No. 24-1296

In the Supreme Court of the United States

MCKENZIE COUNTY, NORTH DAKOTA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
ADAM R.F. GUSTAFSON
Acting Assistant Attorney General
AMBER BLAHA
Attorney
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioner may bring suit under the All Writs Act, 28 U.S.C. 1651(a), rather than under the Quiet Title Act, 28 U.S.C. 2409a, to dispute the United States' ownership of certain mineral rights.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and rules:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 131 F.4th 877. The order of the district court (Pet. App. 36a-65a) is reported at 704 F. Supp. 3d 973. Prior orders of the district court (Pet. App. 66a-89a, 90a-101a) are available at 2019 WL 3646836 and 2020 WL 12969218.

JURISDICTION

The judgment of the court of appeals was entered on March 20, 2025. The petition for a writ of certiorari was filed on June 18, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case concerns a claim by petitioner McKenzie County, North Dakota, to a royalty interest in the federal public-domain mineral estate underlying lands that

the United States acquired through eminent domain in the 1930s. Petitioner brought suit against the United States under the Quiet Title Act, 28 U.S.C. 2409a, and the All Writs Act, 28 U.S.C. 1651(a), claiming that either the eminent-domain proceedings themselves or a subsequent 1991 judgment had secured to petitioner the disputed royalty interest. The district court granted summary judgment to petitioner. Pet. App. 36a-65a. The court of appeals reversed. *Id.* at 1a-35a.

1. In the 1800s and early 1900s, settlers in present-day North Dakota obtained land grants from the United States. Pet. App. 3a. Some land-grant laws, such as the Homestead Act, ch. 75, 12 Stat. 392, provided for conveyance of title to both the surface and underlying mineral estates. Pet. App. 3a. Other laws authorized conveyance of only the surface estate, with the mineral estate reserved to the United States and thus remaining in the public domain. *Ibid.*; see *Watt* v. *Western Nuclear, Inc.*, 462 U.S. 36, 48-50 (1983).

In the 1920s and 1930s, North Dakota suffered from periods of extreme drought, dust storms, and crop failures. Pet. App. 3a. Through tax forfeiture proceedings, petitioner acquired title to thousands of acres that had been privately owned. *Ibid.* "Whatever title the previous landowner held passed to [petitioner]: only the surface estate if the United States initially reserved the minerals, or both the surface and mineral estates if the original patent included title to both." *Id.* at 3a-4a.

In the 1930s, Congress passed a series of emergency relief bills that directed the federal government to acquire "submarginal" lands for restoration and conversion to grazing, forestry, wildlife, or recreation areas. Pet. App. 4a (citation omitted). Starting in 1937, the United States filed six "friendly" condemnation actions

in the United States District Court for the District of North Dakota to acquire lands from petitioner pursuant to the emergency relief acts. *Id.* at 39a; see *id.* at 5a. Each suit resulted in the United States' acquisition of multiple tracts. *Id.* at 6a. For some tracts petitioner held both the surface and mineral estates, while for others it held only the surface estate—but the declarations of taking did not distinguish between those two types of tracts. *Ibid.* "The final judgments and partial final judgments entered in each case stated, with some slight variations," that "'the United States of America is the owner in fee simple of the lands hereinbefore described, subject, however, to the rights of McKenzie County, North Dakota, to a 6 ¼% perpetual royalty in minerals which exist or may be developed on said lands.'" *Id.* at 41a (citation omitted); see *id.* at 6a-7a.

Following the condemnation actions, the Bureau of Land Management (BLM), which manages leasing of federal minerals, updated its records to reflect the 6¼% royalty interest reserved to petitioner in the "acquired minerals," *i.e.*, the mineral interests that the United States had acquired from petitioner via condemnation. Pet. App. 7a. But BLM made no changes to its records for the "public domain minerals," *i.e.*, the minerals underlying the tracts for which the United States had previously reserved (and therefore had continuously owned) the mineral estate. *Ibid.* Ever since, BLM has leased both public domain minerals and acquired minerals associated with the tracts at issue in the condemnation proceedings and has paid (or had the lessee pay) the 6¼% royalty to petitioner only for the tracts with acquired minerals. *Ibid.*

