No.

In the Supreme Court of the United States

CHINOOK LANDING, LLC,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In 1955, Petitioner's predecessor granted to the United States a transmission line easement, now managed by the Bonneville Power Administration (BPA). In March 2011, BPA officials approached Petitioner's immediate predecessor, John Lund, to acquire an access easement to use an existing road on his property, admitting it had "no easement for an access road." Pet. App. 91a. Even though negotiations to acquire an access easement failed, BPA used the road without Mr. Lund's permission. In response, Mr. Lund filed a Quiet Title Act (QTA) lawsuit in 2019.

The District Court held that Mr. Lund filed his complaint outside the Quiet Title Act's twelve-year statute of limitations because he or his predecessor should have known in 1955 that BPA claimed an easement to use the road on his property.

The Federal Circuit affirmed and—in conflict with thirty-five years of Ninth Circuit precedent holding that "[i]f the government has apparently abandoned any claim it once asserted, and then it reasserts a claim, the later assertion is a new claim" under the Quiet Title Act "and the statute of limitations for an action based on that [new] claim accrues when it is asserted," *Shultz v. Dep't of Army, U.S.*, 886 F.2d 1157, 1161 (9th Cir. 1989)—held that Mr. Lund's one and only Quiet Title Act claim accrued in 1955.

The question presented is:

Is a Quiet Title Act claim timely if it is filed within twelve years of the government asserting an interest in plaintiff's property, after government officials previously disavowed any interest in the same property?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Chinook Landing, LLC, hereby states that it has no parent companies, subsidiaries, or affiliates that have issued shares to the public.

LIST OF ALL PARTIES

Petitioner Chinook Landing, LLC, was plaintiff-appellant at the United States Court of Appeals for the Federal Circuit and was substituted as plaintiff after the death of John Lund.

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.

Kristy Lund, as personal representative of the estate of John Lund v. United States, No. 3:19-cv-02015-AR (D. Or. March 17, 2023).

Chinook Landing, LLC v. United States, No. 23-35344 (9th Cir. May 23, 2024).

Chinook Landing, LLC v. United States, No. 2024-1884 (Fed. Cir. June 17, 2025).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Chinook Landing, LLC respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Federal Circuit (Pet. App. 1a-9a) is unpublished but available at 2025 WL 1693163. The decision of the United States District Court for the District of Oregon (Pet. App. 10a-11a) is unpublished but available at 2023 WL 2572613. The magistrate's findings and recommendations that the District Court adopted (Pet. App. 12a-42a) are unpublished but available at 2022 WL 19039088.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 2025. On August 14, 2025, the Chief Justice granted Petitioner's application to extend the time to file this Petition to October 10, 2025. *See Chinook Landing, LLC v. United States*, Supreme Court No. 25A175. The jurisdiction of this Court is invoked 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.
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> * * * * *

INTRODUCTION

The Courts of Appeals are divided on the question of when a claim under the Quiet Title Act, 28 U.S.C. § 2409a, accrues. *Compare Shultz v. Dep't of Army, U.S.*, 886 F.2d 1157, 1161 (9th Cir. 1989); *with* Pet. App. 8a. The statute provides that a landowner may bring an action to adjudicate a disputed title to real property in which the United States claims an interest. 28 U.S.C. § 2409a. A claim under the Act accrues—and the twelve-year statute of limitations 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).

Here, the Federal Circuit held that the time to file Petitioner's quiet title claim expired despite being filed in 2019, fewer than twelve years after government officials told Petitioner's predecessor, in 2011 and 2014, that the government had "no easement for an access road" across Petitioner's property. *See* Pet. App. 91a. These officials had the authority to acquire an access easement that they stated—both to

the landowner and in internal agency documents, Pet. App. 91a-106a—the agency never previously acquired.

The Federal Circuit held that Petitioner's Quiet Title Act claim accrued when the easement was conveyed in 1955 and agency officials used a road across Petitioner's property. Pet. App. 8a. The Federal Circuit reached this decision—affirming the District Court's grant of summary judgment—despite evidence in the record that the agency previously used Petitioner's property only with the property owner's permission and not by right, Pet. App. 91a-106a; and despite the agency officials' statements seemingly confirming that any previous use of Petitioner's property was not by right under any easement it owned, Pet. App. 91a.

The Federal Circuit's decision is in direct conflict with the Ninth Circuit. Recently, the Ninth Circuit reaffirmed thirty-five years of precedent that "[i]f the government has apparently abandoned any claim it once asserted, and then it reasserts a claim, the later assertion is a new claim and the statute of limitations for an action based on that claim accrues when it is asserted." *Shultz*, 886 F.2d at 1161; *Waibel Ranches, LLC v. United States*, No. 22-35703, 2024 WL 3384233, at *2 (9th Cir. July 12, 2024) (citing *Shultz*, 886 F.2d at 1161). In short, "[t]he statute of limitations provision in the Quiet Title Act cannot reasonably be read to imply that if the government has once asserted a claim to property, twelve years later any quiet title action is forever barred." *Shultz*, 886 F.2d at 1161.

