No. 25-1332

In the Supreme Court of the United States

LARRY STEVEN WILKINS, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Quiet Title Act's 12-year statute of limitations, 28 U.S.C. 2409a(g), bars petitioner's quiet-title suit seeking to restrict access to a road that the public has used for decades to access a national forest.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-29a) is reported at 163 F.4th 636. A prior opinion of the court of appeals is reported at 13 F.4th 791. Another prior opinion of the court of appeals is available at 2021 WL 4200563. The order of the district court (Pet. App. 30a-44a) is available at 2024 WL 4680696. Prior orders of the district court are available at 2020 WL 4596720 and 2020 WL 2732251.

JURISDICTION

The judgment of the court of appeals was entered on December 29, 2025. On March 20, 2026, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including May 28, 2026, and the petition was filed on May 27, 2026. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Quiet Title Act (QTA), 28 U.S.C. 2409a, authorizes a suit by a plaintiff who asserts a "right, title, or interest" in real property that conflicts with a "right, title, or interest" that the United States claims. 28 U.S.C. 2409a(d). Congress has imposed various conditions on the QTA's waiver of sovereign immunity, including a statute of limitations, under which a quiet-title action (except one brought by a State) is "barred unless it is commenced within twelve years of the date upon which it accrued." 28 U.S.C. 2409a(g). A QTA cause of action accrues "on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." *Ibid.* The QTA's statute of limitations is not jurisdictional, 598 U.S. 152, 165, but like other conditions on waivers of sovereign immunity, it must be "strictly observed, and exceptions thereto are not to be lightly implied." *Block* v. *North Dakota*, 461 U.S. 273, 287 (1983).

2. a. Robbins Gulch Road branches off of U.S. Highway 93 in rural Montana "and traverses private property for about one mile before it crosses the boundary of Bitterroot National Forest," which is managed by the U.S. Forest Service. Pet. App. 2a; see *id.* at 3a, 30a-31a. In 1962, petitioner's predecessor-in-interest conveyed an "easement to the United States * * * '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 2a. Although the government originally acquired the easement "to be used in connection with timber harvesting," *ibid.*, "the public has regularly used the road since the 1960s to access the National Forest and for other purposes including walking, biking, cross-country

skiing, and horseback riding," Gov't C.A. Br. 8 (citing C.A. Supp. E.R. 53-65); see Pet. App. 2a, 17a.

In 2004, petitioner acquired property subject to the Robbins Gulch Road easement. Pet. App. 2a. He was aware at the time "that the public ha[d] regularly used Robbins Gulch Road to access the National Forest since at least the 1960s." *Id.* at 17a. In 2018, petitioner (as well as another plaintiff who has since died) filed a QTA suit against the United States in the United States District Court for the District of Montana. *Id.* at 3a-4a. He sought a declaration that the "1962 easement was not granted to the United States for general public use," and that the easement may be used only by agents of the United States and specific assignees, such as timber contractors. *Id.* at 4a. Petitioner also sought a declaration that the easement imposes a duty on the United States "to patrol and maintain" the road, and that the United States had violated that duty by permitting "ongoing unrestricted use by the general public." *Ibid.*

After "extensive discovery," Pet. App. 4a, the district court dismissed the case for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). 2020 WL 2732251. The court concluded that the QTA's 12-year statute of limitations is jurisdictional. *Id.* at *7. The court also noted that, because the complaint was filed on August 23, 2018, petitioner's QTA claims were untimely if they "accrued prior to August 23, 2006." *Id.* at *9 n.4.

The district court held that petitioner or his predecessor had known or should have known prior to that date that "the Forest Service believed its easement granted public access," and that petitioner's claims were therefore untimely. 2020 WL 2732251, at *8. The court cited Forest Service maps dating back decades that had depicted Robbins Gulch Road without "any user restrictions"; evidence showing that the public had "been using the road as a public access route" since at least the 1970s; and the Forest Service's temporary closure of the road to public motorists on May 3, 2006, which showed that the agency "'viewed the road as otherwise open to the public.'" *Id.* at *9 (brackets, citation, and emphasis omitted). The court found that petitioner's "claims likely accrued sometime in the 1970s, [and] the record is abundantly clear that [they] accrued, at the latest, on May 3, 2006." *Ibid.*

