

No.

In the Supreme Court of the United States

LARRY STEVEN WILKINS,

Petitioner,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

*On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Wilkins v. United States*, 598 U.S. 152 (2023), this Court held that the Quiet Title Act's statute of limitations is a nonjurisdictional claim-processing rule and thus reversed and remanded the court of appeals' judgment affirming the dismissal of Petitioner's action for lack of subject-matter jurisdiction.

Despite this ruling, the District Court on remand applied the law of the case doctrine to hold that Petitioner's quiet title claims are untimely.

The Ninth Circuit affirmed, holding that the District Court did not abuse its discretion in applying the law of the case doctrine. The court of appeals also held that Petitioner's quiet title claims seeking adjudication about the scope of a Forest Service easement across his property were untimely because the claims accrued when, more than twelve years before he filed suit, private citizens illegally used the road easement that crosses Petitioner's property.

The questions presented are:

1. Does the law of the case doctrine apply when this Court reverses a lower court's judgment?
2. Does a property owner's quiet title claim under the Quiet Title Act accrue based on the illegal and unauthorized actions of private citizens, rather than the actions of government officials?

PARTIES TO THE PROCEEDING

Petitioner Larry Steven Wilkins was a plaintiff-appellant below.

Respondent Will Stanton was substituted for plaintiff-appellant Jane Stanton at the court of appeals after Ms. Stanton passed away.

Respondent United States of America was defendant-appellee below.

STATEMENT OF RELATED CASES

The proceedings identified below are directly related to the above-captioned case in this Court.

Wilkins v. United States, No. 25-37 (9th Cir. Dec. 29, 2025)

Wilkins v. United States, No. 9:18-cv-147-DLC (D. Mont. Nov. 5, 2024)

Wilkins v. United States, 598 U.S. 152 (Mar. 28, 2023) (No. 21-1164)

Wilkins v. United States, No. 20-35745 (9th Cir. Sept. 15, 2021)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Larry Steven Wilkins respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit is published at 163 F.4th 636 and reproduced at Petitioner's Appendix (App.) 1a. The opinion of the District Court is unpublished but reproduced at App. 30a.

JURISDICTION

The District Court granted Respondent's motion for summary judgment and entered judgment on November 5, 2024. On December 29, 2025, the Ninth Circuit issued a published opinion affirming the judgment.

On March 16, 2026, Petitioner filed an application to extend the time to file this Petition to May 28, 2026. Justice Kagan granted the application on March 20. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AT ISSUE

28 U.S.C. § 2409a provides, in relevant Part:

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections

1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

INTRODUCTION

Petitioner Larry Steven “Wil” Wilkins and the late Jane Stanton (landowners) brought this case to answer a straightforward question: does an easement held by the United States authorize the Forest Service to allow unrestricted public access on a road that crosses their property? Seven and a half years later, with a previous trip to this Court, that remains unanswered. And if this Court denies the Petition for Writ of Certiorari, the question will remain unresolved indefinitely.

Initially, the district court dismissed the case for lack of subject-matter jurisdiction, holding that the Quiet Title Act’s statute of limitations is a jurisdictional requirement and stating that the landowners filed the case out of time. *Wilkins v. United States*, No. 9:18-CV-147-DLC-KLD, 2020 WL 2732251, at *9 (D. Mont. May 26, 2020). Because the District Court treated the statute of limitations as jurisdictional, “no presumption of truthfulness attaches to plaintiff’s allegations, a court may freely consider extrinsic evidence, and it may resolve factual disputes with or without a hearing.” *Id.* at *2 (citing *Kingman Reef Atoll Investments, L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008); *Roberts v.*

Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987); *Rosales v. United States*, 824 F.2d 799, 803 (9th Cir. 1987)). Additionally, “[a]lthough the defendant is the moving party, the plaintiff bears the burden of satisfying the court as to its jurisdiction.” *Ibid.* (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). The Ninth Circuit affirmed.

This Court, however, reversed the judgment of the court of appeals, holding that the Quiet Title Act’s statute of limitations is a nonjurisdictional claim-processing rule. *Wilkins v. United States*, 598 U.S. 152 (2023) (*Wilkins I*). Despite this ruling, the district court on remand held that the law of the case doctrine required it to affirm its initial judgment that Petitioner’s claims are untimely. App. at 34a-36a. The district court’s procedure inexplicably departed from the usual practice of a reversal from this Court. *See generally Johnson v. Bd. of Educ. of City of Chicago*, 457 U.S. 52, 53-54 (1982) (per curiam) (When this Court “vacate[s] the Court of Appeals’ judgments in [a] case, the doctrine of the law of the case does not constrain either the District Court or, should an appeal subsequently be taken, the Court of Appeals.”).

