

No. 25-1332

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*

**REPLY IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI**

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INTRODUCTION

Mr. Wilkins seeks his day in court to answer the straightforward question of whether a government-owned easement allows members of the public to use a road that crosses his private property. He brought this Quiet Title Act action to answer that question but, after eight years of litigation, that question remains open. And because “[a] dismissal pursuant to [the Quiet Title Act’s statute of limitations] does not quiet title to the property in the United States,” Mr. Wilkins’s “title dispute remains unresolved.” *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 291 (1983).

In applying the Quiet Title Act’s statute of limitations, the courts below interpreted the statute’s time-bar more strictly than courts have interpreted similarly worded statutes of limitations elsewhere. Petition for Writ of Certiorari (Pet.) at 16-23. Indeed, the Ninth Circuit’s decision even conflicts with how other courts have interpreted the Quiet Title Act’s statute of limitations itself. *Compare* Petitioner’s Appendix (App.) 15a, *with Werner v. United States*, 9 F.3d 1514, 1519 (11th Cir. 1993), and *George v. United States*, 672 F.3d 942, 947 (10th Cir. 2012).

The Ninth Circuit’s decision treats the Quiet Title Act—and its purpose to allow orderly resolution of title disputes—less favorably than other statutes with the same time-bars, and treats property owners in the Ninth Circuit less favorably than in other circuits. This Court should grant the Petition to resolve this conflict.

ARGUMENT

I. For the purpose of applying the law of the case doctrine, this Court draws no distinction between a vacatur and a reversal.

The government argues that the courts below were correct in applying the law of the case doctrine because this Court reversed, rather than vacated, the previous judgment in *Wilkins I*. Brief for the United States in Opposition (BIO) at 9. But the distinction does not matter for the purpose of applying the law of the case. *See* The Supreme Court’s Style Guide § 10.5 (Jack Metzler ed., 2016).¹

According to this Court’s style guide, the Court “should reverse if it deems the judgment below to be absolutely wrong, but vacate if the judgment is less than absolutely wrong.” *Id.* “[A]bsolutely’ wrong is not about the clarity or egregiousness of the error, but instead about its completeness, that is, whether or not the error involves merely a step in the analysis such that the court below could get to the same place on remand without the error.” Edward A. Hartnett, *Summary Reversals in the Roberts Court*, 38 Cardozo L. Rev. 591, 593 n.11 (2016). That this Court reversed the previous judgment here indicates an even stronger decision than if it vacated.

But if there is a meaningful difference between vacatur and reversal for determining whether the law of the case doctrine applies, that is an additional reason for granting the Petition. *See* Sup. Ct. Rule 10(c). In making the distinction, the Ninth Circuit “has decided an important question of federal law that

¹ Available at SSRN: <https://ssrn.com/abstract=2758862>.

has not been, but should be, settled by this Court[.]” *Id.* This Court should grant the Petition to ensure that the law of the case doctrine is applied correctly and uniformly when this Court reverses or vacates a judgment.

Additionally, the government argues that the Ninth Circuit’s decision did not depend on law-of-the-case principles. BIO at 8. But the district court stated that “under the doctrine of the law of the case, the Court finds that Plaintiffs’ claims are time barred[.]” App. 40a. And the Ninth Circuit held that the district court did not abuse its discretion in reaching that conclusion. App. 8a. Therefore, it appears that the Ninth Circuit affirmed on at least two different grounds and this Court should review both questions presented. But if the government is correct and the law-of-the-case doctrine is irrelevant to the disposition of the case, this Court can and should grant review to answer only the second question presented.

II. The Ninth Circuit’s focus on third-party actions—rather than government action—in applying the discovery rule conflicts with the decisions of other courts.

The government attempts to downplay how the Ninth Circuit’s decision conflicts with the opinions of this Court and other Courts of Appeals on how to apply the discovery rule. BIO at 12-13. The thrust of the government’s argument is that the Petition primarily cites cases that apply the discovery rule in other contexts. *Id.*

But this Court has recognized that the Quiet Title Act’s statute of limitations incorporates the discovery rule. *See Merck & Co. v. Reynolds*, 559 U.S. 633, 645,

(2010); *Enbridge Energy, LP v. Nessel on behalf of Michigan*, 146 S. Ct. 1074, 1083 (2026). And the Ninth Circuit applied the Quiet Title Act’s discovery in a manner quite different from how it has been applied by other courts of appeals in analogous contexts. *See* Pet. at 16-23.

