

No. 25-37

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LARRY STEVEN WILKINS; JANE B. STANTON,

Plaintiffs – Appellants,

v.

UNITED STATES OF AMERICA

Defendant – Appellee.

On Appeal from the United States District Court
for the District of Montana
No. 9:18-cv-00147-DLC
Honorable Dana L. Christensen, District Judge

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INTRODUCTION

“Larry Steven Wilkins and Jane Stanton want[] quiet titles and a quiet road.” *Wilkins v. United States*, 598 U.S. 152, 155 (2023). In 2018, after nearly a decade of being told by Forest Service officials that they did not need to file a lawsuit to address the excessive use of the Forest Service Easement that crosses their property (known as Robbins Gulch Road), they filed this quiet title action asking the District Court to interpret the terms of that Easement.

Cognizant of not wanting to waste judicial resources, Mr. Wilkins and Mrs. Stanton did everything they could to resolve their issues without resorting to litigation. After the Forest Service installed a sign along Robbins Gulch Road that read “public access thru private lands” in September 2006, Mr. Wilkins and Mrs. Stanton went to the Forest Service to discuss the agency’s new approach to managing the road. They then took the Forest Service at its word in 2007 when then-Darby District Ranger Chuck Oliver told Mr. Wilkins he could “relax” because “Robbins Gulch Road[] is slated to be closed” in a proposed travel management plan the Forest Service had just released to the public. 8-ER-1578 (Depo. Wilkins 113:22–24).

Mr. Wilkins and Mrs. Stanton waited eight years before the Forest Service finally released the final version of that travel management plan. But despite the agency telling Mr. Wilkins and Mrs. Stanton that the road would be closed to public access, the final plan did the exact opposite and allowed use of Robbins Gulch Road by the public in summer and autumn. Once again, Mr. Wilkins and Mrs. Stanton tried to negotiate with the Forest Service to curb the public's excessive and burdensome use of the Easement.

In 2017, Mr. Wilkins—desperate to find out what he could do to limit the public's burdensome use of the road—had a meeting with then-Darby District Ranger Eric Winthers. In response to Mr. Wilkins's questions about what options he had, Mr. Winthers laughed and told Mr. Wilkins that Mr. Wilkins could sue the Forest Service. 8-ER-1580 (Depo. Wilkins 118:14–17). Faced with no other choice, Mr. Wilkins filed this lawsuit less than a year later.

After trying to resolve their issues with the Forest Service outside the courtroom and after trusting the Forest Service that they could “relax” because the public would not be able to use Robbins Gulch Road, Mr. Wilkins and Mrs. Stanton were rewarded with an opinion saying

they waited too long to file their lawsuit. The District Court determined that it could not interpret a simple deed because Mr. Wilkins and Mrs. Stanton did not immediately run to court when their issues first arose.

But this Court has stated that property owners do not need to file a premature suit “to protect against the possibility, however remote, that the government might someday” change its mind about how it manages an easement it owns. *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995). The Quiet Title Act did not require Mr. Wilkins and Mrs. Stanton to distrust the federal government’s word and file a potentially unnecessary lawsuit. Mr. Wilkins and Mrs. Stanton timely filed their claims and this Court should remand so that the District Court can resolve the dispute about the scope of the Easement.

JURISDICTION

The landowners filed their quiet title action under 28 U.S.C. § 1346(f), which grants district courts “exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.” This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is from

the final judgment of the district court which disposes of all parties' claims. The appeal is timely under Fed. R. App. P. 4(a)(1)(B)(ii) and 4(a)(4)(A)(iv). Judgment was entered on November 5, 2024. 1-ER-2. The notice of appeal was filed on December 23, 2024. 8-ER-1727.

ISSUES PRESENTED FOR REVIEW

1. Whether the law of the case doctrine applies when the Supreme Court reverses the previous judgment in the case.

2. Whether Mr. Wilkins and Mrs. Stanton timely filed their claim about the scope of the 1962 Easement or, in the alternative, whether there was a dispute of material fact about when that claim accrued.

3. Whether the government is equitably estopped from asserting the statute of limitations as a defense against Mr. Wilkins and Mrs. Stanton's claim about the scope of the Easement.

4. Whether Mr. Wilkins and Mrs. Stanton timely filed their separate and distinct claim that the Forest Service is overburdening the Easement.

STATUTORY AUTHORITIES

28 U.S.C. § 1346 provides, in relevant part:

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

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).

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(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.

STATEMENT OF THE CASE

I. Factual Background.

Larry “Wil” Wilkins is a veteran diagnosed with posttraumatic stress disorder. 7-ER-1328. In 2004, he purchased his home in Ravalli County, Montana, near the boundary of the Bitterroot National Forest, on Robbins Gulch Road. 4-ER-366–67. Across that dirt lane lives Mrs. Stanton, who purchased her residence on Robbins Gulch Road in 1990 with her husband. *See* 8-ER-1510; 4-ER-369–74. Since her husband’s passing in 2013, she has lived alone at the house. 4-ER-371. For their security and peace of mind, both need to know who can use Robbins Gulch Road and how.

In 1962, Plaintiffs’ predecessors granted the Easement at issue here in two separate deeds with substantially similar language (1962 Easement). 3-ER-338–43. The deeds convey to the United States a 60-foot easement “for a road as now constructed and in place and to be re-

constructed, improved, used, operated, patrolled, and maintained and known as the Robbins Gulch road, Project Number 446.” 3-ER-338. The Easement differs in significant ways from the form easements in the Forest Service Handbook used by the agency at the time: whereas the form easements purport to grant to the United States an easement for “highway purposes,” the 1962 deeds do not. 4-ER-394–96. The elimination of the highway purpose language from the Robbins Gulch Road easement deeds is consistent with the Forest Supervisor’s cover letter that accompanied the proposed deeds. That letter explains that the “[p]urpose of [the] road” was for “timber harvest.” 3-ER-335.