The Ninth Circuit affirmed the judgment of the district court, holding that the district court did not abuse its discretion in applying the law of the case doctrine. App. 8a. The court of appeals also held that private citizens’ illegal use of the road caused Mr. Wilkins’s claims to accrue because he should have known that the use reflected the Forest Service’s belief that the road was open to the public. App. 17a-19a. But by looking to the concededly illegal actions of third parties—rather than the authorized actions of the government itself—the Ninth Circuit interpreted the Quiet Title Act’s discovery rule in a way

inconsistent with how courts interpret similar statutes of limitations in other contexts. *See, e.g., United States v. Kubrick*, 444 U.S. 111, 122 (1979) (statute of limitations that incorporates a discovery rule begins to run when plaintiff is in “possession of the critical facts that he has been hurt and *who has inflicted the injury*” (emphasis added)); *Reguli v. Russ*, 109 F.4th 874, 883-84 (6th Cir. 2024) (“Courts universally recognize that the discovery rule begins once a plaintiff learns of *an* injury from the *defendant’s conduct*[.]” (second emphasis added)).

The Quiet Title Act was enacted to bring certainty to property disputes between private landowners and the United States. *See* S. Rep. No. 92-575 at 2 (1971) (“What this bill does is enable a citizen involved in a title dispute with the Government to have his day in court—something he does not now get unless or until the Government elects to initiate suit.”). But “[a] dismissal pursuant to § 2409a(f) does not quiet title to the property in the United States. The title dispute remains unresolved.” *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 291 (1983). By applying the Quiet Title Act’s statute of limitations in a manner inconsistent with how similar time limits are applied elsewhere, the Ninth Circuit prevented the Quiet Title Act from achieving its purpose, and left Petitioner’s years-long dispute with the government unresolved.

The petition should be granted.

STATEMENT OF THE CASE

A. Factual Background

Mr. Wilkins is a veteran diagnosed with post-traumatic stress disorder. 7 Appellants’ Excerpts of

Record (ER) at 1328, Ninth Circuit case no. 25-37, docket no. 11.8 (filed March 14, 2025, as amended by clerk). In 2004, he purchased his home in Ravalli County, Montana, near the boundary of the Bitterroot National Forest, next to a dirt road called Robbins Gulch Road. 4 ER at 366-67, Ninth Circuit case no. 25-37, docket no. 11.5. For his security and peace of mind, he needs to know who can use Robbins Gulch Road and how.

Mr. Wilkins's property is burdened by an easement owned by the federal government and managed by the Forest Service. 3 ER at 338-43, Ninth Circuit docket no. 11.4. His predecessor granted the easement in 1962, conveying to the United States a 60-foot easement "for a road as now constructed and in place and to be re-constructed, improved, used, operated, patrolled, and maintained and known as the Robbins Gulch road, Project Number 446." *Id.* at 338. The easement differs in significant ways from the form easements in the Forest Service Handbook used by the agency at the time: whereas the form easements purport to grant to the United States an easement for "highway purposes," 7 ER at 1299, Ninth Circuit docket no. 11.8, the 1962 deed does not, 3 ER at 338, Ninth Circuit docket no. 11.4. The elimination of the highway-purpose language from the Robbins Gulch Road easement deeds is consistent with the Forest Supervisor's cover letter that accompanied the proposed deed. That letter explains that the "[p]urpose of [the] road" was for "timber harvest" and, thus, not for public use. *Id.* at 335.

In September 2006, the Forest Service commissioned a sign to be installed along Robbins Gulch Road that read "public access thru private lands." 8 ER at 1615-17, Ninth Circuit docket no.

11.9. Since that time, expanded use of the easement has interfered with Mr. Wilkins's use and enjoyment of his property. *Id.* at 1517, 1529, 1583. For example, Mr. Wilkins and his neighbors have had to deal with people trespassing, stealing their personal property, shooting at their houses, hunting both on and off the easement, and travelling at dangerous speeds on and around Robbins Gulch Road. *Ibid.* In September 2019, someone travelling along the road shot Mr. Wilkins's cat. 7 ER at 1329, Ninth Circuit docket no. 11.8. The recent, excessive use of the road and adjacent properties by the public and Forest Service permittees has even caused some neighbors to move. *Id.* at 1334.

The increased use of the easement has also caused erosion of the road that affects the adjacent properties. 3 ER at 233, Ninth Circuit docket no. 11.4. The road deteriorating condition has caused sediment and silt to build up on the underlying properties and has washed out portions of those properties. 8 ER at 1576, docket no. 11.9. Making things worse, the Forest Service's maintenance of the easement has in recent years become infrequent. *Id.* at 1517.