Here, the Federal Circuit treated as irrelevant the government officials' statements apparently

abandoning any claim in Petitioner's property. *See* Pet. App. 3a, 8a; *see also* Pet. App. 39a n.11. In doing so, it forever barred any quiet title action because the government once used a road on Petitioner's property, despite later admitting it never had any interest in that same property.

The Federal Circuit's approach is inconsistent with the text of the Quiet Title Act. The Act provides that a property owner can bring a claim "to adjudicate a *disputed* title to real property in which the United States claims an interest[.]" 28 U.S.C. § 2409a(a) (emphasis added). Thus, in order to have a Quiet Title Act claim, the government must claim an interest in real property and there must be a dispute to that claimed interest. *Ibid.*

The Ninth Circuit's approach ensures that there is a dispute for a court to adjudicate. The Federal Circuit's approach requires a property owner to file a quiet title action even if there is no dispute about who owns what.

Certiorari should be granted to ensure uniformity among the courts of appeal. The Federal Circuit had jurisdiction here because Petitioner's predecessor, John Lund, brought a takings claim in addition to his Quiet Title Act claim. Pet. App. 77a. If Mr. Lund had forfeited his takings claim, his appeal would have been heard by the Ninth Circuit, and the court would have applied its "apparent abandonment" standard. Instead, the appeal was heard by the Federal Circuit, which applied a different standard to determine that his claim was untimely filed. Property owners should not be forced to choose between preserving their constitutional right to just compensation for a taking

of property, and being able to have their Quiet Title Act claims heard on the merits.

STATEMENT OF THE CASE

A. Factual Background

1. The 1955 Deed granting BPA a transmission line easement and the right to construct a new road for ingress and egress to the transmission line easement

The property at issue is in rural Tillamook County, Oregon, next to the Wilson River. Pet. App. 16a. In 1944, Margaret D. Linderman transferred the property to J. W. Carrico and Mary Carrico "subject to an easement for road purposes along the Wilson River, which road is to be of a sufficient width to make said road a good passable high-way, not less than twenty-four feet in width." Pet. App. 47a-48a. The road referenced in the 1944 Deed was constructed shortly thereafter and prior to 1955. Pet. App. 49a. The road is also known as Reeher Road and is the road Appellant Chinook Landing, LLC seeks to quiet title to here. Pet. App. 16a & n.2.

In 1955, the then-owners of the property, as well as the owners of neighboring properties, granted in a single deed two separate rights to the federal government: a "Transmission Line Easement And Access Road Easement[.]" Pet. App. 107a-111a. The transmission line easement grants, in relevant part:

> a perpetual easement and right to enter and erect, operate, maintain, repair, rebuild, and patrol one or more electric power transmission lines and appurtenant signal lines, poles, towers,

> wires, cables, and appliances necessary in connection therewith, in, upon, over, under and across the following described parcel of land . . . together with the right to clear said parcel of land and keep the same clear of all brush, timber, structures, and fire hazards . . . and also the present and future right to top, limb, fell, and remove all growing trees, dead trees or snags (collectively called "danger trees") located on Grantors' land adjacent to said parcel of land . . . .

Pet. App. 107a, 109a.

"Also, in addition to" the transmission line easement, the 1955 Deed grants an easement to construct and maintain an access road. Pet. App. 109a. This access road easement grants the federal government a "permanent easement and right-of-way over, upon, and across a part of the SW1/4SW1/4 of Section 3, Township 1 North, Range 7 West, W.M., Tillamook County, Oregon, excepting the Gales Creek-Tillamook transmission line right-of-way" and as shown in the Deed. *Ibid.* The portion of the property covered by the access road easement is different from the portion of the property crossed by Reeher Road. *Ibid.*; Pet. App. 114a.

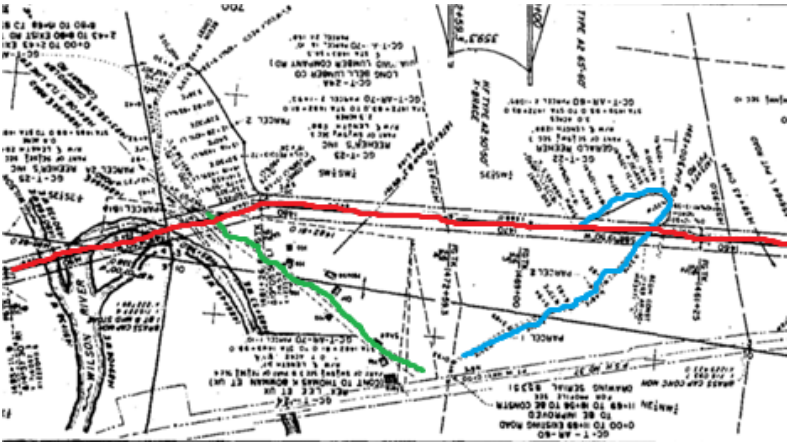
The access road easement granted the federal government the right to enter the specified portion of the property:

> for the purpose of *constructing an access road* approximately 14 feet in width, with such additional widths as are necessary to provide for cuts, fills, and turnouts, and for curves at angle points,

> to be used in connection with the aforementioned transmission line easement and right-of-way, together with such other rights and the right to construct such other appurtenant structures as are necessary to accomplish the purposes for which this access road easement and right-of-way is granted.