2. In 1981, in response to an inquiry by petitioner "regarding royalty interests for specific tracts that

were the subject of two" of the 1930s condemnation actions, BLM stated that its records showed that the relevant minerals were public domain minerals and "'are not subject to the royalty reservation.'" Gov't C.A. Br. 12 (citation and emphasis omitted). In 1985, BLM informed petitioner that it would no longer recognize the royalty reservation in even the acquired minerals, in light of a North Dakota Supreme Court decision that BLM interpreted to hold that the royalty reservation was void. Pet. App. 7a; see *De Shaw* v. *McKenzie County*, 114 N.W.2d 263 (1962). Petitioner then sued the United States in federal court. Petitioner's complaint described the suit as "a dispute over ownership of a 6¼% royalty interest under certain lands located in McKenzie County." Pet. App. 8a. An attached list of the "subject lands" included only tracts with acquired minerals. *Ibid.*; see *id.* at 22a.

In 1991, the district court granted summary judgment to petitioner "quieting title in [petitioner] to the disputed minerals." Pet. App. 9a. After that 1991 judgment, "BLM updated its records to again recognize [petitioner's] royalty interest" in the acquired minerals and directed oil and gas lessees to pay the royalty to petitioner. *Id.* at 10a. "As before, however, BLM's records never reflected a royalty interest in public domain minerals." *Ibid.*

By 1998, petitioner had begun a project to "inventory and map all the royalties [petitioner] owns, research the statute of limitations," and "proceed to court if necessary" to assert royalty claims. Pet. App. 11a. In November 2003, in response to an inquiry from petitioner, BLM sent it a summary of the tracts affected by the 1930s condemnation judgments and stated that BLM's records showed that "only the acquired minerals * * *

[a]re subject to a 6¼% royalty reservation." *Ibid.* (brackets omitted). Minutes from a December 2003 meeting of petitioner's Board of County Commissioners noted that "BLM may not be recognizing [petitioner's] royalty right on parcels which were originally patented with mineral reservations to the federal government." *Ibid.*; see *id.* at 33a. In January 2004, after meeting with petitioner's representatives, BLM sent petitioner a letter reiterating that only minerals "acquired by the United States in the condemnations," and not public domain minerals, "are subject to a 6¼ percent royalty reservation." *Id.* at 11a-12a.

3. In 2016 petitioner filed the instant suit against the United States, again in the United States District Court for the District of North Dakota. Pet. App. 12a. Petitioner sought "to quiet title to the royalty interest in public domain minerals" beneath the tracts that were covered by the 1930s condemnation judgments. *Ibid.* Petitioner invoked the Quiet Title Act (QTA), which waives the government's sovereign immunity in civil actions "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. 2409a(a); see Pet. App. 12a. The QTA contains several qualifications, however, including a 12-year limitations period that runs from "the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. 2409a(g).

The United States filed a motion to dismiss on statute-of-limitations grounds, which the district court denied. Pet. App. 66a-89a. Petitioner then amended its complaint to add a claim under the All Writs Act, 28 U.S.C. 1651(a) (which authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of

law"), and Federal Rule of Civil Procedure 70 (which authorizes enforcement of judgments that direct the performance of specific acts). Pet. App. 12a. Through that claim, petitioner sought to enforce the 1991 judgment and the 1930s condemnation judgments, which petitioner asserted "included the royalty interest" in public domain minerals. *Ibid.*

After denying another motion to dismiss, Pet. App. 90a-101a, the district court granted summary judgment to petitioner, *id.* at 36a-65a. The court concluded that the 1930s condemnation judgments had unambiguously conveyed to petitioner a royalty interest in the public domain minerals (as well as in the acquired minerals), and that the 1991 judgment had unambiguously reaffirmed that conveyance. See *id.* at 55a, 58a-64a. Asserting that the All Writs Act and Rule 70 authorized it "to enforce its prior judgments" in petitioner's favor, the district court declined to resolve petitioner's QTA claim. *Id.* at 56a; see *id.* at 64a.