b. The court of appeals affirmed in two opinions issued on the same day. In a published opinion, it held that the QTA's statute of limitations is jurisdictional. 13 F.4th 791. In a separate, nonprecedential opinion, the court agreed with the district court that petitioner's two claims had accrued at the same time, and it upheld the district court's determination that the claims were untimely. 2021 WL 4200563. "Together with the historic public use of the road," the court of appeals explained, "the historic [Forest Service] maps should have alerted a reasonable landowner of the government's view regarding public access of the easement more than twelve years before [petitioner] filed suit," "[a]nd the government's temporary closure of the road in 2006 was consistent with this understanding." *Id.* at *2.

c. Petitioner filed a petition for a writ of certiorari that presented the question "[w]hether the Quiet Title Act's Statute of Limitations is a jurisdictional requirement or a claim-processing rule." 21-1164 Pet. i. This Court granted certiorari and reversed, holding that the QTA's statute of limitations "is a nonjurisdictional claims-processing rule." 598 U.S. at 165. While acknowledging that the parties disputed "the precise implications on remand of a ruling that § 2409a(g) is nonjurisdictional," the Court took "no position on that dispute." *Id.* at 156 n.1.

3. a. The case was remanded to the court of appeals, which in turn remanded for further proceedings in the district court. 66 F.4th 1223. In the district court, neither party sought to reopen discovery or to submit new evidence. Pet. App. 9a. The parties cross-moved for summary judgment, and the government again asserted that petitioner's claims are time-barred. *Id.* at 33a.

The district court found petitioner's claims untimely and granted summary judgment to the government. Pet. App. 30a-44a. Because "motions to dismiss under Rule 12(b)(1) and motions for summary judgment under Rule 56 are analyzed under different standards," the court acknowledged that its and the court of appeals' prior decisions on timeliness did " 'not automatically constitute law of the case at this stage.' " *Id.* at 35a (citation omitted). But the district court stated that "a court's prior ruling may be applied as the law of the case where the facts presumed true at the motion to dismiss stage are proven true at summary judgment." *Id.* at 35a-36a.

The district court found that petitioner had "fail[ed] to proffer any evidence rendering the facts relied upon in" the prior decisions to be "in dispute." Pet. App. 38a. The court further stated that a prior decision need not be applied as law of the case where "(1) the first decision was clearly erroneous; (2) there has been an intervening change in the law; (3) the evidence presented on remand is substantially different; (4) other changed circumstances exist; or (5) a manifest injustice would otherwise result." *Id.* at 39a (citation omitted). Finding none of those exceptions applicable, the court concluded that petitioner's "claims are time barred by the QTA's 12-year claims processing rule." *Id.* at 40a.

b. The court of appeals affirmed. Pet. App. 1a-29a. Like the district court, the court of appeals recognized that its prior untimeliness determination had been made under a "different standard[]" from the summary-judgment standard. *Id.* at 10a. But the court of appeals found that the district court had "'properly examined' [petitioner's] material in opposition to summary judgment," and had "not abuse[d] its discretion in applying the law of the case doctrine." *Id.* at 12a (citation omitted).

The court of appeals further held that, even apart from law-of-the-case principles, the court would "still affirm the judgment after a de novo review of the motions for summary judgment." Pet. App. 12a-13a. The court found that petitioner had "raise[d] a genuine dispute regarding whether the historic Forest Service maps spurred the limitations period, and may also [have] do[ne] so with [respect to] the May 2006 Closure Order." *Id.* at 23a; see *id.* at 19a-23a. But the court held that there was no genuine dispute that "the public has regularly used Robbins Gulch Road to access the National Forest since at least the 1960s," and that, given that public use, petitioner or his predecessor had known or should have known of the government's claim as to the easement's scope more than 12 years before petitioner filed suit. *Id.* at 17a; see *id.* at 18a-19a, 23a.