Pet. App. 109a (emphasis added). Additionally, the "Grantors will be permitted the right of ingress and egress over and across *said road*" to the extent such use does not interfere with the federal government's use of the road. Pet. App. at 110a (emphasis added).

The Transmission line easement runs approximately west-to-east across the original property (middle of the picture, in red, below):



Pet. App. 114a (attachment to 1955 Deed oriented with north at top; colors added for illustrative purposes); *see also* Pet. App. 101a (representation of the roads and easements at issue created by Mr. Lund for this litigation).

The Access Road Easement begins at Highway 6 (in blue above) and continues northeast until it intersects with the transmission line easement. Pet. App. 114a. Reeher Road (in green above) begins at Highway 6 and continues northwest. *Ibid.* The transmission line easement is wide enough to accommodate trucks and other equipment. *See* Pet. App. 108a-109a (describing width of the easement).

In short, the 1955 Deed provides sufficient rights to allow BPA—the federal agency that manages the easement—to maintain its transmission lines without needing to use Reeher Road across Petitioner's property. Indeed, after the Deed granting the easements to BPA was recorded in 1955, BPA used a road other than Reeher Road to access the transmission line easement. Pet. App. 80a.

Later, Mr. Lund's predecessors gave BPA permission to use Reeher Road to access the transmission line easement. Pet. App. 84a-86a. Then, prior to 2004, the property was divided into three separate parcels, Pet. App. 3a, and the owners of these newly created parcels continued to allow BPA to use Reeher Road to access its transmission line easement. Pet. App. 84a-86a.

2. John Lund buys the Property and continues to allow BPA to use Reeher Road—rather than the road specified in the 1955 Deed—to access BPA's transmission line easement

Mr. Lund grew up visiting the property, Pet. App. 84a, and always viewed the area as his happy place. Waud's Funeral Home, *John Richard Lund: Obituary*

and Events.[1] So, in 2004, Mr. Lund purchased one of the three parcels from Bjerte Williams, whom he had known since childhood. Pet. App. 84a-85a. Bjerte Williams had previously been married to Bill Stewart and acquired the property from him. *Ibid.*

Mr. Lund had also known Mr. Stewart since childhood and had many conversations about the property prior to Mr. Stewart's death. Pet. App. 84a-85a. Mr. Stewart had told Mr. Lund that he had given BPA permission to use the section of Reeher Road on his property to access the transmission line easement. *Ibid.* When Mr. Lund bought the property, he continued to allow BPA to use Reeher Road. Pet. App. 85a.

3. BPA acknowledges it does not have an easement to use Reeher Road and negotiates with the landowners

In 2011, as BPA was preparing for an upcoming project, it recognized it did not have the right to access Reeher Road. Pet. App. 80a, 91a. Field Reality Specialist Monica Stafflund reached out to Mr. Lund in March 2011, stating that BPA has "the transmission line easement but no easement for an access road" across his property because "the road is a historical way to travel not an easement[.]" Pet. App. 91a.

Following up on her conversation with Mr. Lund, Field Realty Specialist Stafflund requested a survey of Mr. Lund's property and BPA's rights on the property. Pet. App. 80a. BPA project surveyor RJ Teiper then reported he could "not find any documents giving BPA the right to use" Reeher Road. *Ibid.* He

[1] https://tinyurl.com/vjjm94w9.

recommended that BPA "acquire rights from all parties involved with this road [Reeher Road]." *Ibid.* As a result, in December 2012, BPA offered Mr. Lund $1,900 for an access easement across Mr. Lund's property. Pet. App. 93a.

Two years later, in April 2014, BPA again reached out to Mr. Lund to formally request an easement on Reeher Road to replace wood poles throughout the transmission line easement. Pet. App. 93a. BPA Realty Specialist Jill Nystrom reiterated that "BPA offered to purchase an access road easement from you which would have provided BPA a specific and defined access route to BPA's structures" for the project and for maintenance after the project. *Ibid.*

BPA allegedly needed this easement because, in the agency's words, "[i]n order to complete this project, and for operations and maintenance purposes, it is necessary for BPA to have access to its facilities." Pet. App. 94a.[2] Right of Way Agent Christine Nickerson followed up in July of 2014, stating to Mr. Lund that "Jill really just wanted to secure the property rights as this is something that should have been handled many years ago." Pet. App. 102a.

BPA also reached out to the owners of the other two parcels that Reeher Road crosses. Pet. App. 3a. In 2013, BPA acquired easements to use Reeher Road across Mr. Lund's neighbors' properties. *Ibid.*

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[2] Of course, the 1955 Deed grants BPA the right to build an access road to its facilities, Pet. App. 109a. Rather than BPA needing an easement to use Reeher Road, it appears the agency wished to acquire an easement to use Reeher Road because using the 1955 access easement would—in the words of Right of Way Agent Nickerson—"be a more difficult route." Pet. App. 102a.