4. The court of appeals reversed. Pet. App. 1a-35a.

The court of appeals first held that petitioner's claim could proceed only under the QTA, which "provides the exclusive means by which adverse claimants can challenge the United States' title to real property." Pet. App. 16a (brackets and citation omitted); see *id.* at 17a. The court did not dispute that "a district court can enforce a Quiet Title Act judgment, either under Rule 70 or the All Writs Act." *Id.* at 17a n.10. But the court of appeals rejected the district court's conclusion that the 1991 judgment applied to public domain minerals, emphasizing, among other things, that petitioner's complaint in that litigation had referred only to tracts with acquired minerals. *Id.* at 19a-25a. The court of appeals concluded that, because the 1991 judgment had not or-

dered the relief petitioner now seeks, petitioner could not obtain that relief by enforcing that judgment under the All Writs Act or Rule 70. See *id.* at 25a-26a & n.13. The court further held that petitioner could not enforce the 1930s condemnation judgments directly, because the QTA is the proper mechanism for settling disputes over the scope of title conveyed through eminent domain. See *id.* at 26a-29a.

The court of appeals then held that petitioner's suit was barred by the QTA's 12-year statute of limitations. Pet. App. 29a-35a. Referring to the exchange of correspondence between BLM and petitioner in late 2003, see pp. 4-5, *supra*, the court found that, "[a]t the latest, [petitioner] knew the United States did not recognize outstanding mineral royalties in lands in which the mineral estate was reserved to the United States in the original patent by December 2, 2003," more than 12 years before petitioner filed suit in 2016. Pet. App. 35a; see *id.* at 30a-31a. The court therefore reversed the district court's judgment and remanded for entry of judgment in favor of the United States. *Id.* at 35a.

ARGUMENT

Petitioner contends (Pet. 12-18) that it may invoke the All Writs Act, 28 U.S.C. 1651(a), to assert its claim to a royalty interest in public domain minerals, thereby avoiding the 12-year statute of limitations of the Quiet Title Act (QTA), 28 U.S.C. 2409a. The court of appeals correctly rejected that argument. The parties' disagreement here ultimately reduces to a factbound dispute over the meaning of decades-old judgments in prior litigation. And the Eighth Circuit's decision does not implicate any disagreement among the courts of appeals. Further review is not warranted.

1. The court of appeals correctly held that petitioner's claim is cognizable only under the QTA, not under the All Writs Act. Pet. App. 14a-29a.

a. The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. 1651(a). It "authorizes a federal court 'to issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.'" *Syngenta Crop Prot., Inc.* v. *Henson*, 537 U.S. 28, 32 (2002) (quoting *United States* v. *New York Tel. Co.*, 434 U.S. 159, 172 (1977)). But the Act is only "a residual source of authority to issue writs that are not otherwise covered by statute." *Pennsylvania Bureau of Corr.* v. *United States Marshals Serv.*, 474 U.S. 34, 43 (1985). "Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Ibid.*; see *Syngenta*, 537 U.S. at 32. As petitioner acknowledges (Pet. 14), the All Writs Act may not be used "to circumvent statutory requirements or otherwise binding procedural rules." *Shoop* v. *Twyford*, 596 U.S. 811, 820 (2022).

The All Writs Act accordingly cannot substitute for the QTA, which provides that the United States may generally "be named as a party defendant in a civil action * * * to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. 2409a(a). Instead, the QTA "provides the exclusive means by which adverse claimants can challenge the United States' title to real property." Pet. App. 16a (quoting *Block* v. *North Dakota*, 461 U.S. 273, 286

(1983)) (brackets omitted). This Court has repeatedly rejected litigants' efforts to invoke other provisions, such as the mandamus statute, 28 U.S.C. 1361, and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, 701 *et seq.*, to bring what in substance are quiet-title actions against the United States. See *Block*, 461 U.S. at 278, 286; see also *United States* v. *Mottaz*, 476 U.S. 834, 847 (1986). Permitting such suits would enable plaintiffs to circumvent the various limitations on the QTA's waiver of sovereign immunity, see *Block*, 461 U.S. at 283-284—including the 12-year statute of limitations, 28 U.S.C. 2409a(g), that is a "central condition of the consent [to suit] given by the [QTA]," *Mottaz*, 476 U.S. at 843; see *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 216, 223-224 (2012); see also, *e.g.*, 28 U.S.C. 2409a(c) and (d) (barring preliminary injunctions and imposing pleading requirements in QTA suits).