For many years, the Forest Service’s management ensured that use of the Easement did not unreasonably burden Mr. Wilkins’s and Mrs. Stanton’s properties. 8-ER-1517 (Stanton Depo. 30:7–8). But in September 2006, the Forest Service commissioned a sign to be installed along Robbins Gulch Road that read “public access thru private lands.” 8-ER-1615–17. Since that time, expanded use of the Easement has interfered with Mr. Wilkins’s and Mrs. Stanton’s use and enjoyment of their properties. 8-ER-1583 (Wilkins Depo. 132:23–133:4, Aug. 15, 2019); 8-ER-1517, 8-ER-1529 (Stanton Depo. 31:9–32:2, 79:5–80:22,

Aug. 15, 2019). For example, Mr. Wilkins, Mrs. Stanton, and their neighbors have had to deal with people trespassing, stealing their personal property, shooting at their houses, hunting both on and off the Easement, and travelling at dangerous speeds on and around Robbins Gulch Road. 8-ER-1517, 8-ER-1522 (Stanton Depo. 31:9–32:2; 51:20–52:7); 8-ER-1582–83 (Wilkins Depo. 127:17–129:2, 133:10–12); 7-ER-1333. In September 2019, someone travelling along the road shot Mr. Wilkins’s cat. 7-ER-1329. The recent, excessive use of the road and adjacent properties by the public and Forest Service permittees has even caused some neighbors to move. 7-ER-1334.

Additionally, the increased use of the Easement has caused erosion of the road that affects the adjacent properties. 3-ER-233. The road condition has caused sediment and silt to build up on the underlying properties and has washed out portions of those properties. 8-ER-1576 (Wilkins Depo. 102:03–103:06). Making things worse, the Forest Service’s maintenance of the Easement has in recent years become infrequent. 8-ER-1517 (Stanton Depo. 30:7–8, Aug. 15, 2019).

In 2007, the Bitterroot National Forest—as part of a Forest Service-wide policy to provide “clear identification of roads, trails, and

areas for motor vehicle use on each National Forest,” 70 Fed. Reg. 68,264, 68,264 (Nov. 9, 2005)—began a process to determine which Forest Service-managed roads can and should be open to the public. 8-ER-1619. This travel management process was needed because the previous maps for the Bitterroot National Forest were “confusing” and made it “challenging for both members of the public and Forest Service personnel to easily determine *where* and *when* motorized use can legally occur.” 8-ER-1622, 8-ER-1698. In September 2007, a year after the Forest Service commissioned the “public access thru private lands” sign, it issued a proposed action scoping document about the travel management process. 8-ER-1619. In that document, the Forest Service proposed no public use of Robbins Gulch Road. 8-ER-1641.

Around the time the Forest Service released the proposed action, then-Darby District Ranger Chuck Oliver told Mr. Wilkins—who had recently complained about the excessive use of the road—that Mr. Wilkins could “relax” because “Robbins Gulch Road[] is slated to be closed” in the travel management plan. 8-ER-1579 (Depo. Wilkins 113:22–24). The planning process took over eight years, culminating in the Forest Service’s final decision in 2016. 8-ER-1658. But after

originally proposing to allow no public use on Robbins Gulch Road, 8-ER-1641, the final travel plan decision allowed use of the road by the public in summer and autumn, 8-ER-1709–10.

The Bitterroot's final travel plan decision only exacerbated the problems occurring on the Easement. In December 2017, after the second autumn under the travel plan, the landowners and their neighbors met with Forest Service officials and requested that the Forest Service help address these problems. 7-ER-1416–17 (Winthers Depo. 12:9–22; 13:16–15:17). The Forest Service declined. *Id.* (Winthers Depo. 13:16–15:17). Not only did the agency disagree that the Easement is limited in scope, it also disclaimed its obligations under the Easement to ensure reasonable use of the road. *Id.* It informed the property owners that it would manage the Easement however it wished, and that it owed no duties to the owners of the servient estates. *Id.*

In May 2018, as seasonal summer traffic was about to begin, counsel for Mr. Wilkins followed up with a letter to the United States Department of Agriculture Office of the General Counsel. 7-ER-1320. In July 2018, the Office of the General Counsel reiterated the Forest Service's position that the agency could allow whomever it wanted on

the Easement and that all management decisions were at the Forest Service's sole discretion. *Id.*

A month after the response from the Office of the General Counsel, Mr. Wilkins and Mrs. Stanton filed this suit. They asserted two claims for relief. First, they alleged that the 1962 Easement does not grant an easement for general public use, but rather it grants the right to ingress and egress by the United States, its agencies (namely, the Forest Service), and those who hold specific permits or licenses issued by the United States. 8-ER-1723–24. Second, they alleged that the 1962 Easement does not allow the government and those it invites on the Easement to overburden the servient estate and instead requires the government to ensure reasonable use of its easement. 8-ER-1724.

II. Previous Proceedings.

In August 2018, Mr. Wilkins and Mrs. Stanton filed this Quiet Title Act suit requesting the District Court interpret the Easement the federal government holds across their properties. 8-ER-1711–26. The government filed a motion to dismiss for lack of subject matter jurisdiction, arguing that Mr. Wilkins and Mrs. Stanton filed their complaint outside the Quiet Title Act's statute of limitations. The

District Court granted the motion to dismiss and this Court affirmed. *Wilkins v. United States*, 13 F.4th 791, 796 (9th Cir. 2021). The Supreme Court granted certiorari and reversed the judgment, holding that the Quiet Title Act's statute of limitations is a nonjurisdictional claim processing rule. *Wilkins*, 598 U.S. at 165.

On remand, both sides filed cross-motions for summary judgment. On November 5, 2024, the District Court granted the government's motion for summary judgment and denied Mr. Wilkins's and Mrs. Stanton's motion for summary judgment. 1-ER-18. Mr. Wilkins and Mrs. Stanton filed their notice of appeal on December 23, 2024. 8-ER-1727.

III. Legal Background on the Quiet Title Act.

The Quiet Title Act provides: "The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. § 2409a(a). The Quiet Title Act has a twelve-year statute of limitations that begins to run when "the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. § 2409a(g). The Quiet Title Act's statute of

limitations thus incorporates the “discovery rule.” See 54 C.J.S. Limitations of Actions § 136 (2024) (explaining discovery rule). The discovery rule is an equitable doctrine and, in the context of the Quiet Title Act, “effectively allow[s] for equitable tolling.” *United States v. Beggerly*, 524 U.S. 38, 48 (1998).

Under the discovery rule, the statute of limitations does not begin to run until the plaintiff knows or “reasonably could have become aware of” the triggering event. *Lyons v. Michael & Assocs.*, 824 F.3d 1169, 1171 (9th Cir. 2016) (quoting *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1118 n.5 (9th Cir. 2014)) (applying discovery rule to Fair Debt Collection Practices Act). Under the Quiet Title Act, the triggering event is “the claim of the United States,” 28 U.S.C. § 2409a(g). The government has the burden of proving that a quiet title action was filed outside the statute of limitations. *Wilkins*, 598 U.S. at 165 (statute of limitations is a nonjurisdictional claim processing rule); *Payan v. Aramark Mgmt. Servs. Ltd. P’ship*, 495 F.3d 1119, 1122 (9th Cir. 2007) (because the statute of limitations is an affirmative defense, the defendant bears the burden of proving that the plaintiff filed beyond the limitations period).