4. Negotiations for an easement to use the portion of Reeher Road on Mr. Lund's property fail and Mr. Lund revokes BPA's permission to use the road

During negotiations with BPA, Mr. Lund expressed concerns about who would maintain Reeher Road and how the agency would mitigate and prevent impacts to the adjacent river, which provides potable water to his property. Pet. App. 85a. Mr. Lund was also concerned about ownership rights of felled hazard trees and the potential liability for use of the road. *Ibid.* BPA refused to contribute to the cost of maintaining Reeher Road and would not agree to any terms that would address Mr. Lund's concerns. *Ibid.* As a result, in August 2014, Mr. Lund revoked BPA's permission to use his portion of Reeher Road. *Ibid.*

Despite Mr. Lund revoking permission to use Reeher Road, BPA employees and contractors continued to use the road to access the transmission line easement. Pet. App. 85a-86a. Occasionally, Mr. Lund gave limited permission to use Reeher Road for specific projects, but other times BPA officials and contractors used the road without permission. *Ibid.*

In 2018, BPA Regional Realty Officer Stacie Hensley made an internal request for "an urgent land work order to complete an acquisition for an access road" to their transmission line easement. Pet. App. 81a. Realty Officer Hensley noted that she needed the order because negotiations failed with Mr. Lund and that "[w]e are currently unable to access the property due to inadequate land rights." *Ibid.* BPA never acquired an access easement from Mr. Lund but continued to use Reeher Road to access its transmission line easement. Pet. App. 85a-86a.

B. Procedural Background

1. Mr. Lund's lawsuit

Following BPA's continued use of Reeher Road, Mr. Lund filed this lawsuit against the federal government in December 2019 in the United States District Court for the District of Oregon. Pet. App. 4a. The original complaint brought claims for an unconstitutional taking under the Little Tucker Act, a Federal Tort Claims Act claim for trespass, and a Bivens action for violations of other constitutional rights. Pet. App. 46a.

Magistrate Judge Acosta issued findings and recommendations concluding that Mr. Lund's original complaint should be dismissed with leave to amend, because the Quiet Title Act provided the exclusive means by which he could seek a remedy. Pet. App. 46a-76a. Judge Acosta rejected BPA's argument that a Quiet Title Act claim would be time barred, concluding that the Quiet Title Act claim accrued in 2014, when Mr. Lund revoked BPA's permission to use Reeher Road. Pet. App. 73a. In a brief order, the District Court adopted the findings and recommendations in part, holding that Mr. Lund should be granted leave to amend to add a Quiet Title Act claim, but ultimately concluding that whether the claim fell within the statute of limitations could not be determined at the motion to dismiss stage. Pet. App. 44a. The District Court also held that Mr. Lund's takings claim could move forward as an alternative theory of relief. Pet. App. 44a-45a.

Mr. Lund amended his complaint, raising a Quiet Title Act claim in addition to his existing takings claim. First Amended Complaint, U.S. District Court District of Oregon No. 3:19-CV-02015, docket no. 34

(filed June 22, 2021). BPA filed a motion for summary judgment arguing that Mr. Lund's claims were barred by the applicable statutes of limitations and failed on their merits. *See* Pet. App. 13a. BPA also filed a motion to strike as hearsay the agency officials' statements admitting BPA did not own an easement to use Reeher Road because Mr. Lund quoted those statements in his response to BPA's motion for summary judgment. Pet. App. 39a n.11. Mr. Lund opposed both motions. *Ibid.*

Magistrate Judge Jeffrey Armistead issued findings and recommendations recommending that the District Court grant the government's motion because both the Quiet Title Act claim and the takings claim were filed outside the applicable statutes of limitations. Pet. App. 12a-42a. The magistrate judge also stated that the court did not need to consider the pending motion to strike to reach its judgment, treating the government official's statements as irrelevant to his analysis. Pet. App. 39a n.11.

On March 17, the District Court adopted the findings and recommendations in their entirety, without additional analysis. Pet. App. 10a-11a. Judgment was entered on March 28, 2023, and an appeal to the Ninth Circuit was filed on May 17, 2023.

2. Mr. Lund's death and transfer of property to his widow

On September 25, 2021, before the District Court entered its order and judgment, Mr. Lund passed away and his widow Kristy Lund, in her capacity as the personal representative to the estate, was substituted as the plaintiff in the case. *See* Order Granting Motion to Substitute Party, U.S. District Court District of Oregon No. 3:19-CV-02015, docket

no. 50 (filed Nov. 15, 2021). During the probate process, title to the property at issue here was transferred to Chinook Landing, LLC, which is a single member LLC owned wholly by Mrs. Lund. *See* Appellant's Unopposed Motion to Substitute Party, Ninth Circuit case no. 23-35344, docket no. 17-1 (filed Sep. 1, 2023). On August 29, 2023, the Tillamook County Circuit Court approved final distribution of Mr. Lund's estate, including any remaining claims in this case and on August 30, 2023, Mrs. Lund, as representative of the estate, assigned the claims in this case to Chinook Landing. *See ibid.*

Following the transfer of property and claims, Chinook Landing moved to be substituted as Plaintiff-Appellant in this case. *Ibid.* The Ninth Circuit granted the motion on September 8, 2023. *See* Order Granting Motion to Substitute Party, Ninth Circuit case no. 23-35344, docket no. 18 (filed Sep. 8, 2023).