In 2007, the management staff of the Bitterroot National Forest began—as part of a Service-wide policy to provide “clear identification of roads, trails, and areas for motor vehicle use on each National Forest,” 70 Fed. Reg. 68,264, 68,264 (Nov. 9, 2005)—a process to determine which roads managed by the Forest Service should be open to the public, 8 ER at 1619, Ninth Circuit docket no. 11.9. As part of this process, the Forest Service explained that “[w]here access to NFS lands from private property is needed, the Forest Service will seek rights-of-way from willing sellers. If public access cannot be secured, these

routes generally will be closed to motor vehicles under the final rule.” 70 Fed. Reg. at 68,276. In September, a year after the Forest Service commissioned the “public access thru private lands” sign, the Bitterroot National Forest issued a proposed-action scoping-document about the process. 8 ER at 1619, Ninth Circuit docket no. 11.9. In that document, the Bitterroot National Forest proposed no public use of Robbins Gulch Road. *Id.* at 1641.

Around the time the Bitterroot National Forest released the proposed action, then-Darby District Ranger Chuck Oliver told Mr. Wilkins—who had recently complained about the excessive use of the road—that Mr. Wilkins could “relax” because “Robbins Gulch Road[] is slated to be closed” in the travel management plan. 8 ER at 1578, Ninth Circuit docket no. 11.9. The planning process took over eight years, culminating in the Forest Service’s final decision in 2016. *Ibid.* After originally proposing to allow no public use on Robbins Gulch Road, *id.* at 1641, the final travel plan decision allowed use of the road by the public in summer and autumn, *id.* at 1709-10.

The Bitterroot’s final travel plan decision only exacerbated the problems occurring on the easement. In December 2017, after the second autumn under the travel plan, Mr. Wilkins and his neighbors met with Forest Service officials and requested that the Forest Service help address these problems. 7 ER at 1416, Ninth Circuit docket no. 11.8. The Forest Service declined. *Id.* at 1416-17. Not only did the agency disagree that the easement is limited in scope, it also disclaimed its obligations under the easement to ensure reasonable use of the road. *Id.* at 1417-18. It informed the property owners that it would manage

the easement however it wished, and that it owed no duties to the owners of the servient estates. *Ibid.*

In May 2018, as seasonal summer traffic was about to begin, counsel for Mr. Wilkins followed up with a letter to the United States Department of Agriculture Office of the General Counsel. 7 ER at 1320-22, Ninth Circuit docket no. 11.8. In July 2018, the Office of the General Counsel reiterated the Forest Service's position that the agency could allow whomever it wanted on the easement and that all management decisions were at the Forest Service's sole discretion. *Ibid.*

B. Procedural Background

Unable to get help from the Forest Service, Mr. Wilkins and Mrs. Stanton filed this Quiet Title Act suit in August 2018, one month after the Forest Service Office of the General Counsel responded to Mr. Wilkins's letter. 8 ER at 1726, Ninth Circuit docket no. 11.9. The Complaint asked the district court to interpret the easement under Montana law to determine its lawful use and the government's duties under it. *See id.* at 1723-24.¹ Specifically, Mr. Wilkins and Mrs. Stanton brought two claims for relief: one alleging that the easement does not permit the general public to use the road, the other alleging that

¹ Montana law governs the interpretation of the easement at issue here. *See Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378-79 (1977) ("Under our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States."); H.R. Rep. No. 92-1559 at 10 (1972) (Letter from the Attorney General to the Speaker of the House in support of legislation allowing for quiet title actions against the United States and stating that "[t]he State law of real property would of course apply to decide all questions not covered by Federal law.").

the government has a duty to maintain and patrol the road to ensure that use of the easement does not unreasonably burden the servient estates. *Ibid.*

In October 2019, prior to the close of discovery, the government filed a motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See* District Court docket nos. 24, 30. It argued that Mr. Wilkins and Mrs. Stanton did not bring the case within the Quiet Title Act's twelve-year statute of limitations. *See Wilkins*, 2020 WL 2732251, at *1. The government could "not pin down precisely when Plaintiffs' claims expired" but argued that the claims accrued more than twelve years before the lawsuit was filed. *Id.* at *9. The landowners responded that the Quiet Title Act's statute of limitations is nonjurisdictional, and therefore the case could not be resolved on a motion to dismiss. *See id.* at *3.

The magistrate judge recommended that the motion to dismiss be denied. *Id.* at *3. She concluded that the Quiet Title Act's statute of limitations is nonjurisdictional. *Ibid.* Hence, the government's motion to dismiss for lack of jurisdiction was improper, and its statute-of-limitations arguments should be decided on a motion for summary judgment or trial. *Ibid.* The magistrate also recognized that there were disputes of fact about "whether the USFS's operation and management of the easement have remained consistent." *Wilkins v. United States*, No. 9:18-cv-147-DLC-KLD, 2020 WL 8340145, at *7 (D. Mont. Feb. 4, 2020).