SUMMARY OF THE ARGUMENT

In granting the government’s motion for summary judgment, the District Court mistakenly applied the law of the case doctrine. 1-ER-8–14. But when the Supreme Court “vacate[s] the Court of Appeals’ judgments in [a] case, the doctrine of the law of the case does not constrain either the District Court or, should an appeal subsequently be taken, the Court of Appeals.” *See Johnson v. Bd. of Educ. of City of Chicago*, 457 U.S. 52, 53–54 (1982) (per curiam). Here, the Supreme Court reversed the previous judgment in the case, *Wilkins*, 598 U.S. at 165, and “[a] judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect[.]” *Franklin Sav. Ass’n v. Off. of Thrift Supervision*, 35 F.3d 1466, 1469 (10th Cir. 1994) (quotations omitted). The District Court incorrectly held that the law of the case doctrine applies on remand and that doctrine does not constrain this Court’s *de novo* review of the motions for summary judgment.

The District Court also erred in holding that Mr. Wilkins and Mrs. Stanton did not file their complaint within the statute of limitations. 1-ER-18. The Quiet Title Act’s limitations period does not begin to run if “the United States’ claim is ambiguous or vague[.]”

Waibel Ranches, LLC v. United States, No. 22-35703, 2024 WL 3384233, at *2 (9th Cir. 2024) (quoting *Shultz v. Department of Army*, 886 F.2d 1157, 1160 (9th Cir. 1989)). Instead, Mr. Wilkins’s and Mrs. Stanton’s claims only accrued when the Forest Service “‘adopted a position in conflict’ with Plaintiffs-Appellants or their predecessors in interest with respect to the public’s use of the easement.” *Id.* (quoting *Mills v. United States*, 742 F.3d 400, 405 (9th Cir. 2014)). Here, at the earliest, the Forest Service adopted a position in conflict with respect to the public’s use of the easement when the Forest Service placed the “Public Access Thru Private Lands” sign no earlier than September 2006. 8-ER-1615–17. This case was filed in August 2018, less than twelve years later, and, thus, was filed within the statute of limitations.

But even if Mr. Wilkins and Mrs. Stanton were slightly late in filing their complaint, this Court should still reverse because the government is equitably estopped from asserting the statute of limitations as a defense. *See Wilkins*, 598 U.S. at 165. *See id.* at 164 (“Precisely because the Court’s inquiry was so focused on the particular nature of equitable tolling, *Beggerly* also did not address whether other exceptions such as ‘fraudulent concealment or equitable estoppel might

apply[.]” (quoting *Beggerly*, 524 U.S. at 49)). In 2007, then-Darby District Ranger Chuck Oliver told Mr. Wilkins he could “relax” because “Robbins Gulch Road[] is slated to be closed” in a proposed travel management plan the Forest Service had just released to the public. 8-ER-1578 (Depo. Wilkins 113:22–24). Mr. Wilkins and Mrs. Stanton waited eight years—delaying filing this suit—before the Forest Service finally released the final version of the travel management plan that did the opposite of what District Ranger Oliver told Mr. Wilkins would happen. The federal government does not get to tell a property owner that his problems will be resolved without litigation, causing him to delay filing a suit, and then complain that the property owner did not file his suit earlier.

Finally, the District Court erred in not analyzing Mr. Wilkin’s and Mrs. Stanton’s two claims for relief separately. *See* 1-ER-4 n.2. Mr. Wilkins and Mrs. Stanton allege two claims for relief. First, they allege that the 1962 Easement does not grant an easement for general public use, but rather it grants the right to ingress and egress by the United States, its agencies (namely, the Forest Service), and those who hold specific permits or licenses issued by the United States. 8-ER-1723–

24 ¶¶ 30–34. Second, the 1962 Easement does not allow the government and those it invites on the easement to overburden the servient estate and instead requires the government to ensure reasonable use of its easement. 8-ER-1724 ¶¶ 35–38. The “requirement not to cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment ... is an independent requirement on an easement holder’s use of the easement.” *Mattson v. Montana Power Co.*, 215 P.3d 675, 692 (Mont. 2009). Thus, these two independent requirements should have been analyzed independently. Instead, the District Court mistakenly lumped the two claims for relief together in granting the government’s motion for summary judgment.

This Court should reverse the judgment of the District Court and remand for a decision on the scope of the Easement and the government’s obligations under the Easement. In the alternative, this Court should vacate the judgment of the District Court and remand for a trial on whether Mr. Wilkins and Mrs. Stanton timely filed their claims.

STANDARD OF REVIEW

This Court reviews “*de novo* the district court’s decision on cross motions for summary judgment.” *Marable v. Nitchman*, 511 F.3d 924, 929 (9th Cir. 2007). Viewing the evidence in the light most favorable to the nonmoving party, the court considers whether there are genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *Id.* Courts do not weigh the evidence but only determine whether there is a genuine issue for trial. *Id.* Additionally, when both parties file simultaneous cross-motions for summary judgment on the same claim, the court must consider the appropriate evidentiary material identified and submitted in support of both motions, and in opposition to both motions, before ruling on each of them. *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001).

ARGUMENT

- I. The District Court erred in applying the law of the case doctrine because that doctrine does not apply when the Supreme Court reverses the judgment in a case.**

Much of the District Court’s opinion below discusses its four-year-old opinion that dismissed the lawsuit for lack of subject matter

jurisdiction. 1-ER-8–14. The District Court then concluded that it must follow the previous opinion’s findings and conclusions because it is the law of the case. *Id.* But when the Supreme Court “vacate[s] the Court of Appeals’ judgments in [a] case, the doctrine of the law of the case does not constrain either the District Court or, should an appeal subsequently be taken, the Court of Appeals.” *Johnson*, 457 U.S. at 53–54.

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

Here, the Supreme Court reversed this Court’s judgment affirming the District Court’s previous order, and remanded for further

proceedings. *Wilkins*, 598 U.S. at 165. “Thus, the Supreme Court has overruled the basis for the district court’s dismissal and our affirmance.” *Arbaugh v. Y&H Corp.*, 446 F.3d 573, 574 (5th Cir. 2006) (decision on remand after the Supreme Court held that a statutory filing requirement was not a jurisdictional requirement). The previous judgment—and the opinions related to that judgment—are deprived of any conclusive effect and the District Court should have reviewed the motions for summary judgment without reference to any previous decision.

