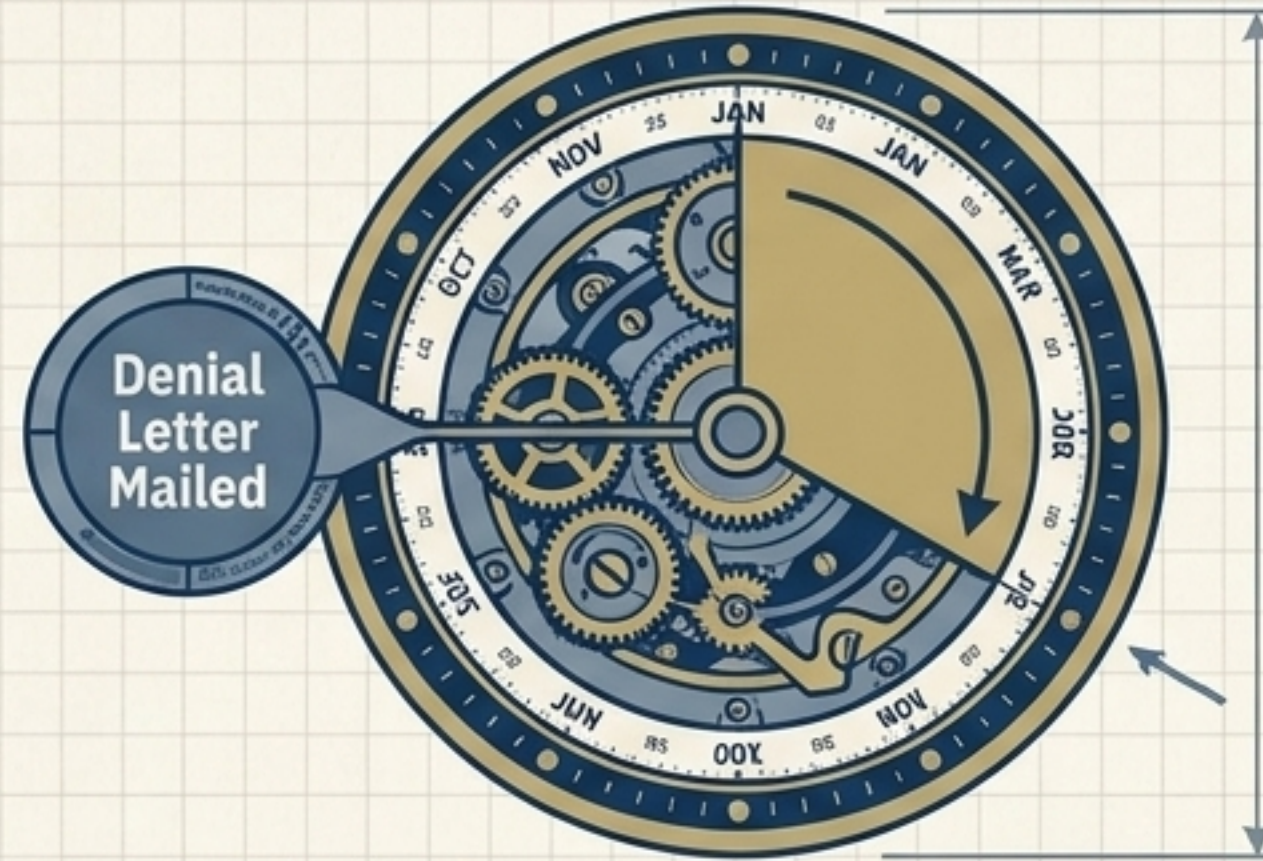
Step 2: The Agency Decision & The Alternative

	FTCA Tort Lawsuit	38 U.S.C. § 1151 Claim
Goal	Seeks a lump-sum financial judgment for damages.	Seeks a permanent monthly VA disability rating increase (e.g., 100% TDIU).
Burden of Proof	Requires proving medical malpractice/negligence by a federal employee.	Requires proving the VA hospital care proximately caused an additional, unforeseen disability.
Impact of Sovereign Immunity	Heavily barred by the Independent Contractor defense.	Bypasses this defense if the VA explicitly authorized the Community Care.

STRATEGY: PARALLEL EXECUTION

Smart litigation files the § 1151 claim simultaneously with the FTCA claim to secure ongoing medical survival resources while fighting the tort battle.