ARGUMENT

Petitioner contends (Pet. 16-23) that the court of appeals erred in applying the law-of-the-case doctrine and in holding that his QTA claims are untimely. The court of appeals' decision is correct and does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. The court of appeals correctly held that petitioner's QTA claims had accrued more than 12 years before he filed suit and are therefore time-barred. Pet. App. 7a-23a.

a. A QTA claim is generally "barred unless it is commenced within twelve years of the date upon which it accrued," and such a claim is "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." 28 U.S.C. 2409a(g). Although the statute of limitations is not jurisdictional, 598 U.S. 152, 165, it is a mandatory condition of the QTA's waiver of sovereign immunity that "must be strictly observed." *Block* v. *North Dakota,* 461 U.S. 273, 287 (1983); see *United States* v. *Mottaz*, 476 U.S. 834, 843 (1986) ("The limitations period is a central condition of the consent [to sue] given by the [QTA]."); 598 U.S. at 162. The QTA's limitations period is "unusually generous" in length, *United States* v. *Beggerly*, 524 U.S. 38, 48 (1998), but it reflects "the wish of Congress" to foreclose "suits involving stale claims," *Block*, 461 U.S. at 285.

The court of appeals correctly applied the QTA's statute of limitations. Petitioner's claims allege that the government's easement for Robbins Gulch Road "was granted only for restricted purposes related to timber harvest for the United States and its assigns," and that the government was wrongfully "authorizing and facilitating * * * ongoing unrestricted use by the general public," including public use of the road to reach Bitterroot National Forest. Pet. App. 4a (brackets omitted). As the court of appeals explained, however, "[t]he record shows that the public has regularly used Robbins

Gulch Road to access the National Forest since at least the 1960s," and petitioner was "aware of such public use" when he purchased his property. *Id.* at 17a. Because that public use "would have alerted a reasonable landowner" that the United States did not view the easement as limited to governmental use for timber-harvest purposes, petitioner or his predecessor knew or should have known of the government's claim more than 12 years before petitioner filed suit. *Ibid.* Petitioner's claims are therefore barred by the QTA's statute of limitations. 28 U.S.C. 2409a(g).

b. Petitioner's contrary arguments lack merit.

i. With respect to the first question presented in the petition for a writ of certiorari (at i), petitioner contends that the courts below erred in applying the law-of-the-case doctrine. As "most commonly defined, th[at] doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Pepper* v. *United States*, 562 U.S. 476, 506 (2011) (citation omitted). In arguing that law-of-the-case principles do not apply here, petitioner emphasizes (Pet. 14-15) that this Court reversed the court of appeals' prior holding that the QTA's statute of limitations is jurisdictional, and that on remand, at summary judgment, "the District Court could not apply the same standard" to the timeliness issue that it had applied to the government's earlier motion to dismiss, Pet. 16.

That argument does not cast doubt on the correctness of the summary-judgment decision here. Even setting aside the fact that the court of appeals' decision did not depend on law-of-the-case principles, see p. 11, *infra*, the courts below acknowledged the need to apply a different standard on remand, and they determined that summary judgment was warranted under that standard. Pet. App. 10a-12a; see *id.* at 23a, 35a. In that regard, it is questionable whether the courts below truly applied law of the case at all, rather than merely viewing the prior proceedings as "inform[ing] the analysis on * * * summary judgment." *Id.* at 35a; cf. *Pepper*, 562 U.S. at 506 (noting that law of the case is "an amorphous concept") (citation omitted). The court of appeals also correctly recognized that this Court's previous decision in this case did not address the timeliness of petitioner's claims or otherwise disturb the lower courts' prior analysis of that issue. See Pet. App. 10a ("only the jurisdictional question was before the Supreme Court").

The law-of-the-case precedents of this Court cited by petitioner (Pet. 13) are inapposite. *Pepper*, *supra*, and *Johnson* v. *Board of Education*, 457 U.S. 52 (1982) (per curiam), stand for the proposition that a wholly vacated decision does not bind a lower court as law of the case. See *Pepper*, 562 U.S. at 507-508; *Johnson*, 457 U.S. at 53-54. Neither decision addressed a lower court's application of law of the case on one issue (here, the timeliness of petitioner's claims) after this Court had reversed on a distinct issue (here, the nonjurisdictional nature of the QTA's statute of limitations) and remanded for further proceedings. Cf., *e.g.*, *Adarand Constructors, Inc.* v. *Slater*, 228 F.3d 1147, 1191 n.38 (10th Cir. 2000) (holding that when this Court reversed a constitutional decision by the court of appeals, it "did not disturb" a distinct statutory holding that thus "remain[ed] law of the case"), cert. dismissed, 534 U.S. 103 (2001). The other decisions that petitioner invokes involved the treatment of interlocutory decisions as law of the case. See *United States* v. *United States Smelting Ref. & Mining Co.*, 339 U.S. 186, 198-199 (1950); *Coe* v.