In applying the discovery rule here, the Ninth Circuit relied solely on third-party use to determine when the statute of limitations began to run. App. 19a-23a; Pet. at 20-22. The government argues that some of that third-party use was legal, so the Ninth Circuit was correct in affirming the district court in equating that use as equivalent to formal and public governmental approval. BIO at 10. But the Ninth Circuit drew no distinction between legal and illegal third-party use of the easement. 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.”). It concluded that evidence of third-party illegal use was sufficient to trigger the statute of limitations. *Id.*

In short, the Ninth Circuit stated that a third party’s actions can assert the government’s position on what it owns. App. 19a; *see also* BIO at 10. That is not how the discovery rule is applied anywhere else. Pet. at 17-19. “Courts universally recognize that the discovery rule begins once a plaintiff learns of *an* injury from the *defendant’s conduct*[.]” *Reguli v. Russ*, 109 F.4th 874, 883-84 (6th Cir. 2024) (second emphasis added).

By holding that illegal third-party use is sufficient to trigger the Quiet Title Act’s statute of limitations, the Ninth Circuit is stating that reasonable landowners should draw a connection between that

illegal conduct and the government's position on the scope of the easement. Indeed, it appears that the government is entertaining the position that landowners should presume that the government will countenance third-party illegal behavior on its easement. BIO at 10 ("In any event, petitioner does not establish that only a lawful use of property can trigger the QTA's statute of limitations."). An interpretation of the Quiet Title Act that leads to that conclusion strains credulity.

Moreover, some people using the road is consistent with Mr. Wilkins's interpretation of the easement. Mr. Wilkins accepts that specific permittees—like the grazing permit holder in the National Forest—can and will use the easement. And the nature of Robbins Gulch Road—with multiple easement holders and multiple burdened properties—means that there will be strangers (not invited by the government) on the road. Pet. at 22-23. That makes it difficult for one to know who is on the road, why they are on the road, and whether they have permission to use the road. *Id.*² And, as a result, one cannot draw a conclusion about the government's otherwise unstated position

² Contrary to the government's assertions, BIO at 11, Mr. Wilkins raised the argument (at both the district court and the Ninth Circuit) that the existence of multiple easements on the road makes it difficult to know who, if anyone, was granting permission to use the road. Appellant's Reply Brief at 22 (ECF page no. 28), Ninth Circuit case No. 25-37, docket no. 33.1 (filed Sep. 5, 2025); Plaintiffs' Combined Response to Defendant's Motion for Summary Judgment and Reply in Support of Plaintiffs' Motion for Summary Judgment at 10-11 (ECF page nos. 17-18), D. Mont. case No. 9:18-cv-00147-DLC, docket no. 87 (filed Dec. 18, 2023). But both the district court and the Ninth Circuit failed to address the argument.

on the scope of its easement just because a third party used the road.

The uncertain connection between third-party actions and whether a plaintiff has discovered a claim against the defendant is why courts have rejected a universal rule that third parties can trigger the discovery rule. Instead, in applying the discovery rule, courts examine “[i]ssues of due diligence and constructive knowledge” which “depend on inferences drawn from the facts of each particular case[.]” *Kraciun v. Owens-Corning Fiberglas Corp.*, 895 F.2d 444, 447 (8th Cir. 1990) (quotations omitted) (discussing application of state discovery rule); *see also Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686, 705 (6th Cir. 2022) (“Should the plaintiffs’ snippets of knowledge have alerted the typical lay person to protect his or her rights by investigating further? We cannot say. This is a question of fact[.]” (quotations and citations omitted)). But here, the Ninth Circuit adopted a rule that third party use of a road put the residents on notice of an interpretation of the easement the Forest Service did not state anywhere else. App. 19a.

The government sees no conflict, and no issue, with the discovery rule applying more strictly to the Quiet Title Act than it does to similarly worded statutes-of-limitations. *See* BIO at 12-13. But to treat the discovery rule in such a way relegates the Quiet Title Act—and its purpose to allow property owners a forum to vindicate their rights—to the status of a poor relation” among other statutes that incorporate the discovery rule. *Cf. Knick v. Twp. of Scott*, 588 U.S. 180, 189 (2019) (“The state-litigation requirement relegates the Takings Clause ‘to the status of a poor relation’ among the provisions of the Bill of Rights.”

(citation omitted)); *see also* Motion for Leave to File Brief as Amici Curiae and Brief of the National Federation of Independent Business Small Business Legal Center, et al. at 15-20, 2022 WL 3371303, *Wilkins v. United States*, 598 U.S. 152 (2023) (No. 21-1164) (discussing the consequences to property owners of strictly interpreting the Quiet Title Act’s statute of limitations).

The Ninth Circuit’s approach to the Quiet Title Act’s statute of limitations requires property owners to go to federal court if they see any person they do not know using an easement owned by the government, even, if it turns out, that person does not have the government’s permission to use the road. But, as a different panel of the Ninth Circuit has said, the Quiet Title Act “should not be read” in a way that “would lead to premature, and often unnecessary, suits.” *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995).