The district court rejected the magistrate's findings and recommendations and held that the Quiet Title Act's statute of limitations is jurisdictional. 2020 WL

2732251, at *7. As a result of that holding, the court applied the Ninth Circuit standard for resolving a “factual attack” on subject-matter jurisdiction “meaning the facts negating jurisdiction exist outside the complaint[.]” *Id.* at *2. Under this standard, “no presumption of truthfulness attaches to plaintiff’s allegations, a court may freely consider extrinsic evidence, and it may resolve factual disputes with or without a hearing.” *Ibid.* Without holding an evidentiary hearing to resolve disputed facts, the district court concluded that the landowners failed to meet their burden to establish jurisdiction and therefore dismissed the case. *Id.* at *9.

The Ninth Circuit panel affirmed the judgment of the district court. *Wilkins v. United States*, 13 F.4th 791 (9th Cir. 2021); *Wilkins v. United States*, No. 20-35745, 2021 WL 4200563 (9th Cir. Sept. 15, 2021). In a published opinion, the panel held that the Quiet Title Act’s statute of limitations is jurisdictional. 13 F.4th at 795. In a separate unpublished opinion, the panel, reviewing the district court’s order for clear error, affirmed the dismissal. 2021 WL 4200563, at *2. Mr. Wilkins and Mrs. Stanton then successfully petitioned this Court for review, the Court holding that the Quiet Title Act’s statute of limitations is a nonjurisdictional claims-processing rule and thus reversing the court of appeals’ judgment. *Wilkins I*, 598 U.S. at 165.

On remand in the district court, the parties filed cross-motions for summary judgment. The landowners argued that, based on the Forest Service’s actions in managing the easement (including statements by Forest Service officers to the landowners and their neighbors), the quiet title claims did not accrue until the Forest Service put up the sign

that read “public access thru private lands.” *See* App. 14a. That sign was commissioned in September 2006, within 12 years of the lawsuit’s filing. *Ibid.*

The government argued that the statute of limitations had run on the landowners’ claims. Specifically, the government argued that previous use of the road by private individuals put the landowners on notice that the Forest Service believed that its easement allowed for public use. *See* App. 17a-19a. The landowners responded that the only evidence of public use was private individuals illegally using the road, and that a reasonable landowner would not believe that individuals acting in violation of state law and Forest Service regulations were invited by the agency. *See id.* 18a-19a.

The district court granted the government’s motion for summary judgment, applying the law of the case doctrine and adopting its previous findings from the government’s original motion to dismiss for lack of subject-matter jurisdiction. App. at 34a-36a. The Ninth Circuit affirmed, holding that the district court did not abuse its discretion in applying the law of the case doctrine. App. 8a. It also held that the evidence of previous use of the road by private individuals was enough to trigger the Quiet Title Act’s statute of limitations. *Id.* at 19a. The panel stated that “Plaintiffs’ argument that the public was using the road for illegal purposes, such as trespass or underage drinking, does not move the needle.” *Ibid.*

REASONS FOR GRANTING THE PETITION

I. Certiorari Should Be Granted Because the Ninth Circuit’s Opinion Conflicts With This Court’s Decisions Holding That the Law of the Case Doctrine Does Not Apply When This Court Reverses a Judgment and Remands for Further Proceedings.

In affirming the district court’s judgment, the Ninth Circuit panel held that the district court did not abuse its discretion in applying the law of the case doctrine. App. at 12a. But when this Court “vacate[s] the Court of Appeals’ judgments in [a] case, the doctrine of the law of the case does not constrain either the District Court or, should an appeal subsequently be taken, the Court of Appeals.” *Johnson*, 457 U.S. at 53-54 (per curiam).

The panel’s decision thus conflicts with the relevant decisions of this Court on when to apply the law of the case doctrine. *See Coe v. Armour Fertilizer Works*, 237 U.S. 413, 418 (1915); *United States v. U.S. Smelting Ref. & Min. Co.*, 339 U.S. 186, 198 (1950); *Pepper v. United States*, 562 U.S. 476, 507 (2011). This Court has said that a court must issue “a final judgment to sustain the application of the rule of the law of the case just as it does for the kindred rule of *res judicata*.” *U.S. Smelting Ref. & Min. Co.*, 339 U.S. at 199. But when this Court reverses a final judgment it “effectively wipe[s] the slate clean.” *Pepper*, 562 U.S. at 507. In short, the law of the case doctrine is “not applicable here because when the case was first remanded, nothing was finally decided. The whole proceeding thereafter was in fieri.” *U.S. Smelting Ref. & Min. Co.*, 339 U.S. at 198.