Armour Fertilizer Works, 237 U.S. 413, 418 (1915). Those decisions are not implicated here.

ii. With respect to the second question presented in the petition, petitioner describes the court of appeals as having erroneously held that the QTA's statute of limitations was triggered by third-party conduct—*i.e.*, "beer parties" thrown in Bitterroot National Forest by "local teenagers"—that, because of its unlawful character, was "not reasonably attributable to the Forest Service." Pet. 19-20 (citation and internal quotation marks omitted). But neither lower court specifically relied upon such illegal activity; both courts instead cited the public's use of Robbins Gulch Road in general, see Pet. App. 17a, 37a, which included innocuous activities like "walking, biking, cross-country skiing, and horseback riding," Gov't C.A. Br. 8 (citing C.A. Supp. E.R. 53-65). And even if some private persons engaged in illegal conduct on National Forest lands, it would not follow that those persons acted unlawfully by using the road to access the Forest. In any event, petitioner does not establish that only a lawful use of property can trigger the QTA's statute of limitations. Cf. *Kingman Reef Atoll Invs., L.L.C.* v. *United States*, 541 F.3d 1189, 1197 (9th Cir. 2008) ("[T]he crucial issue in the statute of limitations inquiry is whether the plaintiff had notice of the federal claim, not whether the claim itself is valid.") (brackets and citation omitted).

More broadly, petitioner appears to fault (Pet. 19-20) the court of appeals for "relying solely on third-party conduct" that had no "plausible connection to the government" in determining when petitioner's claims accrued. The court did not do so. The premise of petitioner's QTA suit is that, under the easement, the government was responsible for preventing public use of

Robbins Gulch Road. See Pet. App. 4a. The court thus properly treated such public use as providing notice of the government's claim as to the scope of the easement. *Id.* at 17a. For the same reason, petitioner is wrong in hypothesizing (Pet. 22-23) that a reasonable landowner would have attributed the public use to the conduct of other easement holders along Robbins Gulch Road rather than to the government. In any event, petitioner did not raise that argument below. See *United States* v. *Ortiz*, 422 U.S. 891, 898 (1975) (declining to consider an issue "which was raised for the first time in the petition for certiorari"). The court of appeals' decision is correct, and petitioner's request for summary reversal is particularly unwarranted, contra Pet. 26-27.

2. This Court's review is unwarranted for several additional reasons.

a. This case would be an unsuitable vehicle to consider the first question presented in the petition, regarding law of the case. As noted above, it is not clear that the courts below even applied law of the case as that doctrine is typically understood—neither court gave binding effect to its previous decision, made under a different standard, that petitioner's claims were untimely. See pp. 8-9, *supra*. In any event, the court of appeals made clear that its "de novo review of the motions for summary judgment" provided an independent ground for affirming the district court's decision. See Pet. App. 13a; see also *id.* at 13a-23a. This Court does not grant 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).

The law-of-the-case issue also does not implicate any disagreement among the courts of appeals, contra Pet. 14. Like *Pepper* and *Johnson*, *supra*, the court of appeals decisions cited by petitioner reflect the general proposition 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); see *Dorsey* v. *Continental Cas. Co.*, 730 F.2d 675, 678 (11th Cir. 1984) ("Where 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.") (citing *Johnson*, *supra*); see also *Franklin Sav. Ass'n* v. *Office of Thrift Supervision*, 35 F.3d 1466, 1469 (10th Cir. 1994) (holding that an "entirely vacated" district-court decision "lacks preclusive effect"). The court of appeals did not hold otherwise here. As discussed above, that court upheld the district court's decision, which found petitioner's claims untimely under the summary-judgment standard. This Court did not address that timeliness issue in reversing the court of appeals' previous judgment.