Although this Court in one footnote in one case pontificated on whether a reversal would be different than a vacatur in applying the law of the case, *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1424 n.2 (9th Cir. 1991), the distinction does not matter, see *Franklin Sav. Ass’n*, 35 F.3d at 1469; see also Edward A. Hartnett, *Summary Reversals in the Roberts Court*, 38 *Cardozo L. Rev.* 591, 593 n.11 (2016). “According to the Supreme 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.’” Hartnett, *supra*, 38 *Cardozo L. Rev.* at 593 n.11 (citing *The Supreme Court’s Style Guide* § 10.5 (Jack Metzler ed.,

2016)). “[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.” *Id.* That the Supreme Court reversed the previous judgment here indicates an even stronger decision than if it vacated. But either way, the law of the case doctrine does not apply.

In any event, the law of the case “doctrine is not a limitation on a tribunal’s power, but rather a guide to discretion.” *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (citing *Arizona v. California*, 460 U.S. 605, 618 (1983)). A court may depart from the law of the case where: (1) the first decision was clearly erroneous; (2) an intervening change in the law has occurred; (3) the evidence on remand is substantially different; (4) other changed circumstances exist; or (5) a manifest injustice would otherwise result. *Id.*

Here, the Supreme Court’s decision that the Quiet Title Act’s statute of limitations is nonjurisdictional changed the circumstances in how a court decides whether a quiet title claim was timely filed. *Wilkins*, 598 U.S. at 165. On the motion to dismiss, the District Court placed the

burden on Mr. Wilkins and Mrs. Stanton to prove that their case was timely. *Wilkins v. United States*, No. CV 18-147-M-DLC-KLD, 2020 WL 2732251, at *2 (D. Mont. May 26, 2020). But for a nonjurisdictional statute of limitations, the burden is on the government to prove that the case is untimely. See *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1122 (9th Cir. 2007). When reviewing the government's motion to dismiss for lack of subject matter jurisdiction, the District Court was able to "resolve factual disputes with or without a hearing." *Wilkins v. United States*, 2020 WL 2732251, at *2. But now that it is confirmed that the statute of limitations is nonjurisdictional, then all disputed facts must be construed in favor of the moving party at the summary judgment stage. See *Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982).

Indeed, the Solicitor General argued that the Supreme Court should deny certiorari because a judgment reversing this Court would have no effect on the outcome of the case. Brief for the Respondent in Opposition at 21–24, Supreme Court No. 21-1164 (April 25, 2022). The Supreme Court rejected that argument, and granted Mr. Wilkins's and Mrs. Stanton's petition. The Supreme Court would not have wasted its

time reviewing this case if it believed that the law of the case would constrain the District Court's decision on remand so that it would simply repeat its previous opinion.

The District Court incorrectly held that the law of the case doctrine applies and that doctrine does not constrain this Court's *de novo* review of the motions for summary judgment.

II. The District Court misapplied this Court's holdings about when a quiet title claim accrues and entered a holding that will lead to premature, and often unnecessary, suits.

A. The undisputed facts demonstrate that Mr. Wilkins and Mrs. Stanton timely filed this action.

1. A Quiet Title Act claim does not accrue until the federal government adopts a position in conflict with another party regarding title to a property interest.

In construing the Quiet Title Act's statute of limitations, this Court has "read narrowly the requirement that the title at issue be 'disputed.'" *Mills v. United States*, 742 F.3d 400, 405 (9th Cir. 2014). Specifically, "[f]or a title to be disputed for purposes of the QTA, the United States must have adopted a position in conflict with a third party regarding that title." *Id.*

Additionally, when a claim accrues under the Quiet Title Act depends on the nature of the interest at issue. *McFarland v. Norton*, 425 F.3d 724, 726–27 (9th Cir. 2005). “An easement, of course, is different” from a fee title interest. *Id.*; 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 conflicting view of the easement. See *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 landowners’ contrary views of the government’s rights. Thus, when a quiet title claim involves a non-possessory interest such as an easement, a claim accrues when the government acts adversely to the interests of plaintiffs 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)); *McFarland*, 425 F.3d at 727.

This Court has cautioned that courts should not interpret the Quiet Title Act’s statute of limitations in a way that would “lead to

premature, and often unnecessary, suits.” *Michel*, 65 F.3d at 132.¹ The Quiet Title Act does not “force[]” a claimant “to bring suit within twelve years even though the government gave no indication that it contested the claimant’s right.” *Id.* The statute does not “compel[]” a landowner “to sue to protect against the possibility, however remote, that the government might someday” disagree with the claimant’s view of his or her rights. *Id.* When a Quiet Title Act claim involves a dispute over an easement, the statute of limitations is triggered only when the government acts adversely to the plaintiff’s interests. *Id.*

In reaching its decision in *Michel*, this Court relied on the Eighth Circuit’s analysis in *Werner*. In *Werner*, the court “reject[ed]” the theory “that the notice that triggers the [Quiet Title Act’s] statute of limitations need be only that the government claims some interest—any interest—

¹ Similarly, in the context of another federal statute, this Court has “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) (quotations & citation omitted), *amended by McGraw v. United States*, 298 F.3d 754 (9th Cir. 2002) (interpreting federal discovery rule in the context of the Comprehensive Environmental Response, Compensation, and Liability Act).

in the property.” *Werner*, 9 F.3d at 1518–19; *see also Michel*, 65 F.3d at 132 (favorably citing *Werner*). Rather, in determining when a Quiet Title Act claim accrues, “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.” *Werner*, 9 F.3d at 1518–19.

And just as this Court relied on *Werner*’s analysis in *Michel*, the *Werner* Court adopted the reasoning of *Elk Mountain Safari, Inc. v. United States* in analyzing the Quiet Title Act’s statute of limitations. *Werner*, 9 F.3d at 1518 (citing *Elk Mountain Safari*, 645 F. Supp. 151 (D. Wyo. 1986)). In *Elk Mountain Safari*, a landowner granted a right-of-way to the government in 1957 and, like here, a later owner sued the government alleging that the right-of-way was limited and not open to the public. 645 F. Supp. at 152. Even though an internal agency manual stated the opinion that the right-of-way provided public access, the court held that the manual was not sufficient to provide the plaintiff with reasonable awareness of the government’s claim. *Id.* at 155–56. Only when the government publicly announced that the “roadway should be

open to the general public” did the Quiet Title Act’s statute of limitations begin to run. *Id.* at 156.