Finally, despite the government’s claims to the contrary, the Ninth Circuit’s decision creates conflict with other cases involving the Quiet Title Act. *See* BIO at 13. The government argues that the Eleventh Circuit’s decision in *Werner v. United States* is distinguishable with the decision below because *Werner* involved a claim that the plaintiff owned an easement on government property, rather than a claim about a government easement on private property. *Id.* But the Eleventh Circuit’s analysis drew no distinction between how the Quiet Title Act’s statute of limitations should be applied when the government owns an easement versus when a private party owns an easement. *Werner*, 9 F.3d at 1519. Indeed, the court cited to a case with similar facts to Mr. Wilkins’s case when concluding that, “[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.” *Id.* (emphasis added).

The government’s attempts to distinguish *McFarland v. Norton*, 425 F.3d 724, 726-27 (9th Cir. 2005), and *Michel v. United States*, 65 F.3d at 132, are similarly unavailing. See BIO at 14. Not only has another panel of the Ninth Circuit applied *Michel* and *McFarland* in a case involving a government-owned easement, *Waibel Ranches, LLC v. United States*, No. 22-35703, 2024 WL 3384233 (9th Cir. July 12, 2024), the Tenth Circuit positively cited both cases in a dispute involving a government-owned easement across private property, *George v. United States*, 672 F.3d 942, 947 (10th Cir. 2012). The *George* court stated that its holding “squares neatly with” *Michel* and *McFarland* and ultimately looked to the actions of the government—not third parties—to determine when the Quiet Title Act’s statute of limitations had run. *Id.*

The Ninth Circuit’s singular focus on the actions of third parties is in conflict with how this Court and other courts have applied the discovery rule in other contexts, and is in conflict with how other circuits have applied the rule in Quiet Title Act cases. It requires landowners to file a suit even if the government has never stated a position in conflict with the landowner. The Court should grant the Petition to ensure proper and consistent application of the Quiet Title Act’s statute of limitations.

III. The Ninth Circuit’s decision unnecessarily leaves title disputes unresolved.

While “we must be careful not to interpret [the Quiet Title Act’s 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[.]” *Block*, 461 U.S. at 287 (quotations omitted); *see also Wilkins v. United States*, 598 U.S. 152, 161 (2023) (*Wilkins I*). The Ninth Circuit’s decision interprets the Quiet Title Act’s time-bar unduly restrictively. Indeed, the court interpreted the Quiet Title Act’s statute of limitations more strictly than similarly worded statutes of limitations. *See* Section II, *supra*.

There is no justification for the Ninth Circuit’s overly strict interpretation. Because the Quiet Title Act does not touch the public fisc, the sovereign immunity concerns are minimized when interpreting the statute’s waiver of that immunity. *See West v. Gibson*, 527 U.S. 212, 222 (1999) (discussing whether to apply a “specially strict standard” for construing a waiver of sovereign immunity because of its effect on the public fisc); *Robinson v. United States Dep’t of Educ.*, 917 F.3d 799, 801 (4th Cir. 2019) (“A strong doctrine of sovereign immunity is nowhere more important than for damages claims”). If a plaintiff wins a Quiet Title Act suit, the court does not transfer any property from the government to the plaintiff, because a favorable judgment means the government never owned the property in the first place.

As the Senate Committee on Interior and Insular Affairs stated when it proposed the Quiet Title Act, “[s]overeign immunity or the infallibility of the

Crown, so to speak, became imbedded in the common law of England and so came into our American law,” but “this principle is not appropriate where the courts are established . . . to serve the people.” S. Rep. No. 92-575 at 1 (1971). What the Quiet Title Act “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.” *Id.* at 2. Despite the Quiet Title Act’s language and purpose, the Ninth Circuit interpreted its statute of limitations more strictly than other time-bars that use the same language.

The Ninth Circuit’s overly strict interpretation of the Quiet Title Act’s statute of limitations prevents citizens involved in a title dispute from having their day in court while leaving that dispute unresolved. The government argues that the Ninth Circuit’s decision provides “certainty for the government, landowners, and the general public.” BIO at 15. But far from creating certainty, the Ninth Circuit’s decision requires Mr. Wilkins to “continu[e] 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.

During the first oral argument at the Ninth Circuit, Judge VanDyke suggested that Mr. Wilkins put up a gate across Robbins Gulch Road to get the Forest Service to sue him and resolve the title dispute. Oral Argument of Jeffrey Wilson McCoy on behalf of Appellants, *Wilkins v. United States*, No. 20-35745, 2021 WL 5996989 (9th Cir. Aug. 11, 2021). If the Ninth Circuit’s goal was to provide certainty, it failed. *Cf. Upper Skagit Indian Tribe v. Lundgren*, 584 U.S. 554, 562 (2018) (Roberts, C.J., concurring) (“I am

skeptical that the law requires private individuals . . . to pick a fight in order to vindicate their interests.”).

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.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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