b. The second question presented in the petition, regarding whether a QTA claim can accrue based on third parties' illegal conduct, likewise does not satisfy this Court's usual criteria for granting a writ of certiorari. Petitioner asserts (Pet. 17-19, 21) that a conflict on that question exists between the decision below and decisions of several other courts of appeals, but none of the other cited decisions addresses that question, much less conflicts with the court of appeals' decision in this case. Most of the decisions that petitioner invokes do not involve the QTA at all; petitioner cites them for the general principle that under a "discovery rule," a claim accrues when the plaintiff knows or should know "of an injury from the defendant's conduct." *Reguli* v. *Russ*, 109 F.4th 874, 883 (6th Cir. 2024) (per curiam) (emphasis omitted); see *Snyder-Hill* v. *Ohio State Univ.*, 48 F.4th 686, 702 (6th Cir. 2022), cert. denied, 143 S. Ct. 2659 (2023); *Skwira* v. *United States*, 344 F.3d 64, 74 (1st Cir. 2003), cert. denied, 542 U.S. 903 (2004); *Lhotka* v. *United States*, 114 F.3d 751, 753 (8th Cir. 1997).

Petitioner views (Pet. 19) the decision below as inconsistent with that principle, on the ground that the court of appeals looked solely "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." As explained above, however, p. 10, *supra*, that characterization of the court of appeals' decision is incorrect. Even assuming that the non-QTA decisions discussing the discovery rule are relevant to application of the QTA's statute of limitations, the ruling below does not conflict with those decisions.

Werner v. *United States*, 9 F.3d 1514 (11th Cir. 1993), is a QTA case, but it is readily distinguishable from this one. In *Werner*, plaintiffs claimed that they had an easement over federal land to access their property, and that the government had hindered their efforts to use the easement. See *id.* at 1515-1516. The district court granted judgment to the government on statute-of-limitations grounds, holding that the plaintiffs' claim had accrued when they "knew or should have known * * * that the government claimed some interest in or ownership of the [relevant] property." *Id.* at 1516. The Eleventh Circuit reversed, holding that a QTA claim in that context does not accrue until "the government, acting adversely to the interests of others, seeks to expand [its] claim" over the relevant property. *Id.* at 1519.

As the court of appeals explained below, a requirement of such affirmative action to trigger the statute of limitations makes sense when the plaintiff claims an easement over federal land, since the claimed easement is "entirely consistent" with the government's ownership of the land. Pet. App. 15a (citation omitted). By contrast, in QTA cases involving government easements over private land, use of the easement in a way that conflicts with the landowner's view of its scope can be apparent even without affirmative government action. The decision below therefore does not conflict with *Werner*. Cf. *Skwira*, 344 F.3d at 78 ("The degree of knowledge of injury and cause that would prompt a reasonable person to [make inquiry about a claim] will vary with the circumstances of the case.").

The court of appeals correctly distinguished *Michel* v. *United States*, 65 F.3d 130 (9th Cir. 1995) (per curiam), on the same basis. See Pet. App. 14a-15a. While petitioner suggests (Pet. 24 n.4) that the Ninth Circuit applied *Michel* more broadly in *Waibel Ranches, LLC* v. *United States*, No. 22-35703, 2024 WL 3384233 (July 12, 2024), that case concerned the government's alleged abandonment of a property interest, which is not at issue here. See *id.* at *1. *Waibel Ranches* is also a nonprecedential decision, and at all events, assertions of intra-circuit inconsistency do not support this Court's intervention, see *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

The second question presented thus reduces to a case-specific challenge to the court of appeals' factbound determination, based on the longstanding public use of Robbins Gulch Road, that petitioner's claim accrued more than 12 years before he filed suit. This Court seldom grants certiorari "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. That is particularly so when, as here, the "district court and court of appeals are in agreement as to what conclusion the record requires." *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) (citing *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)).

Contrary to petitioner's contention (Pet. 25), further review is not needed to "ensure that property owners can know with certainty what their rights are." The QTA's generous limitations provision affords a landowner more than a decade to bring suit after he knows or should know of the government's claim. 28 U.S.C. 2409a(g). Once that period expires, enforcement of the time bar serves Congress's purpose of providing certainty for the government, landowners, and the general public. See *Block*, 461 U.S. at 285; see also *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 14 (2014) (explaining that statutes of limitations "characteristically embody a 'policy of repose, designed to protect defendants,'" and "foster the 'elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities'") (citations omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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