The panel decision also conflicts with the decisions of other courts of appeal. Numerous courts have recognized that “[a] vacated decision cannot operate as the law of the case.” *Resurrection Sch. v. Hertel*, No. 21-1699, 2022 WL 332400, at *2 (6th Cir. Jan. 11, 2022) (citing *Johnson*, 457 U.S. at 53-54; *Amelkin v. McClure*, 330 F.3d 822, 828-29 (6th Cir. 2003)). That is because, “[w]here a judgment is vacated for a new determination, findings previously made that are integral to that judgment are likewise vacated and are thus not subject to the law of the case doctrine.” *Dorsey v. Cont’l Cas. Co.*, 730 F.2d 675, 678 (11th Cir. 1984). As such, “[a] judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect[.]” *Franklin Sav. Ass’n v. Office of Thrift Super-vision*, 35 F.3d 1466, 1469 (10th Cir. 1994) (quotations & citation omitted).

In *Wilkins I*, this Court reversed the district court’s judgment—and the Ninth Circuit’s affirmance of that judgment—holding that the Quiet Title Act’s statute of limitations is nonjurisdictional and remanding for further proceedings. *Wilkins I*, 598 U.S. at 165. “Thus, the Supreme Court has overruled the basis for the district court’s dismissal and [the Court of Appeals’] affirmance.” *Arbaugh v. Y&H Corp.*, 446 F.3d 573, 574 (5th Cir. 2006) (decision on remand after this Court held that a statutory filing requirement was not a jurisdictional requirement). The previous judgment—and the opinions related to that judgment—were deprived of any conclusive effect; the district court and the Court of Appeals should have reviewed the motions for summary judgment without reference to any previous decision.

The Ninth Circuit, however, held that the law of the case applied because this Court never “mentioned

our memorandum disposition” in its previous opinion. App. 9a. “This Court, however, reviews judgments, not statements in opinions.” *Black v. Cutter Lab’ys*, 351 U.S. 292, 297 (1956); *see also Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984) (citing numerous cases for the proposition that “this Court reviews judgments, not opinions”), *overruled on other grounds by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). By reversing the judgment in *Wilkins I*, this Court deprived any previous opinions of conclusive effect, and the law of the case doctrine did not constrain review on remand. *See Johnson*, 457 U.S. at 53-54.

This Court did not need to explicitly mention the unpublished opinion because *Wilkins I* undercut the reasoning of that opinion.² The unpublished opinion affirmed the district court’s holding that the suit was filed outside the Quiet Title Act’s statute of limitations. *See Wilkins*, 2021 WL 4200563 . But the district court’s decision (as well as the Ninth Circuit’s memorandum ruling) applied the wrong standard of review to reach that conclusion.

When the District Court previously decided that the complaint was untimely, it did so in a motion to dismiss for lack of subject-matter jurisdiction. It therefore placed the burden on Mr. Wilkins and Mrs. Stanton to prove that his case was timely. *Wilkins*, 2020 WL 2732251, at *2. And it was able to

² The unpublished opinion was included in the appendix of the cert petition and, thus, was a part of this Court’s review in *Wilkins I*. *See* Appendix to Petition for Writ of Certiorari B-1, *Wilkins v. United States* (No. 21-1164), *petition granted* June 6, 2022.

“resolve factual disputes with or without a hearing.”
Ibid.

But when this Court confirmed that the statute of limitations is nonjurisdictional, then the District Court could not apply the same standard of review as it applied the first time around. For a non-jurisdictional statute of limitations, the burden is on the government to prove that the case is untimely. *See Payan v. Aramark Mgmt. Servs. Ltd. P’ship*, 495 F.3d 1119, 1122 (9th Cir. 2007). And the district court was required to construe disputed facts in favor of the moving party at the summary judgment stage. *See Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982).

Thus, *Wilkins I*’s holding that the Quiet Title Act’s statute of limitations is nonjurisdictional changed the circumstances in how a court decides whether a quiet title claim was timely. *Wilkins I*, 598 U.S. at 165. In reaching this holding, this Court reversed the previous judgment and, thus, the law of the case doctrine did not apply.

This Court should grant the petition to ensure that the law of the case doctrine is applied uniformly among the circuits and not applied when this Court reverses or vacates a judgment.

II. Certiorari Should Be Granted Because the Ninth Circuit’s Opinion Conflicts With Decisions from This Court and Other Courts About How to Apply the Discovery Rule.

The Quiet Title Act provides: “The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real

property in which the United States claims an interest[.]” 28 U.S.C. § 2409a(a). The Quiet Title Act has a twelve-year statute of limitations that begins to run when “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 Quiet Title Act’s statute of limitations thus incorporates the “discovery rule.” *See Merck & Co. v. Reynolds*, 559 U.S. 633, 645, (2010) (“Legislatures have codified the discovery rule in various contexts” (citing U.S.C. § 2409a(g) as an example)); *Enbridge Energy, LP v. Nessel on behalf of Michigan*, 146 S. Ct. 1074, 1083 (2026) (citing *United States v. Beggerly*, 524 U.S. 38, 48 (1998), when discussing another time limit that “functions much like a discovery rule”).