In short, this Court’s cases, and the reasoning of the cases from other courts that this Court has adopted, a quiet title claim about the scope of an easement only accrues when the government adopts a position in conflict with the underlying landowner by acting adversely to the interests of plaintiffs with respect to the easement. This Court’s recent decision in *Waibel Ranches, LLC v. United States* succinctly harmonized and applied this Court’s precedents in a case that presented circumstances similar to here. *See* No. 22-35703, 2024 WL 3384233 (9th Cir. July 12, 2024). In *Waibel Ranches*, like here, property owners filed a Quiet Title Act action to “challenge only the government’s decision to allow public access to the easement.” *Id.* at *2. Taking the Plaintiffs’ allegations in the complaint as true, the Court held that “the government had not, until 2021, ‘adopted a position in conflict’” with Plaintiffs-Appellants or their predecessors in interest with respect to the public’s use of the easement.” *Id.* (quoting *Mills*, 742 F.3d at 405). Thus, the Court concluded, “Plaintiffs-Appellants were not required to file a preemptive suit ‘to protect against the possibility, however remote, that

the government might someday' claim that the Big Summit Prairie easement includes the right to public access." *Id.* (quoting *Michel*, 65 F.3d at 132).

2. The government did not adopt a position in conflict with Mr. Wilkins and Mrs. Stanton with respect to the public's use of the Easement until September 2006, 11 years and 11 months before this case was filed.

Here, the Forest Service did not adopt a position in conflict with Mr. Wilkins and Mrs. Stanton until September 2006 at the earliest, when it commissioned a sign to be installed along Robbins Gulch Road that read "public access thru private lands."

In deciding that the Quiet Title Act's statute of limitations barred Mr. Wilkins's and Mrs. Stanton's claims, the District Court relied on old Forest Service maps of the area. 1-ER-10. But by the Forest Service's own admission, 8-ER-1622, 8-ER-1698, these maps were ambiguous. Specifically, in 2005, the Forest Service adopted the travel management rule, which required each National Forest to provide for "clear identification of roads, trails, and areas for motor vehicle use on each National Forest," 70 Fed. Reg. 68,264, 68,264 (Nov. 9, 2005).

The Bitterroot National Forest began its process in 2007, and its environmental review documents acknowledge that travel maps prior to the 2007 travel management process were “confusing” and made it “challenging for both members of the public and Forest Service personnel to easily determine *where* and *when* motorized use can legally occur.” 8-ER-1622, 8-ER-1698. If the pre-2007 maps were confusing to the Forest Service itself, then the landowners and their predecessors could not reasonably have known that the maps depicted the Forest Service’s position that the 1962 Easement allowed for public use.

A closer examination of these maps demonstrates their ambiguity. The District Court started with a 1950 map, stating that it shows Robbins Gulch Road as a non-Forest System Road. 1-ER-10 (citing 2-ER-177). That 1950 map was produced 12 years before the granting of the Easement at issue in this case. In 1950, the United States merely had a contract to use Robbins Gulch Road, not a property right in the form of an easement. 3-ER-320. The 1950 map only shows that there was a road along Robbins Gulch, not who could use the road. 2-ER-177.

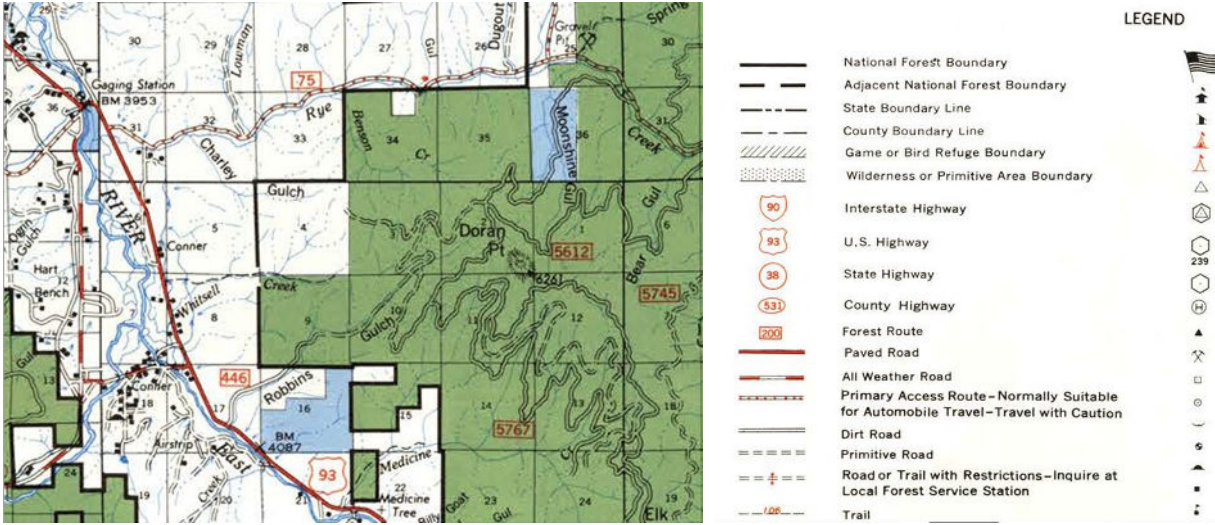
The District Court then examined later maps. 1-ER-10–11. These maps are similar to the 1950 map except that they use the number “446”

next to Robbins Gulch Road. *See* 2-ER-178–88. This number indicates that the road is a Forest System Road, but not all Forest System Roads are open to the public. 2-ER-100, 2-ER-102. National Forest System Roads fall into two categories: Administrative National Forest System roads and public National Forest System Roads. 2-ER-100, 2-ER-102. As the name suggests, only the latter are open to the public. 2-ER-102. Therefore, the use of the number 446 does not clearly indicate that the road was open to the public—a fact the District Court noted. 1-ER-10.

The District Court specifically mentioned the 1972, 1981, and 1993 maps, 1-ER-12, but these maps are also ambiguous. The District Court noted that these maps show Robbins Gulch Road as an improved road, rather than a road with restrictions. 1-ER-10. But those maps also show improved roads which the Forest Service has no rights-of-way over, such as state and county roads. *See* 2-ER-182–88.