3. Transfer of case to Federal Circuit and the decision below

On May 23, 2024, the Ninth Circuit transferred the Case to the Federal Circuit, because the Federal Circuit has appellate jurisdiction over any cases brought in part under the Little Tucker Act, 28 U.S.C. § 1346(a)(2). Pet. App. 77a (citing 28 U.S.C. § 1295(a)(2); *United States v. Hohri*, 482 U.S. 64 (1987); *Brant v. Cleveland Nat'l Forest Serv.*, 843 F.2d 1222 (9th Cir. 1988)).

The Federal Circuit held oral argument and, on June 17, 2025, issued its decision affirming the judgment of the District Court. Pet. App. 1a-9a.

This Petition followed.

REASONS FOR GRANTING THE PETITION

I. Certiorari Should Be Granted To Resolve A Square Circuit Split About When A Quiet Title Act Claim Accrues

A. The Federal Circuit's decision conflicts with other circuits' decisions holding that the Quiet Title Act's statute of limitations begins to run only when the government reasserts a claim to property after apparently abandoning the same claim

Here, the Federal Circuit held that Mr. Lund's claims accrued when BPA officials originally used Reeher Road to access the transmission line easement in 1955. Pet. App. 8a. In reaching that holding, the Federal Circuit did not think it was relevant that BPA officials told Mr. Lund in 2011 that the agency did not have a right to use Reeher Road and that it subsequently attempted to acquire an easement from Mr. Lund to use Reeher Road. *See* Pet. App. 3a, 39a n.11. The Federal Circuit noted that in 2013 BPA acquired easements to use Reeher Road from Mr. Lund's neighbors, but failed to acquire an easement from Mr. Lund. Pet. App. 3a. Despite BPA going through the effort to acquire easements to use Reeher Road, the Federal Circuit believed that Mr. Lund or his predecessor should have known that the government claimed to own an easement across Mr. Lund's land even though it only recently acquired a similar easement from his neighbors. Pet. App. 3a, 8a.

The Federal Circuit's approach is in direct conflict with the approach taken by other Circuits. The Ninth Circuit has repeatedly held that "[i]f the government has apparently abandoned any claim it once asserted, and then it reasserts a claim, the later assertion is a

new claim and the statute of limitations for an action based on that claim accrues when it is asserted." *Shultz*, 886 F.2d at 1161; *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995) (stating same); *Waibel Ranches*, 2024 WL 3384233, at *1 (same). Unlike the Federal Circuit, the Ninth Circuit holds that "[t]he statute of limitations provision in the Quiet Title Act cannot reasonably be read to imply that if the government has once asserted a claim to property, twelve years later any quiet title action is forever barred." *Shultz*, 886 F.2d at 1161.

The Ninth Circuit recently reaffirmed its approach in a case very similar to Petitioner's case. *See Waibel Ranches*, 2024 WL 3384233. In *Waibel Ranches*, landowners brought a Quiet Title Act claim to adjudicate a dispute over an alleged easement the Bureau of Land Management managed over the plaintiffs' property. *Id.* at *1. In April 2015, the BLM's regional office issued a press release that the landowners were able to close a 350-foot portion of the road (previously open to the public) "'because the BLM's Right-of-Way . . . did not cover the entire length of Teaters Road.'" *Ibid.* (quoting press release). BLM officials then allegedly stated to the property owners that "the Easement . . . is and always has been invalid since its inception." *Ibid.*

In September 2015, the BLM reversed its position, and claimed that it owned an easement across the entire length of the road. *Id.* at *2. Applying the Ninth Circuit's precedents in *Shultz* and *Michel*, the *Waibel Ranches* court held that—based on the allegations in the complaint—it was reasonable for the property owners to believe that the government did not continue to claim an interest in the property and, thus, "the limitations period reset once the

government re-asserted its interest in the 350-foot gap in September 2015." *Ibid.*

But the Federal Circuit took a different approach here. Like the agency officials in *Waibel Ranches*, BPA officials disclaimed any interest in the property, telling Mr. Lund in 2011 that the agency had "the transmission line easement but no easement for an access road" across his property because "the road is a historical way to travel not an easement[.]" Pet. App. 91a. Nearly three years later, BPA officials once again reached out to Mr. Lund, stating that they needed to acquire an easement "to secure the property rights" across his property. Pet. App. 102a.

BPA's statements led Mr. Lund to reasonably believe that the government did not continue to claim—if it ever claimed in the first place—that it had an easement over his property. Under the Ninth Circuit's "apparent abandonment" standard, any previous limitations period would have been reset in 2014, once BPA claimed a right to use Reeher Road without Mr. Lund's permission. *See* Pet. App. 85a-86a (declaration of John Lund).