“Courts universally recognize that the discovery rule begins once a plaintiff learns of *an* injury from the *defendant’s conduct*[.]” *Reguli*, 109 F.4th at 883-84 (second emphasis added). In other words, the defendant—not some unrelated third party—must do something to trigger a statute of limitations that incorporates the discovery rule. This Court has explained the reasoning behind this approach when it held that a statute of limitations runs when a plaintiff learns of an injury and its cause (even if he or she does not know that there is a legal remedy): “That [a plaintiff] has been injured in fact may be unknown or unknowable until the injury manifests itself; and the facts about causation may be in the control of the putative defendant, unavailable to the plaintiff or at least very difficult to obtain.” *Kubrick*, 444 U.S. at 122. “The prospect is not so bleak for a plaintiff in possession of the critical facts that he has been hurt and *who has inflicted the injury*. He is no longer at the mercy of the latter.” *Ibid.* (emphasis added). If a

potential plaintiff does not know who caused an injury, then it is unfair and impractical to require him or her to file suit against an unknown defendant.

While *Kubrick* involved a medical malpractice claim, “[t]he courts of appeals have applied versions of *Kubrick*’s discovery rule in settings other than medical malpractice and latent disease.” *Skwira v. United States*, 344 F.3d 64, 74 (1st Cir. 2003) (citing *Lhotka v. United States*, 114 F.3d 751, 753 (8th Cir. 1997) (trespass and nuisance); *Stoleson v. United States*, 629 F.2d 1265, 1268-69 (7th Cir. 1980) (occupational safety)); see also *Rotella v. Wood*, 528 U.S. 549 (2000) (Racketeer Influenced and Corrupt Organizations Act (RICO) suit). And though different cases may have different triggering events, courts recognize that—regardless of particular circumstances—a statute of limitations does not begin to run until the plaintiff knows of the connection between the injury and the defendant’s conduct. See *Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686, 702 (6th Cir. 2022) (“[a] plaintiff’s awareness encompasses two elements: (1) [t]he existence of the injury; and (2) causation, that is, the connection between the injury and the defendant’s actions.” (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001))).

Indeed, “[o]utside the medical malpractice context, . . . the identity of the individual(s) responsible for an injury may be less evident, and a plaintiff may have less reason to suspect governmental involvement.” *Skwira*, 344 F.3d at 77. “Not surprisingly, courts of appeals have been slightly more forgiving in these cases, deferring the accrual of claims until a reasonably diligent plaintiff has reason to suspect a governmental connection with the injury.” *Ibid.*

In *Lhotka v. United States*, for example, the Eighth Circuit applied the discovery rule in a case similar to the situation here. *Lhotka*, 114 F.3d at 753. Although *Lhotka* involved a trespass claim rather than a quiet title claim, the case concerned actions by a federal agency that affected private property. *Ibid.* In determining whether the plaintiffs' claim was timely, the court held that the statute of limitations began to run "from the time that they actually knew, or should have reasonably known, (1) that a trespass and nuisance occurred and (2) that the Fish and Wildlife Service's restoration work caused them." *Ibid.*

And in *Werner v. United States*, the Eleventh Circuit focused—consistent with how courts apply the discovery rule in other contexts—on the government's actions to determine when the Quiet Title Act's statute of limitations was triggered. 9 F.3d 1514, 1519 (11th Cir. 1993). After analyzing Quiet Title Act cases from other courts, the *Werner* Court held "[f]or statute of limitations purposes, the first inquiry must define the government's claim and then one must look to the time that *the government, acting adversely to the interests of others*, seeks to expand that claim." *Ibid.* (emphasis added).

Thus, this Court and other courts agree that a discovery rule necessarily implies a requirement of some action by the defendant to trigger the running of the limitations period. Below, however, the panel looked to the illegal actions of third parties—and expressly disavowed the necessity of any plausible connection to the government—to determine when the statute of limitations began to run. App. 19a.

The panel correctly recognized that most of the government's arguments about the statute of

limitations relied on disputed facts. App. 19a-23a. The panel, however, affirmed the district court's judgment based on alleged third-party use of Robbins Gulch Road, holding that such use put Petitioner or his predecessors on notice that the Forest Service believed its easement allowed for public use. *Id.* at 17a-19a.

In reaching that conclusion, the Ninth Circuit rejected Mr. Wilkins's argument that the evidence of third-party use was inadequate because such use was illegal and thus not reasonably attributable to the Forest Service. App. 19a ("Plaintiffs' argument that the public was using the road for illegal purposes, such as trespass or underage drinking, does not move the needle."). By relying solely on third-party conduct (and illegal conduct at that), the panel departed from how this Court and other courts have applied the discovery rule in analogous contexts.