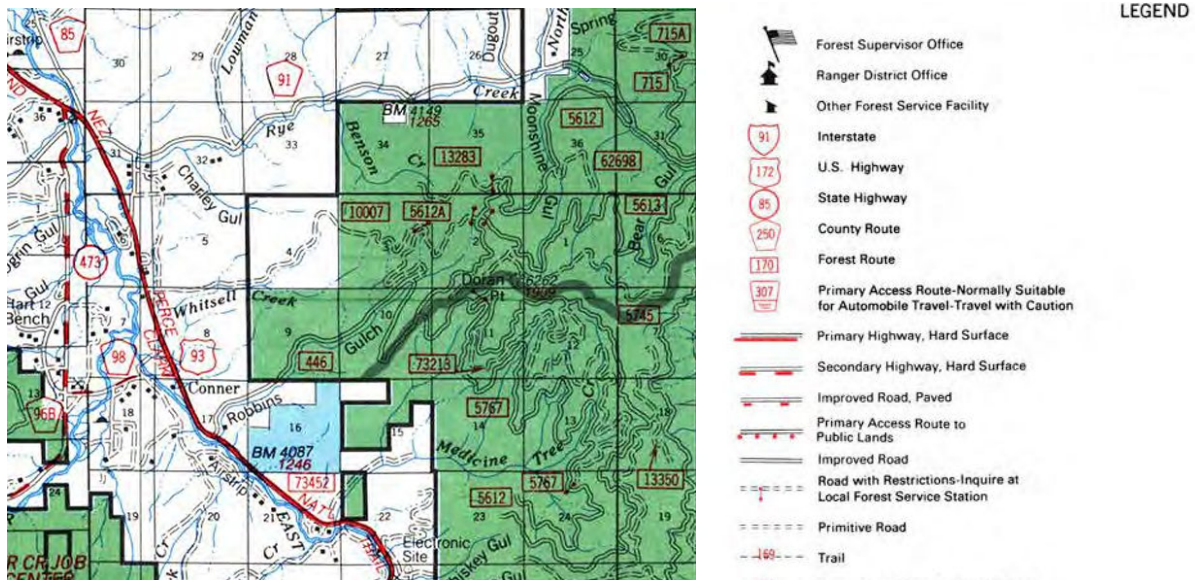
The 1972 map shows Robbins Gulch labeled “446,” 2-ER-182, but, again, this does indicate that it is open to the public. Instead, the map indicates that the portion of Robbins Gulch Road that crosses private land is not open to the public because a road north of Robbins Gulch

Road, number 75, is expressly labeled as the “Primary Access Route” to the area.



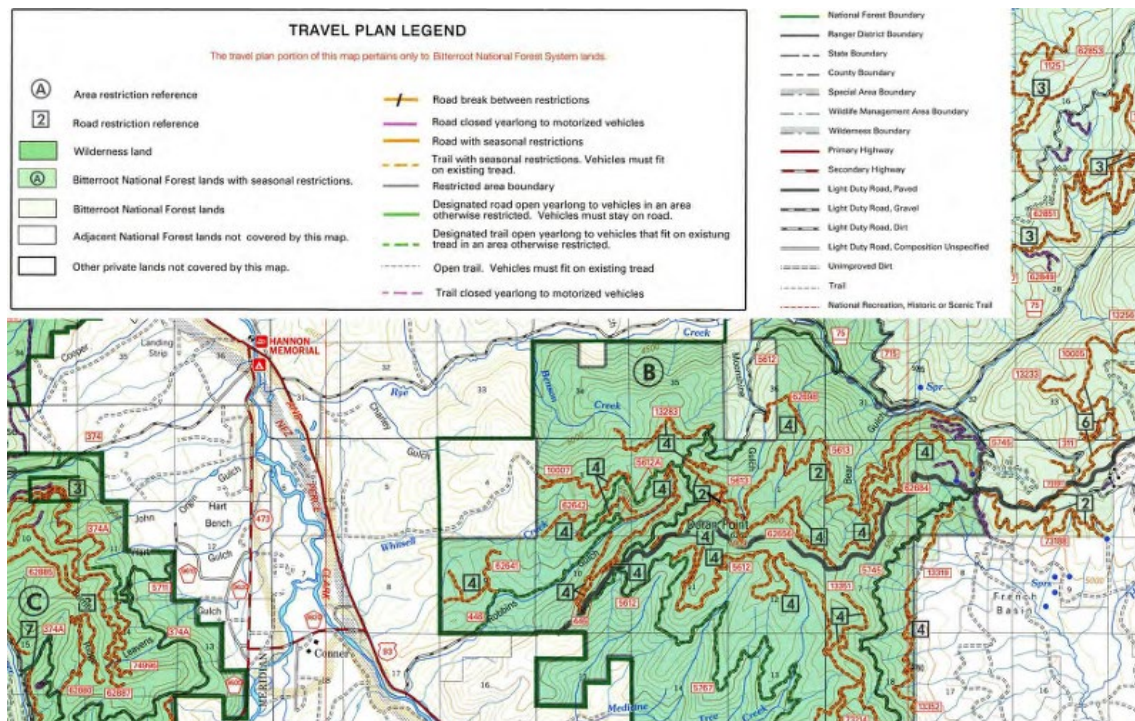
2-ER-182. The 1981 map is nearly identical to the 1972 map. 2-ER-184.

The 1993 map also supports the conclusion that the portion of Robbins Gulch Road that crosses private land is not open to the public:



2-ER-186. It labels Robbins Gulch Road as “446” only on Forest Service land. *Id.* The road to the north—the primary access route—is now labeled as a county road. *Id.* That road is also labeled as an improved road like Robbins Gulch Road, further demonstrating that the “improved” label does not necessarily mean the Forest Service has jurisdiction over the road.

Finally, the 2005 map is also unclear, at best:



2-ER-188. This map expressly color codes which roads are designated open year-round, which roads are closed seasonally, and which roads are open to motor vehicles. *Id.* The portion of Robbins Gulch Road that crosses private land has none of these designations and is not labeled

“446,” which can be reasonably interpreted as the Forest Service not allowing public use on that portion of the road. *Id.*

The ambiguous nature of these maps and others like them was the catalyst for the travel management rule. Indeed, to this day the Forest Service acknowledges that only the maps adopted under the travel management rule reflect which roads are open to the public. 2-ER-141. One Forest website warns visitors “that not all roads/trails on GPS/maps are open for public access. *Please consult the Motor Vehicle Use Map for the area you are in to determine public access.*” *Id.* (emphasis added).² That Robbins Gulch Road appeared on pre-travel management rule Forest Service maps does not mean that the Road was open to the public. It was only after the agency adopted a travel management plan that the Forest Service created unambiguous maps that reflect what roads are open to the public.

