No. 25-462

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

The Circuits are split on whether and to what extent statements from agency officials cause a Quiet Title Act claim to accrue. Petition for Writ of Certiorari (Pet.) at 16-26. The Ninth Circuit holds that it is "reasonable for [property owners] to believe that" personnel from an agency office that acquires easements can "disclaim the government's interest in the easement." *Waibel Ranches, LLC v. United States*, No. 22-35703, 2024 WL 3384233, at *1 (9th Cir. July 12, 2024). Here, the Federal Circuit determined that such statements are irrelevant when determining whether a Quiet Tile Act claim was timely filed. Pet. App. 3a, 8a.

Here, officials from the Bonneville Power Administration (BPA)—who had the delegated authority to acquire easements on behalf of the agency—told Petitioner's predecessor John Lund that it did not have an easement to use a road (Reeher Road) on Petitioner's property. Pet. App. 91a, 94a. As a result, they reached out to Mr. Lund and his neighbors to acquire easements to use the road. *Id.* at 93a.

Mr. Lund was happy to negotiate; he just wanted some assurances from the government that the BPA—in its use of the road—would take precautions to protect the creek that provides water to the property. Pet. App. 85a. It was only when the BPA would not commit to such assurances in writing that Mr. Lund revoked his previously granted permission to use the road. *Ibid.*

When the BPA failed to acquire an easement from Mr. Lund, the agency used Reeher Road anyway. Pet. App. 85a-86a. Then when Mr. Lund filed this suit to

quiet title to the road, the agency argued that Mr. Lund should have known that the agency claimed an easement across the road, even when the agency's officials told him the exact opposite.

In many circuits, the agency's statements disclaiming any interest in Reeher Road (made fewer than twelve years before the suit was filed) would have allowed Mr. Lund's quiet title action to reach the merits. Pet. 16-20. But the Federal Circuit split with those circuits, holding instead that the BPA's statements were irrelevant to whether Mr. Lund timely filed his lawsuit. Pet. App. 3a, 8a.

The petition should be granted to resolve this conflict.[1]

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[1] The government is correct that the blue line on the map in the Petition does not depict the access road easement granted in the 1955 deed from Mr. Lund's predecessor. *See* Brief for the United States in Opposition (BIO) at 3 n.*; Petition for Writ of Certiorari (Pet.) at 8. Rather, the blue line depicts a different access road easement granted to BPA in a deed covering the property adjacent to Chinook Landing's property. Pet. App. 114a. Like the access road easement in the 1955 deed from Mr. Lund's predecessor, the adjacent deed granted BPA an easement for a new road "to be constr[ucted]" as well as a portion of an "existing road to be improved." *Ibid.* It appears that BPA never constructed the road on the adjacent property. *Id.* at 102a. Mr. Lund depicted both the access road easement on his property and the access road easement on the adjacent property as "legal BPA easements" in a map made for this litigation. *Id.* at 101a (black lines depicting explicit BPA access easements). Both of these access easements are shown in the map incorporated into the 1955 Deed. *Id.* at 114a. This map shows that the BPA has access to and from its transmission lines (as well as along the 100-foot-wide transmission line easement) without needing to use Reeher Road. *Ibid.* Petitioner's counsel apologizes for the error.

ARGUMENT

I. The Square Circuit Split Is Demonstrated By The Ninth Circuit's Rejection Of The Exact Argument The Government Makes Here

Ninth Circuit precedent holds 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 [Quiet Title Act's] statute of limitations for an action based on that claim accrues when it is asserted." *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995) (emphasis added) (quoting *Shultz v. Dep't of Army*, 886 F.2d 1157, 1161 (9th Cir. 1989)). The government argues that the Federal Circuit's decision here does not create a circuit split with the Ninth Circuit because the government must in fact abandon any interest for the *Michel* standard to apply, and "[t]he United States 'cannot be deemed to have abandoned' a property interest unless it does so 'clearly and unequivocally.'" BIO at 10 (quoting *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1201 (9th Cir. 2008)). But last year, the Ninth Circuit rejected this exact same argument. *Waibel Ranches*, 2024 WL 3384233, at *1.

In *Waibel Ranches*, the Ninth Circuit held that an April 2015 Bureau of Land Management press release stating that the agency did not hold an easement across the plaintiffs' land, followed by a September 2015 statement that it did hold an easement across plaintiffs' land, meant that the plaintiffs' Quiet Title Act claim accrued in September 2015. *Id.* at *1-2. In arguing that the April 2015 press release was irrelevant to when the plaintiffs' claim accrued, "[t]he

government cite[d] *Kingman Reef Atoll Investments, LLC v. United States*, 541 F.3d 1189 (9th Cir. 2008), for the proposition that the government abandons an interest in property only when it does so 'clearly and unequivocally[.]'" *Id.* at *1. The Ninth Circuit rejected the government's *Kingman Reef* argument. *Ibid.*