In direct conflict with the Ninth Circuit, however, the Federal Circuit believed that BPA's apparent abandonment of any interest in 2011 and 2014 was irrelevant. *See* Pet. App. 3a, 39a n.11. Instead, the Federal Circuit held that the statute of limitations began to run in 1955 when the transmission line easement was conveyed, and twelve years later any quiet title action was forever barred. *Compare* Pet. App. 3a, 8a, *with Shultz*, 886 F.2d at 1161 ("The statute of limitations provision in the Quiet Title Act cannot reasonably be read to imply that if the government has once asserted a claim to property,

twelve years later any quiet title action is forever barred.").

Other Circuits have followed the Ninth Circuit's "apparent abandonment" standard. *See, e.g.*, *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765 (4th Cir. 1991). In *Richmond, Fredericksburg & Potomac Railroad Co.*, a railroad company filed a suit to interpret a 1938 indenture that exchanged various parcels of land and imposed use restrictions on those parcels. *Id.* at 767. Citing *Shultz*, the Fourth Circuit recognized that a new claim under the Quiet Title Act could have arisen if "the government abandoned its claim prior to reasserting it," *id.* at 770, but ultimately rejected that argument because "[t]he use restriction in the 1938 indenture is clear and unambiguous" and "there is no evidence that the government has ever extinguished or relaxed the use restriction, or abandoned its claim to the continued power of restriction" over the relevant area. *Ibid.*

The Eighth Circuit also recognizes that the government's abandonment and later reassertion of a claim give rise to a new claim that accrues upon the later reassertion of the claim. *Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 739 (8th Cir. 2001) (citing *Michel*, 63 F.3d at 132-33). In *Spirit Lake Tribe*, however, a split panel majority held that the government had to outright abandon the claim, *id.* at 739-40, and that a 1976 memo by the Associate Solicitor for the Division of Indian Affairs within the Department of Interior did not abandon the government's claim in Devils Lake because the Associate Solicitor did not have the authority to "bind the government," *id.* at 740. The dissent relied on *Shultz* and *Michel* to conclude that a later, 1981 memo

from the Department of Interior caused the Tribe's claim to accrue because "the Department of Interior's 1981 letter reasserts a new status of the lakebed because it indicated the status quo for the government's view of the ownership of the lakebed had changed[.]" *Id.* at 750 (Bright, J., dissenting).

The D.C. Circuit has also adopted the Eighth Circuit's actual abandonment standard in the context of a dispute over fee title. *Cheyenne Arapaho Tribes of Oklahoma v. United States*, 558 F.3d 592, 597 (D.C. Cir. 2009). In doing so, the court distinguished its case from the Ninth Circuit's "apparent[] abandonment" standard by stating that the Ninth Circuit's standard applies to disputes over easements. *Ibid.* (*Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1199 (9th Cir. 2008)). The Eleventh and Tenth Circuits have also applied an actual abandonment standard in the context of disputes over fee title. *F.E.B. Corp. v. United States*, 818 F.3d 681, 688 (11th Cir. 2016); *Rio Grande Silvery Minnow (Hybognathus amarus) v. Bureau of Reclamation*, 599 F.3d 1165, 1185 (10th Cir. 2010).

Here, the Federal Circuit's decision goes beyond even the strict approach adopted by the D.C., Eighth, Tenth, and Eleventh Circuits. In those other cases, the courts applied an actual abandonment standard to disputes over fee title, not an easement. *Cheyenne Arapaho Tribes of Oklahoma*, 558 F.3d at 597; *F.E.B. Corp.*, 818 F.3d at 688. Additionally, those courts analyzed whether the statements disclaiming an interest came from an official with the delegated authority to "bind the government." *Spirit Lake Tribe*, 262 F.3d at 740; *see also Rio Grande Silvery Minnow*, 599 F.3d at 1186; *F.E.B. Corp*, 818 F.3d at 688. Here, the officials who talked to Mr. Lund, and

disclaimed any interest in his property, had the authority to bind the government because they were attempting to acquire an easement on behalf of the government. *See* Pet. App. 93a-94a.

Moreover, the interest in *Spirit Lake* was created by treaty, 262 F.3d at 736; and the interest in *Cheyenne Arapaho Tribes of Oklahoma* was created by Executive Order, 558 F.3d at 593. Here, the interest claimed by the government was allegedly created by the same level of official as the ones who disclaimed any interest. *See* Pet. App. 93a-94a, 110a-111a. The *Waibel Ranches* opinion, in distinguishing another Ninth Circuit case, recognized that how the disputed interest was acquired affects who can apparently abandon the claim for the purpose of the Quiet Title Act's statute of limitations. *Waibel Ranches*, 2024 WL 3384233, at *2. In concluding that statements by the BLM's regional office could lead the landowners to reasonably believe that the government had abandoned its claim, the *Waibel Ranches* court stated that "this case is therefore unlike *Kingman*, where the government's ownership interest was created by an executive order signed by President Franklin D. Roosevelt, but the plaintiffs argued that the interest was apparently abandoned by low-level government officials." *Ibid.* (citing *Kingman Reef Atoll Invs.,* 541 F.3d 1189).[3]

[3] *Waibel Ranches* also noted that "[i]t is not clear whether that high standard for abandonment applies to cases involving the government's nonpossessory interests" but assumed it did for the purpose of that case. *Waibel Ranches*, 2024 WL 3384233, at *1. That is consistent with other circuits' statements that the actual abandonment standard applies to disputes over fee title and further demonstrates how the Federal Circuit's approach here—in a dispute over an easement—conflicts with the other circuits.