The alleged statement of material fact that the government relied on to argue that Mr. Wilkins should have known of the Forest Service's interpretation of the easement—which is that the agency can allow the general public to use the easement as a public highway—was a declaration from an area resident averring that "local teenagers knew they could use Robbins Gulch Road to access National Forest for 'beer parties.'" 2 ER at 63, Ninth Circuit docket no. 11.3. Assuming the statement to be true, it violates both state and federal law. *See* Mont. Code Ann. § 45-5-624; 36 C.F.R. § 261.58(bb) (prohibiting underage consumption of alcohol).

Pursuant to the discovery rule, the Quiet Title Act's statute of limitations should not have begun to run unless there was a reasonable connection between

these beer parties and the Forest Service. Given that there is no evidence in the record supporting such a connection, the panel's holding that this third-party activity started the clock on the Quiet Title Act's statute of limitations shouldn't be sustained.

A landowner does not need to have any knowledge of the Forest Service's regulations to know that underage drinking is illegal. And a reasonable landowner would not believe that those committing illegal acts had the permission of the federal government to commit those acts. Instead, it is reasonable for a property owner to believe that those committing illegal acts were also illegally using the road. And it was reasonable for the residents of the road—including Mr. Wilkins—to believe that the Forest Service didn't condone the activity, much less that such activity was consistent with the agency's otherwise unpublicized view of the road easement. *Cf. Snyder-Hill*, 48 F.4th at 704 (“The plaintiffs’ allegations that they lacked reason to know that Ohio State injured them are plausible. It would be difficult for the ‘typical lay person’ in the plaintiffs’ position to know the underlying facts about Ohio State’s alleged deliberate indifference.”).

Indeed, in *Elk Mountain Safari v. United States*—one of the cases the 11th Circuit relied on in *Werner*, 9 F.3d at 1518—a court held that trespassers using the plaintiffs’ property did not cause the Quiet Title Act’s statute of limitations to run. *Elk Mountain Safari, Inc. v. U.S. Dep’t of Interior*, 645 F. Supp 151, 154 (D. Wyo. 1986). In *Elk Mountain Safari*, a landowner granted a right of way to the government in 1957 and, like here, a later owner sued the government alleging that the right of way was limited and not open to the public. *Id.* at 152. The court held

that only when the government publicly announced that the “roadway should be open to the general public” did the Quiet Title Act’s statute of limitations begin to run. *Id.* at 156. Importantly, the court noted that the landowners had to deal with “increased trespassing occurring on their private lands—most often involving hunters” and that they even “erected a gate on its lands across the roadway to keep out trespassers.” *Id.* at 154. Despite this public use of the road, the court held that the statute of limitations did not run until the defendant took some action to indicate its position that the roadway was open to the public. *Id.* at 156.³

Further complicating the issue here—and further demonstrating why the Quiet Title Act’s discovery rule requires the government, not a third party, to trigger the statute of the limitations—is the fact that the government is not the only easement holder on Robbins Gulch Road. “A parcel of land may be reciprocally servient and dominant to other parcels of land formerly under common ownership.” *O’Keefe v. Mustang Ranches HOA*, 446 P.3d 509, 518 (Mont. 2019). Here, the Robbins Gulch Road residents (especially those up the road from Mr. Wilkins) are both the servient estate with respect to the Forest Service’s easement and the dominant estate with respect to their private-party neighbors (including Mr. Wilkins). Thus, even if the statute of limitations-triggering third-party use here had otherwise been

³ In analyzing *Elk Mountain Safari*, the Ninth Circuit looked only to the District of Wyoming’s statement that an internal agency manual did not cause the statute of limitations to run. App. at 16a. In doing so, it looked past the facts that the public was using the road for illegal purposes, like here.

entirely legal, such use could just as well have been the result of the direction of non-governmental parties with rights of use superior to Petitioner's. In other words, mere use of the road by members of the public would not put a landowner like Mr. Wilkins on notice of what the Forest Service itself thought it had the right to authorize. In holding to the contrary, the Ninth Circuit's ruling conflicts with how this Court and other courts have applied the discovery rule. The Court should therefore grant the Petition to ensure proper and consistent application of the discovery rule.

III. Certiorari Should Be Granted to Ensure That Landowners Know With Certainty What Their Rights Are.

As this Court has recognized, “[i]t is of special importance that landowners know with certainty what their rights are[.]” *Beggerly*, 524 U.S. at 49. But “[a] dismissal pursuant to § 2409a(f) does not quiet title to the property in the United States. The title dispute remains unresolved.” *Block*, 461 U.S. at 291. Thus, while “we must be careful not to interpret [the statute of limitations] in a manner that would extend the waiver beyond that which Congress intended,” it is also important to “not construe such a time-bar provision unduly restrictively[.]” *Id.* at 287 (quotations omitted); *see also Wilkins I*, 598 U.S. at 161 (quoting *Block*, 461 U.S. at 287).