Those principles foreclose petitioner's resort to the All Writs Act here. Because "the essence and bottom line" of petitioner's suit is a claim to a title interest in government-owned property, *Mottaz*, 476 U.S. at 842 (citation omitted), the QTA is the appropriate and exclusive avenue for bringing that claim. Indeed, petitioner's original complaint relied on the QTA alone; petitioner amended its complaint to invoke the All Writs Act only after the government moved to dismiss the suit based on the QTA's statute of limitations. See p. 5, *supra*. But petitioner may not use the All Writs Act "to end-run the QTA's limitations," *Patchak*, 567 U.S. at 216, which include its 12-year period for commencing suit.

The petition for a writ of certiorari does not dispute that petitioner was aware of the United States' rejection

of petitioner's asserted royalty interest in the public domain minerals, and that the QTA claim therefore accrued, more than 12 years before this suit was filed. See Pet. App. 29a-35a. And petitioner identifies no reason why it could not have filed suit years earlier. The court of appeals therefore correctly held that judgment must be entered for the United States. *Id.* at 35a.

b. Petitioner's counterarguments lack merit. Petitioner emphasizes (Pet. 12-18) the finality of judgments and the role of the All Writs Act in enforcing them. But those arguments assume that the prior judgments here, entered in the 1930s and in 1991, actually conveyed to petitioner a royalty interest in public domain minerals. The court of appeals "d[id] not doubt that a district court can enforce a Quiet Title Act judgment, either under Rule 70 or the All Writs Act." Pet. App. 17a n.10. Rather, it concluded that the 1991 judgment did not cover the disputed minerals, and that the All Writs Act cannot be used to enforce the 1930s condemnation judgments directly. *Id.* at 19a-29a.

Petitioner's failure to meaningfully contest either of those conclusions is a sufficient reason to deny the petition. See *Johnson* v. *Williams*, 568 U.S. 289, 299 (2013) (noting that federal courts "refuse to take cognizance of arguments that are made in passing without proper development"). For example, petitioner simply asserts (Pet. 14) that the 1991 judgment "clearly and unambiguously quieted title [to petitioner] in the 6¼ percent royalty interest described in the 1930's Judgments." Petitioner does not address the court of appeals' stated reasons for concluding that the 1991 judgment's reference to "'the disputed minerals'" did not encompass public domain minerals. Pet. App. 20a (citation omitted); see *id.* at 19a-25a.

Petitioner's reliance on the 1930s condemnation judgments is similarly misplaced. As BLM has maintained for nearly a century, the 1930s condemnation judgments did not grant petitioner the claimed royalty interest in public domain minerals. The purpose of those proceedings, as reflected in the condemnation judgments (and in the nature and purpose of eminent domain), was to convey real-property rights *from* petitioner *to* the United States.

Because that conveyance was "subject to a 6¼% royalty reservation," Pet. App. 6a, petitioner did not convey *all* of its interest in the condemned lands, but instead retained part of its preexisting property rights in those lands. See p. 3, *supra*; Gov't C.A. Br. 41 (explaining that the phrase "'subject to'" "has a well-accepted meaning in condemnation actions and other real property transactions: it indicates that the title conveyed is subordinate to an *existing* specified interest"); *Black's Law Dictionary* 1567 (12th ed. 2024) (defining "reservation" as "[a] keeping back or withholding"). But nothing in the language or purposes of the 1930s judgments suggests that the United States' condemnation of petitioner's land was intended to convey *to petitioner* any real-property rights that petitioner did not already possess. Read in context, the 1930s judgments thus did not convey to petitioner a royalty interest in the public domain minerals, which the United States had owned all along. See Gov't C.A. Br. 39-47.

Because no existing judgment supports petitioner's claim to the public domain mineral royalty, neither the All Writs Act nor Rule 70 provides a basis for asserting that claim. Even if petitioner's interpretation of the 1930s and 1991 judgments were "seriously arguable," "resort to the All Writs Act would still be out of bounds"

given the QTA's availability for disputing the United States' title. *Clinton* v. *Goldsmith*, 526 U.S. 529, 537 (1999). And in any event, questions concerning the scope of the prior judgments are factbound matters that do not warrant review by this Court, which generally "do[es] not grant * * * certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U.S. 220, 227 (1925); see Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