But regardless of whether the Federal Circuit's approach here was consistent with—or an improper extension of—the holdings in *Spirit Lake*, *F.E.B. Corp.*, and *Rio Grande Silvery Minnow*, the Circuits are squarely split on the question of whether the government's apparent abandonment of a property interest raises a new claim under the Quiet Title Act. As the dissent in *Spirit Lake* demonstrates, the Circuits take different approaches on how statements from government officials affect when a Quiet Title Act claim accrues. The petition for a writ of certiorari should be granted to resolve that split.

B. The Federal Circuit's decision conflicts with the Quiet Title Act's statutory language and other Circuit's precedents stating that a property owner can only bring a Quiet Title Act claim when the government asserts an adverse interest

The Ninth Circuit's "apparent abandonment" standard faithfully applies the Quiet Title Act's statutory text. The Act provides that a property owner can bring a claim "to adjudicate a *disputed* title to real property in which the United States claims an interest[.]" 28 U.S.C. § 2409a(a) (emphasis added). Thus, in order to have a Quiet Title Act claim, the government must claim an interest in real property and there must be a dispute to that claimed interest. *Ibid.*

As the Ninth Circuit said in *Michel*, "[t]o start the limitations period, the government's claim must be adverse to the claim asserted by the" plaintiff. 65 F.3d at 131-32. The Tenth Circuit "agree[s], there must be some claim, some assertion of an adverse interest" to trigger the statute of limitations. *George v. United*

States, 672 F.3d 942, 947 (10th Cir. 2012). "In short," several Circuits have held that "a claim arises when the government puts its interest in conflict with that of the plaintiff." *NE 32nd St., LLC v. United States*, 896 F.3d 1240, 1244 (11th Cir. 2018) (summarizing the holdings of *Werner v. United States*, 9 F.3d 1514 (11th Cir. 1993); *Kane Cnty. v. United States*, 77 F.3d 1205 (10th Cir. 2014); *Michel*, 65 F.3d at 132).

Here, the Federal Circuit held that Mr. Lund was required to bring a claim under the Quiet Title Act even though the government explicitly stated that it did not claim an interest in Mr. Lund's property and, thus, there was no dispute for a court to adjudicate. The Ninth Circuit has rejected a similar approach because "[a] contrary holding would lead to premature, and often unnecessary, suits." *Michel*, 65 F.3d at 132.

The Ninth Circuit's approach ensures that there is a dispute to be adjudicated, especially in cases involving nonpossessory interests. "An easement, of course, is different" from a fee title interest. *McFarland v. Norton*, 425 F.3d 724, 726-27 (9th Cir. 2005); *see also Michel*, 65 F.3d at 132. The key difference between disputes over fee title and disputes over easements is how the property owners interact. *See McFarland*, 425 F.3d at 726-27.

In many situations, the servient estate's view of the easement can "peaceably coexist" with the dominant estate's view of the easement. *See George*, 672 F.3d at 947*; San Juan Cnty. v. United States*, 754 F.3d 787, 794 (10th Cir. 2014). In other words, the government's actions can seem consistent both with the government's views of its rights and the landowner's contrary views of the government's

rights. Thus, when a quiet title claim involves a non-possessory interest such as an easement, the Quiet Title Act's "statute of limitations is not triggered . . . when the United States' claim is ambiguous or vague." *Shultz*, 886 F.2d at 1160; *see also Waibel Ranches*, 2024 WL 3384233, at *2. Instead, a claim accrues only when the government acts adversely to the interests of a property owner with respect to the easement. *See Michel*, 65 F.3d at 132 (citing *Werner v. United States*, 9 F.3d 1514, 1516 (11th Cir. 1993)). Any other approach would require a landowner to file a suit before there is a dispute over the title, contrary to the text of the Quiet Title Act. *See ibid.*

But the Federal Circuit did not look at the nature of the property interest in dispute to determine when Mr. Lund's claim accrued. Instead, it affirmed the District Court's holding that the statute of limitations began to run when Chinook Landing's predecessor conveyed the easement in 1955, Pet. App. 8a, despite the District Court's statement that the deed was "ambiguous." Pet. App. 27a.

The Federal Circuit would have required Mr. Lund's predecessor to bring a suit in 1955, even if there was no dispute over who owned what property interest. The Federal Circuit pointed to BPA's use of Reeher Road in 1955, Pet. App. 8a, but use alone does not indicate whether BPA believed it had the right to use the road, or expressed that belief to the property owner, *see* Pet. App. 91a-106a. Indeed, the record indicates that BPA was using Reeher Road with the express permission of the underlying property owner and so Mr. Lund's predecessor had no reason to believe that BPA claimed a right to use Reeher Road. Pet. App. 91a-106a. In short, in 1955 the government had not acted adversely to the property owner's

interests and no claim under the Quiet Title Act had accrued. *See Michel*, 65 F.3d at 132 (citing *Werner*, 9 F.3d at 1516).