An overly strict interpretation of the Quiet Title Act's statute of limitations unnecessarily creates legal uncertainty because “[n]othing prevents the claimant from continuing to assert his title, in hope of inducing the United States to file its own quiet title suit, in which the matter would finally be put to rest on the

merits.” *Block*, 461 U.S. at 291-92. While Congress intended some time limits on quiet title actions, a court cannot interpret the statute of limitations in a manner inconsistent with how courts apply the discovery rule in other contexts and in a way that consumes the purpose of the Quiet Title Act.

That is why courts have held that the Quiet Title Act’s statute of limitations does not begin to run if “the United States’ claim is ambiguous or vague[.]” *Shultz v. Dep’t of Army, U.S.*, 886 F.2d 1157, 1160 (9th Cir. 1989). A different standard would “force[]” a landowner “to bring suit within twelve years even though the government gave no indication that it contested the claimant’s right.” *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995). And a different standard would conflict with how the discovery rule is applied in other contexts.

The panel below took a different approach, looking to the illegal actions of third parties to determine when Mr. Wilkins’s claim against the government accrued. In doing so, it has set a standard that affects a vast number of property owners in the west.⁴ In the Ninth Circuit, the federal government owns over half the land in the states within that court’s jurisdiction. See Carol Hardy Vincent & Laura A. Hanson,

⁴ The panel below stated that the Ninth Circuit’s decision in *Michel* did not apply here because *Michel* concerned a plaintiff’s claim of an easement over government land, not a government’s claim of an easement over private land. App. 15a. In reaching this conclusion, the panel below did not address that another panel of the Ninth Circuit recently applied *Michel* to a case involving a government easement over private land. *Waibel Ranches, LLC v. United States*, No. 22-35703, 2024 WL 3384233, at *1 (9th Cir. July 12, 2024). This intracircuit split further demonstrates the need for this Court’s review.

Congressional Research Service, *Federal Land Ownership: Overview and Data* 7-8 (Feb. 2020).⁵ Quiet title cases are thus more likely to arise in the western United States, and now plaintiffs in these cases will be hampered by the decision below. And it is not just private individuals who are affected, because local governments in these states often have property disputes with the federal government. *See* Brief Amici Curiae of Local Government Organizations, 2022 WL 3371300, *Wilkins v. United States*, 598 U.S. 152 (No. 21-1164).

The Ninth Circuit’s rule prevents landowners from clarifying their rights by applying an interpretation of the discovery rule that is unique (and uniquely wrong) to quiet title claims. But property owners should not have a harder time vindicating their rights in court than other plaintiffs. *Cf. Knick v. Twp. of Scott*, 588 U.S. 180, 202 (2019) (“Takings claims against local governments should be handled the same as other claims under the Bill of Rights.”); *see also* Motion for Leave to File Amici Brief and Amici Brief of National Federation of Independent Businesses, et al. at 15-20, 2022 WL 3371303, *Wilkins v. United States*, 598 U.S. 152 (No. 21-1164).

This Court should grant the petition to ensure a uniform application of the discovery rule, and to ensure that property owners can know with certainty what their rights are.

⁵ Available at <https://crsreports.congress.gov/product/pdf/R/R42346>.

IV. Summary Reversal Is Appropriate for Both Questions Presented.

In light of the Ninth Circuit’s failure to follow this Court’s decisions regarding when the law of the case doctrine applies, the Court may wish to consider summary reversal of the judgment. Although summary disposition is not a common remedy, it is warranted in this case.

The decision below involves an error on how courts should apply this Court’s decisions on remand. This Court has repeatedly stated that the law of the case doctrine does not apply when this Court vacates or reverses a judgment. *See* Section I, *supra*. Thus, the Ninth Circuit “committed fundamental errors that this Court has repeatedly admonished courts to avoid.” *Sexton v. Beaudreaux*, 585 U.S. 961, 967 (2018) (per curiam). Indeed, this Court has issued summary reversals when courts have incorrectly applied the law of the case in the past. *See Johnson*, 457 U.S. at 53-54 (per curiam); *Dobbs v. Zant*, 506 U.S. 357, 359 (1993) (per curiam). A similar approach is appropriate here. *Cf. Thompson v. Hebdon*, 589 U.S. 1, 4 (2019) (per curiam) (granting vacatur and remanding where “the Ninth Circuit declined to apply [this Court’s] precedent” in controlling case.)

Summary reversal is also appropriate for the second question presented. This Court and other courts have consistently held that third parties cannot trigger a statute of limitations under the discovery rule. *See* Section II, *supra*. In response to this argument, the panel gave a one-sentence conclusory statement that the argument does not “move the needle.” App. 19a. This Court has granted summary reversal when a “the Court of Appeals offered a one-

sentence conclusory explanation for its decision” rather than apply controlling law. *Felkner v. Jackson*, 562 U.S. 594, 597 (2011) (per curiam). A similar approach is appropriate here.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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