Step 3: Federal Litigation & The Ticking Clock

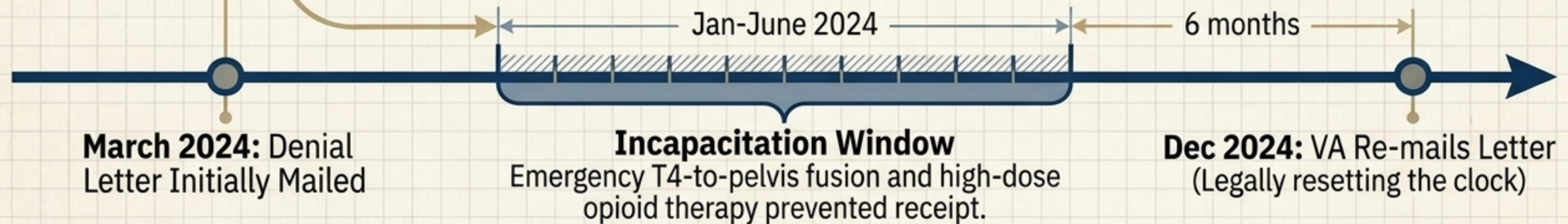


Claimants have exactly **6 months** to file in U.S. District Court under 28 U.S.C. § 2401(b) after the agency mails the denial.

Equitable Tolling:

Based on *Irwin v. Dep't of Veterans Affairs*. The clock can be legally paused if extraordinary circumstances prevent filing.

The Stuart Precedent & Equitable Tolling



Strategy A: The Agency Status Trap

Defeating the Independent Contractor Defense

STATE COURT

Dallas County District Court (Aug 6, 2025)
grants Dr. Patel and UTSW Sovereign
Immunity against a state tort claim.

FEDERAL LAW

Sovereign immunity ONLY applies to
federal employees or agents acting within
the scope of employment. Independent
contractors do not possess it.

THE LOGIC TRAP (Collateral Estoppel)

The federal government cannot simultaneously claim a surgeon
is an independent contractor to deny an FTCA claim, while the
surgeon claims sovereign immunity to escape state liability.
The state ruling legally binds the providers as VA agents.

Strategy B: Exploiting Medical Blindness

1. Private Contractor Error

Failed L2-L4 fusion through Community Care. (DOJ claims immunity).

2. VA Administrative Negligence

VA employees systematically close Community Care consults administratively without records attached (violating MISSION Act / GAO Report 21-71).

3. Medical Blindness

Internal VA clinicians are rendered blind to the October 2021 CT scans showing hardware failure. This leads to life-threatening complications including Pseudomonas infection and Acute Osteomyelitis.

4. Direct Federal Liability

A two-year lapse in care directly causes permanent ankylosis and bone infection. The VA is liable for its own administrative abandonment, bypassing the contractor defense entirely.

Summary of Today's Visit

Strat. Michael A. O'Donoghue / 1974 Age Account No 7750001
Sex: Male Race: White Ethnicity: Not Hispanic or Latino
Preferred Language: English
07/27/2024 visit with Kevin B. Golden, M.D.

Reason for Visit

- Intermittent Pain
- Previous Op. SPAR, Patient -- clean skin mg po daily x 6 months

Screening

Today's Diagnoses include

- Apo0 Pseudomonas Infection
- A2112 Antibiotic resistance of Staphylococcus aureus
- 2C00.21.000 Osteomyelitis of lumbar vertebrae
- A0101.01 Acute osteomyelitis of lumbar vertebrae
- 1E01.9 Chronic Osteomyelitis

Problem List

- M46.46 L5/S1 disc degeneration
Modified On: 07/27/2024 Added On: 06/12/2024
W/U Status: continued
- M46.25 P10C rupture of thoracic spine
Modified On: 07/27/2024 Added On: 07/01/2024
W/C Status: continued
- M46.26 Acute osteomyelitis of lumbar spine
Modified On: 07/27/2024 Added On: 07/27/2024
W/U Status: continued

The Claim Builder's Checklist

1. Pinpoint the Timeline

Calculate the exact Date of Accrual. The 2-year SF-95 window is unforgiving.

2. Audit the Chain of Care

Identify every provider. Determine who is a federal employee, who is a contractor, and where VA administrative staff broke the chain of medical records.

3. State a Sum Certain

Never file an SF-95 without an exact dollar demand. Without it, the claim is void.

4. Deploy Dual Tracks

File the FTCA claim for negligence damages, and simultaneously file the 38 U.S.C. § 1151 claim for disability rating increases. Use federal audit reports (e.g., GAO 21-71) to defeat the 'Deny and Defend' posture.