The Federal Circuit's approach treats the Quiet Title Act's statute of limitations as if it were a statute of repose. "[A] statute of limitations creates 'a time limit for suing in a civil case, based on the date when the claim accrued.'" *CTS Corp. v. Waldburger*, 573 U.S. 1, 7-8 (2014) (quoting Black's Law Dictionary 1546 (9th ed. 2009)). "A statute of repose, on the other hand, puts an outer limit on the right to bring a civil action" that is "measured not from the date on which the claim accrues but instead from the date of the last culpable act or omission of the defendant." *Id.* at 8.

But the Quiet Title Act discusses the time limit to file once a claim "accrue[s.]" 28 U.S.C. § 2409a(g). Thus, the statute "embodies the plaintiff-centric traditional rule that a statute of limitations begins to run only when the plaintiff has a complete and present cause of action." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 813 (2024). The Federal Circuit's approach here treats the Quiet Title Act's statute of limitations "as a defendant-protective statute of repose[.]" *See ibid.* The Ninth Circuit's approach, on the other hand, correctly recognizes that the Quiet Title Act's "plaintiff-focused language makes it an accrual-based statute of limitations." *See ibid.*

Instead of following the lead of the Ninth and other Circuits, the Federal Circuit charted a divergent course. In doing so, the Federal Circuit set a precedent that "force[s]" a landowner "to bring suit within twelve years even though the government gave no indication that it contested the claimant's right."

Michel, 65 F.3d at 132. Under the Federal Circuit's standard, a "claimant [is] compelled to sue to protect against the possibility, however remote, that the government might someday" change its position on what it does or does not own. *Ibid.* "The statute should not be read to create such an undesirable result." *Ibid.*

Indeed, this Court has "recognized that 'we should not construe [the Quiet Title Act's] time-bar provision unduly restrictively,'" *Wilkins v. United States*, 598 U.S. 152, 161 (2023) (quoting *Block v. N.D. ex rel. Bd. of Univ. Sch. Lands*, 461 U.S. 273, 287 (1983)). Most Circuits follow that approach when interpreting the Quiet Title Act. But here, the Federal Circuit construed the Act's statute of limitations unduly restrictively, in conflict with the statutory text and the precedents of other Circuits.

The petition for a writ of certiorari should be granted to ensure that the Quiet Title Act's statute of limitations is interpreted uniformly across the country.

II. Certiorari Should Be Granted Because The Federal Circuit's Decision In This Case Will Force Property Owners To Decide Whether To Forfeit Potential Takings Claims To Allow Adjudication Of Their Quiet Title Claims

The Federal Circuit had jurisdiction here because Mr. Lund brought a takings claim in addition to his Quiet Title Act claim. Pet. App. 77a. Thus, if Mr. Lund had forfeited his takings claim, it is likely that his Quiet Title Act claim would have proceeded on remand. Indeed, this case was originally scheduled to be heard by the same panel that decided *Waibel*

Ranches. *See* Notice of Oral Argument on Tuesday, May 21, 2024, Ninth Circuit case no. 23-35344, docket no. 37 (Mar. 10, 2024). But because there was an outstanding takings claim, the Ninth Circuit transferred the appeal to the Federal Circuit. Pet. App. 77a. Had Petitioner remained in the Ninth Circuit, the panel would have applied the same standard it applied in *Waibel Ranches* to the case here.

Property owners should not be forced to choose between preserving their constitutional right to just compensation for a taking of property, and being able to have their Quiet Title Act claims heard on the merits. During the pendency of quiet title litigation, the government cannot be disturbed in its claimed interest in the disputed property. 28 U.S.C. §§ 2409a(b), 2409a(c). Thus, property owners may have to go years with the government disturbing the use of their property, even though it has no right to do so. If the property owner ultimately prevails in his or her quiet title claim, the property owner may be entitled to compensation for a temporary taking of his or her property. *See Cedar Point Nursery v. Hassid*, 594 U.S. 139, 153 (2021) ("Our cases establish that compensation is mandated when a leasehold is taken and the government occupies property for its own purposes, even though that use is temporary." (quotations and citations omitted)). But, under the precedent set here, if a property owner chooses to allege a temporary taking, he or she may never get a chance to prevail on a quiet title claim.

And while the Quiet Title Act allows the government to pay just compensation to acquire the interest at issue in the quiet title case, the decision to pay is discretionary. 28 U.S.C. § 2409a(b). There is

no guarantee that if a property owner prevails in a Quiet Title Act claim, that he or she will be compensated for any temporary taking of their property.

But even setting aside the issues with forcing property owners to choose whether to raise a takings claim along with a quiet title claim, whether a Quiet Title Act claim can proceed should not depend on where in the country the property is located. As demonstrated above, the Circuits apply different standards to determine when a Quiet Title Act claim accrues. *See* Section I, *supra*. This Court should grant the petition to resolve this split.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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