The *Waibel Ranches* court recognized the unique circumstances of *Kingman Reef*, "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." *Id.* at *2 (citing *Kingman Reef*, 541 F.3d at 1192, 1200). Under those circumstances, it was unreasonable to believe that low-level government officials could undermine a Presidential Executive Order. *Ibid.*

In *Waibel Ranches*, on the other hand, it "was reasonable for Plaintiffs-Appellants to believe that senior personnel in BLM's same regional office" that created the easement "could disclaim the government's interest in the easement." *Id.* at *1. Likewise, Petitioner here argues that it was reasonable for Mr. Lund to believe that BPA personnel who had the authority to acquire easements could disclaim any easement interest in Reeher Road. *See* Pet. at 18.[2]

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[2] *Waibel Ranches* 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 its analysis. *Waibel Ranches*, 2024 WL 3384233, at *1. It is unlikely that the Quiet Title Act requires actual abandonment to bring a

But the Federal Circuit did not analyze whether it was reasonable for Mr. Lund to believe that the BPA officials he talked to could disclaim an easement interest in Reeher Road. Pet. App. 3a, 8a; *see also id.* 39a n.11 (stating statements are irrelevant to analysis). The Federal Circuit did not apply the Ninth Circuit's apparent abandonment standard and hold, based on the facts of this case, that the interest at issue here is closer to the Presidential Executive Order in *Kingman Reef* than the road easement at issue in *Waibel Ranches*. Instead, it treated the BPA officials' statements as irrelevant to the question of when Mr. Lund's claims accrued, in direct conflict with the Ninth Circuit.

The government defending the Federal Circuit's opinion with the same argument the Ninth Circuit explicitly rejected in *Waibel Ranches* demonstrates that the circuits are squarely split on the question presented. This Court should grant the Petition to resolve that split.

II. The Federal Circuit's Approach Conflicts With The Quiet Title Act's Text And The Equitable Nature Of The Act's Statute Of Limitations

The Ninth Circuit's approach that a court should analyze whether it was reasonable for a landowner to believe that agency personnel could disclaim a property interest is consistent with the Quiet Title

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claim because the statute requires property owners to bring a claim when they know or should have known of the adverse claim of the government. 28 U.S.C. § 2409a(g). If government officials with the authority to make decisions about easements are acting as if the government does not have an easement, then it is unreasonable to expect a property owner to believe otherwise.

Act's statutory text. The Federal Circuit's opposite approach is not.

As this Court has recognized, there is an equitable aspect to the Quiet Title Act's statute of limitations. *United States v. Beggerly*, 524 U.S. 38, 48 (1998) (The Quiet Title Act's statute of limitations "effectively allow[s] for equitable tolling."). Moreover, the Quiet Title Act's "knew or should have known" standard incorporates the "discovery rule" that applies to some other statutes of limitations. *See* 54 C.J.S. Limitations of Actions § 136 (2025) (explaining discovery rule). And courts have consistently recognized the equitable nature of the discovery rule. *See Snyder-Hill v. Ohio State Univ.*, 48 F.4th 686, 698-99 (6th Cir. 2022) ("The discovery rule seeks to protect plaintiffs who, through no fault of their own, lacked the information to bring a claim.").

The discovery "rule recognizes that, without certain information, a plaintiff has no viable claim." *Snyder-Hill*, 48 F.4th at 698-99. "That he 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." *United States v. Kubrick*, 444 U.S. 111, 122, (1979). This lack of knowable information leaves the plaintiff "at the mercy of" the defendant and unable to file suit. *Ibid.*

In short, "[t]o say to one who has been wronged, 'You had a remedy, but before the wrong was ascertainable to you, the law stripped you of your remedy,' makes a mockery of the law." *City of Aurora v. Bechtel Corp.*, 599 F.2d 382, 387-88 (10th Cir. 1979) (citation and emphasis omitted). The discovery rule

ensures that plaintiffs can obtain relief if they file within a certain time after discovering their claim.

Here, the Federal Circuit ignored the equitable nature of the Quiet Title Act's statute of limitations and held that Mr. Lund should have filed his claim earlier, despite his good faith belief that the BPA's officials were honest in telling him they claimed no interest in Reeher Road. The government argues that Mr. Lund and Petitioner were not wronged because the Federal Circuit was correct in determining that Mr. Lund knew or should have known of BPA's claimed easement much earlier, despite the agency's statements to the contrary. BIO at 8-9. But based on the record before the Court, neither the District Court nor the Federal Circuit could answer that question on a motion for summary judgment.

"[U]nder the discovery rule, a claim accrues when the reasonable person knows, or in the exercise of due diligence should have known, both his injury and the cause of that injury." *Snyder-Hill*, 48 F.4th at 701 (quotations and citations omitted). In the specific context of the Quiet Title Act, the injury is when the United States asserts an adverse claim to the property owner. 28 U.S.C. § 2409a(g).

Reasonableness requires a court to analyze "[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). And "[w]hen conflicting inferences can be drawn from the facts, summary judgment is inappropriate." *Ibid.*; *see also Snyder-Hill*, 48 F.4th at 705 ("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)).