2. The decision below does not otherwise warrant review. Petitioner asserts that a circuit conflict exists on the question whether the QTA is "an appropriate avenue" for litigating "the scope of title condemned or conveyed through condemnation." Pet. 18; see Pet. 18-23. As petitioner acknowledges, other courts of appeals have held, in accord with the Eighth Circuit's decision below, Pet. App. 27a-28a, that "an effort by plaintiffs to obtain an adjudication that they have an existing property right in real property which the United States purportedly condemned" is properly brought under the QTA. *Klugh* v. *United States*, 818 F.2d 294, 298 (4th Cir. 1987); see *Bank One Tex.* v. *United States*, 157 F.3d 397, 401 & n.7 (5th Cir. 1998), cert. denied, 526 U.S. 1115 (1999); *United States* v. *88.28 Acres of Land, More or Less, Situated in Porter County*, 608 F.2d 708, 716 (7th Cir. 1979); see also *Long* v. *Area Manager*, 236 F.3d 910, 913 (8th Cir. 2001) (plaintiff invoked QTA to bring a claim asserting that the plaintiff's right to use a road "was never taken during [a prior] condemnation").

The decisions that petitioner cites (Pet. 18-20) as rejecting use of the QTA in the condemnation context are inapposite. In those cases, courts of appeals held that

the QTA was unavailable because there was no "dispute[]" over who held title to the relevant property. 28 U.S.C. 2409a(a); see *Saylor* v. *United States*, 315 F.3d 664, 670 (6th Cir. 2003) (holding that the QTA was unavailable because that statute "covers only cases in which title itself is disputed," and "[t]itle here indisputably lies with the United States"); *Heirs of Guerra* v. *United States*, 207 F.3d 763, 767-768 (5th Cir.) (holding that the QTA was unavailable to contest a taking as arbitrary and capricious), cert. denied, 531 U.S. 979 (2000); *Cadorette* v. *United States*, 988 F.2d 215, 225 (1st Cir. 1993) (Breyer, C.J.) (noting the "crucial distinction * * * between bringing a 'quiet title' action where title is still in dispute and bringing a 'quiet title' action after the Government has indisputably obtained title through condemnation"). This case, by contrast, involves a dispute over who has title to the relevant interest in the public domain minerals. It thus does not implicate any disagreement in the courts of appeals over whether, in the absence of such a dispute, the QTA may be used to collaterally attack a condemnation judgment on other grounds. Cf. *United States* v. *Herring*, 750 F.2d 669, 671-674 (8th Cir. 1984) (holding that the QTA was available to contest the adequacy of the government's notice of taking); *Fulcher* v. *United States*, 632 F.2d 278, 280 (4th Cir. 1980) (en banc) (per curiam) (same).

Petitioner also contends (Pet. 20 n.4, 21-22) that the decision below conflicts with *United States* v. *Priest Rapids Irrigation District*, 175 F.2d 524 (9th Cir. 1949), and *Bear* v. *United States*, 810 F.2d 153 (8th Cir. 1987). But *Priest Rapids* did not discuss quiet-title actions at all, and it predated Congress's enactment of the QTA by more than 20 years. 175 F.2d at 533; see Act of Oct. 25, 1972, Pub. L. No. 92-562, § 3(a), 86 Stat. 1176-1177.

The court in *Bear* entertained a QTA claim but held that the claim was barred by res judicata. 810 F.2d at 157; see Pet. App. 28a (discussing *Bear*). And even if the Eighth Circuit had issued inconsistent decisions on this point, that intra-circuit conflict would not warrant this Court's intervention. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

This case would be a poor vehicle to resolve the purported circuit conflict in any event because doing so would not affect the outcome of this case. Although petitioner invoked the QTA below, petitioner now appears to contend that the QTA may not be used to dispute the United States' title to property obtained through eminent domain, and that the All Writs Act therefore remains available in this context. But even if the All Writs Act could be used to "enforce" the "prior final judgments" in the 1930s condemnation actions, Pet. 14, petitioner's suit would fail on the merits because those prior judgments did not grant petitioner the royalty interest it claims, see pp. 10-11, *supra*. This Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties. *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882).

Finally, the question presented is of limited practical importance. As the cases cited in the petition indicate, disputes over the scope of federal condemnation judgments are relatively rare. And the government is unaware of any other case in which a plaintiff has claimed, as petitioner does here, that condemnation proceedings commenced by the United States resulted in a transfer of real-property interests from the federal government to the condemnee. The novelty of petitioner's claim counsels further against granting certiorari in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
ADAM R.F. GUSTAFSON
Acting Assistant Attorney General
AMBER BLAHA
Attorney

SEPTEMBER 2025