The Forest Service’s own documents were ambiguous and did not clearly state the Forest Service’s position that Robbin’s Gulch Road was

² The District Court dismissed Plaintiffs reliance on these documents as only pertaining to motorized use. 1-ER-12. In fact, these documents show that non-motorized use maps (i.e., those not adopted pursuant to a travel management plan) do not reflect what areas are open to the public.

open to the public. And the Quiet Title Act’s limitations period does not begin to run if “the United States’ claim is ambiguous or vague[.]” *Waibel Ranches, LLC*, 2024 WL 3384233, at *2 (quoting *Shultz*, 886 F.2d at 1160). Just like in *Elk Mountain*, even if the Forest Service had internally interpreted its maps, it wasn’t until the agency clearly stated to the public that public access was allowed that Mr. Wilkins and Mrs. Stanton had a cause of action. That statement occurred, at the earliest, when the Forest Service placed the “Public Access Thru Private Lands” sign no earlier than September 2006. 8-ER-1615–17. This case was filed in August 2018, less than twelve years later and, thus, was filed within the statute of limitations.

This Court should reverse the judgment of the District Court.

B. At a minimum, disputed facts prevented the District Court from entering summary judgment for the government.

In mistakenly relying on the law of the case, the District Court mentioned a 2006 Road Closure Order it analyzed in its order granting the motion to dismiss. 1-ER-11. It is unclear whether the District Court believed that this 2006 Road Closure Order was relevant to its decision granting the government’s motion for summary judgment because the

opinion's analysis only focuses on the Forest Service maps. 1-ER-11–13. But if the District Court did believe that the 2006 Order demonstrates that Mr. Wilkins and Mrs. Stanton filed their quiet title action out of time, that is incorrect. Whether the Forest Service placed the Order along Robbins Gulch Road is disputed. Plaintiffs and their neighbors do not recall seeing the Order posted along the road. 8-ER-1576–77 (Depo. Wilkins 104:3–9, 106:13); 8-ER-1530–31 (Depo. Stanton 85:23–86:4.); 7-ER-1334. Rather, they only recall general, ambiguous signs indicating that the road was closed *ahead*. 8-ER-1576 (Depo. Wilkins 103:10–13); 7-ER-1334. This evidence alone produces an issue of material fact about Plaintiffs' knowledge of the closure orders that is sufficient to deny Defendant summary judgment.

Furthermore, Mr. Wilkins and Mrs. Stanton presented further evidence that the District Court failed to analyze and, at a minimum, raises issues of material fact. Namely, Ida Wildung—who was the grantor of one of the Easements at issue in this case—told several neighbors, and Forest Service officials, around 2007 that the 1962

Easement was not meant to allow public access.³ 7-ER-1333. In other words, the evidence shows that when the Forest Service began to indicate that it believed the 1962 Easement allowed for public use in 2007, Mrs. Wildung was surprised, and met with Forest Service officials to tell them that she never intended to convey an easement that allowed for public use. 7-ER-1333 ¶¶ 14–17. If the grantor of the Easement did not know until 2007 that the Forest Service believed the 1962 Easement allowed for public use, then no other landowner along Robbins Gulch Road could reasonably be expected to know of the government’s claim that the 1962 Easement allowed for public use.

At a minimum, this Court should vacate the judgment of the District Court and remand for a trial to determine when the statute of limitations accrued.

³ Ida Wildung’s statements are not offered for the truth of the matter asserted—i.e., that the Easement does not allow for public use—but rather as evidence of when she, as grantor of the Easement, became aware of the Forest Service’s position that the Easement allows for public use. *See United States v. Arteaga*, 117 F.3d 388, 397 (9th Cir. 1997) (Where evidence is offered a non-truth related purpose, it is not hearsay.); *Entous v. Viacom Int’l, Inc.*, 151 F. Supp. 2d 1150, 1158 (C.D. Cal. 2001) (statements offered to show notice to Plaintiff are non-hearsay).

III. The government is equitably estopped from asserting the statute of limitations as a defense because officers of the United States cannot tell a landowner there is no need to sue and then later argue that the landowner waited too long to sue.

Alternatively, this Court can reverse the judgment of the District Court because the undisputed facts demonstrate that the government is equitably estopped from asserting the statute of limitations as a defense. The Quiet Title Act’s statute of limitations is a nonjurisdictional claim processing rule and, thus, some equitable considerations are appropriate when analyzing a statute of limitations defense. *Wilkins*, 598 U.S. at 165. *See id.* at 164 (“Precisely because the Court’s inquiry was so focused on the particular nature of equitable tolling, *Beggerly* also did not address whether other exceptions such as ‘fraudulent concealment or equitable estoppel might apply[.]’” (quoting *Beggerly*, 524 U.S. at 49)). The Supreme Court has suggested that equitable estoppel is available to prevent the government from asserting the statute of limitations in Quiet Title Act cases. *See id.*; *Beggerly*, 524 U.S. at 48 (citing *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990)).

To establish that a defendant is estopped from raising the statute of limitations as a defense, “the plaintiff carries the burden of pleading

and proving” “(1) knowledge of the true facts by the party to be estopped, (2) intent to induce reliance or actions giving rise to a belief in that intent, (3) ignorance of the true facts by the relying party, and (4) detrimental reliance.” *Est. of Amaro v. City of Oakland*, 653 F.3d 808, 813 (9th Cir. 2011) (quotations omitted). “Additionally, when estoppel is sought against the government, there must be affirmative misconduct (not mere negligence) and a serious injustice outweighing the damage to the public interest of estopping the government.” *Id.* (quotations omitted); *see also Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1165 (9th Cir. 2005), *as amended* (Mar. 10, 2005) (applying same standard to estoppel against federal government).