Here, conflicting inferences can be drawn from the facts. The government points to the BPA's use of Reeher in the 1950s, BIO at 8-9, but other evidence in the record states that the BPA used the road only with express permission, Pet. App. 85a. And, as even the District Court recognized, it "cannot conclude that the easement plainly supports a right of access via [Reeher Road.]" Pet. App. 26a. Taken together, these facts support an inference that the property owners would not have, and should not have, reasonably known that the BPA claimed a right to use Reeher Road.

Then BPA officials told Mr. Lund and his neighbors that they did not have an easement to use Reeher Road, Pet. App. 91a, and acquired easements from the adjoining property owners, *id.* at 3a. The facts support an inference that Mr. Lund was reasonable in believing that the government meant what it said, and that the United States did not claim any interest in his property.

The government argues that Mr. Lund or his predecessor should have suspected that the government claimed an interest in Reeher Road because it used the Road. BIO at 8-9. But courts have consistently "reject[ed] an interpretation of the federal discovery rule that would commence limitations periods upon mere suspicion of the elements of a claim" because "such a standard would result in 'the filing of preventative and often unnecessary claims, lodged simply to forestall the running of the statute of

limitations.'" *O'Connor v. Boeing N. Am., Inc.*, 311 F.3d 1139, 1148 (9th Cir. 2002) (quoting *McGraw v. United States*, 281 F.3d 997, 1003 (9th Cir. 2002), *amended by* 298 F.3d 754 (9th Cir. 2002)) (interpreting federal discovery rule in the context of the Comprehensive Environmental Response, Compensation, and Liability Act).

Courts have applied the same interpretation to the Quiet Title Act's statute of limitations, especially when the dispute involves nonpossessory interests. *Michel*, 65 F.3d at 131-32 ("To start the limitations period, the government's claim must be adverse to the claim asserted by the [property owners]. . . . A contrary holding would lead to premature, and often unnecessary, suits.").

The Federal Circuit took a different approach to the discovery rule here. The court relied on one piece of evidence—the BPA's previous use of Reeher Road—while dismissing evidence that showed the agency's use was not by right but only by permission from the property owners. *See* Pet. App. 3a, 8a. It then held that Mr. Lund's predecessor should have filed within twelve years of the recording of the deed, *id.* at 8a, even though such claim would be lodged simply to forestall the running of the statute of limitations.

The Federal Circuit's approach conflicts with the Quiet Title Act's text, the equitable nature of the statute of limitations, and how courts have applied the discovery rule in litigation. The Petition should be granted to resolve this conflict.

III. This Case Is An Ideal Vehicle To Resolve The Question Presented Because, Without Vacatur, The Title Dispute Remains Unresolved

Finally, the government argues that this case presents a poor vehicle to answer the question presented because Petitioner would fail on the merits below. BIO at 13. But the Federal Circuit did not analyze the merits of the Quiet Title Claim.

The Federal Circuit held that "we agree with the district court that Mr. Lund's QTA and inverse condemnation claims are time-barred under the applicable statutes of limitations." Pet. App. 8a. Because the Court of Appeals decided on the Quiet Title Act's statute of limitations, it could not reach the merits. *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 291-92 (1983).

As this Court has said, "[t]he statute limits the time in which a quiet title suit against the United States can be filed; but, unlike an adverse possession provision, § 2409a(f) does not purport to effectuate a transfer of title." *Ibid.* Thus, "[a] dismissal pursuant to § 2409a(f) does not quiet title to the property in the United States." *Ibid.* Instead, "[t]he title dispute remains unresolved." *Ibid.* In short, "[i]f a claimant has title to a disputed tract of land, he retains title even if his suit to quiet his title is deemed time-barred under § 2409a(f)." *Ibid.*

By holding that Petitioner's quiet title claim was time-barred, the Federal Circuit did not, and could not, enter judgment on the merits. The only argument the government presents that the Federal Circuit analyzed the merits is one line in the opinion stating that it "considered [petitioner's] remaining arguments

and [found] them unpersuasive[.]" Pet. App. 9a. The government reads too much into this one line that says nothing of the merits of the claim. It is unknown how the Federal Circuit would interpret the 1955 deed should this Court grant the Petition and vacate the judgment on the merits.

But even assuming the Federal Circuit would side with the government on the merits on remand, this Court's vacatur would still be meaningful to the parties because it would resolve the title dispute. As of now, the question remains open about whether the government has an easement to use Reeher Road. "Nothing prevents [Chinook Landing] from continuing to assert [its] 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.

By granting the Petition and vacating the judgment of the Federal Court, this Court can put the matter to rest on the merits without requiring Chinook Landing to act in a way that prevents BPA from using the road. *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."). Whatever the outcome on remand, the parties will have a clear understanding of the rights and interests involved.

This case is an ideal vehicle to resolve the Circuit Split over when a Quiet Title Act claim accrues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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