As to the first two traditional elements, Defendant’s statute of limitations argument here necessarily means that it had knowledge of the true facts, because it would be illogical to argue that the landowners should have known of the claim of the United States if the federal government did not in fact know of its claim. But despite this knowledge of its claim, the Forest Service and its officials told the landowners that any previous maps were unclear and that it had to go through the travel management process to determine what can and should be open to the

public. 8-ER-1622, 8-ER-1698. The Forest Service then put out official notice that its proposed travel management plan would not allow for public use on the Robbins Gulch Road Easement. 8-ER-1641. Then-Darby District Ranger Chuck Oliver reinforced these statements by telling Mr. Wilkins that he could relax and the travel management process would resolve any issues with public use on the Easement because the public would not be allowed to use the Easement. 8-ER-1578 (Depo. Wilkins 113:22–24). In short, District Ranger Oliver induced reliance by telling Mr. Wilkins that the travel management process would address all the complaints about public use of the Easement. *Id.*

As to the third traditional element, this Court’s “precedent holds that a plaintiff can know, or suspect, that she has a cause of action and still be ‘ignorant of the true facts’ of the case.” *Est. of Amaro*, 653 F.3d at 813. “Most directly, this court has held that equitable estoppel applies to bar a statute of limitations defense when a plaintiff *who knows of his cause of action* reasonably relies on the defendant’s statements or conduct in failing to bring suit.” *Id.* (quotations omitted). Even if Mr. Wilkins and Ms. Stanton should have known of the government’s position, it was reasonable to rely on the Forest Service’s statements

that the travel management process was the way to resolve their complaints about public use.

To the final traditional element, Plaintiffs in fact detrimentally relied on the Forest Service's statements to delay filing this suit. If Mr. Wilkins and Mrs. Stanton had not waited over eight years for the Forest Service to complete the travel management process, and had not relied on District Ranger Oliver's statements when Mr. Wilkins brought up his concerns, they would have filed in 2007, about a year after the 2006 Road Closure Order that the District Court referenced in its previous decision and fewer than two years after the final pre-travel management rule map was published. Thus, even if either of these documents caused Mr. Wilkins's and Mrs. Stanton's claims to accrue, the required filing date was extended by the Forest Service's actions between 2007 and 2016. And as soon as a Forest Service official told Mr. Wilkins that he would have to sue the Forest Service to get relief, he did. 8-ER-1580 (Depo. Wilkins 118:14–17).

Finally, undisputed facts demonstrate the elements that apply when estoppel is sought against the government. "There is no single test for detecting the presence of affirmative misconduct; each case must be

decided on its own particular facts and circumstances.” *Watkins v. U.S. Army*, 875 F.2d 699, 707 (9th Cir. 1989) (en banc). Affirmative misconduct generally requires “an affirmative misrepresentation or affirmative concealment of a material fact by the government, although it does not require that the government intend to mislead a party.” *Id.* (citations omitted). Here, even if the Forest Service and District Ranger Oliver did not intend to mislead Mr. Wilkins, the official statements and conversations had the effect of concealing vital information to the landowners.

The singular focus on the travel management process, and the suggestion that Mr. Wilkins did not and should not sue to resolve any concerns, concealed that the government believed any quiet title claim had accrued, that it apparently did not believe its statements that previous maps were confusing, and that the agency had no intention of resolving any dispute without litigation. The Forest Service then took over eight years to finalize a travel management plan, 8-ER-1658, allowing it to run the clock on the statute of limitations while Mr. Wilkins and Mrs. Stanton waited in good faith for their complaints

to be addressed without litigation. The Forest Service's transgressions, even if unintentional, should not be rewarded.

Finally, public policy weighs in favor of estopping the government because resolving quiet title disputes is in the public interest. "A dismissal pursuant to [the Quiet Title Act's statute of limitations] does not quiet title to the property in the United States. The title dispute remains unresolved." *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 291 (1983). Indeed, during the previous oral argument at this Court, Judge VanDyke suggested Mr. Wilkins and Mrs. Stanton put up a gate across Robbins Gulch Road to get the Forest Service to sue them 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). But the purpose of the Quiet Title Act is to ensure an orderly process to resolve title disputes, so that property owners do not have to resort to tricks to entice the federal government to bring an action to resolve the title dispute. *See* S. Rep. No. 92-575 at 1-2 (1971).

It is in the interest of the landowner, the Forest Service, judicial resources, and the public to ensure that this dispute does not linger and

is resolved on the merits. Plaintiffs, taking the agency and its officials at their word that Robbins Gulch Road would not be open to the public, delayed filing this suit to avoid potentially needless litigation. Failing to reach the merits here will not resolve the ongoing title dispute between the landowners and the Forest Service and will set a precedent “compell[ing]” landowners “to sue to protect against the possibility, however remote, that the government might someday” take an adverse position. *Michel*, 65 F.3d at 132.

In rejecting Mr. Wilkins’s and Mrs. Stanton’s equitable estoppel argument, the District Court focused solely on affirmative misconduct, saying that this case is distinguishable from *Watkins* “where, year after year, the military repeatedly misinformed the plaintiff.” 1-ER-17. But all the Forest Service’s statements—about how previous maps are confusing, that the travel management process would clarify the maps, and the explicit statement from the District Ranger that Mr. Wilkins did not need to worry—resulted in repeated misstatements and an eight year delay in bringing this suit.

The District Court also stated that Mr. Wilkins did not act diligently to protect his own interests. 1-ER-17. But he did. Mr. Wilkins

asked the Forest Service officials in charge of the travel management process what it meant and those officials attempted to allay Mr. Wilkins's fears by telling him to relax because Robbins Gulch Road would be closed. 8-ER-1578 (Depo. Wilkins 113:22–24).

The District Court also admonished Mr. Wilkins by noting that the scoping document only proposed closing Robbins Gulch between mile marker 1.5 to 3.1. 1-ER-16–17. It then stated that if Mr. Wilkins “properly consulted the scoping document, he would have seen that the proposal did not close the entirety of Robbins Gulch Road to public use.” *Id.*

But properly consulting the scoping document demonstrates that Mr. Wilkins was reasonable in believing that the portion of Robbins Gulch Road that crossed his road would not be open to the public after the travel management rule was adopted. It makes little sense to allow the public to use a road for one and a half miles, remove a road for one and a half miles, and then have a road from mile marker 3.1 that attaches to the rest of the roads in the National Forest. 2-ER-182. In light of the fact that the old forest maps labeled the road to the north as the “primary access route”—and that road connects to the portion of

Robbins Gulch Road above mile marker 3.1—the most reasonable interpretation of the scoping document is that the Forest Service contemplated closing Robbins Gulch Road below mile marker 3.1. And if Mr. Wilkins had any doubt about this interpretation, District Ranger Oliver told Mr. Wilkins that is what the scoping document meant.

The federal government does not get to tell a property owner that his problems will be resolved without litigation, causing him to delay filing a suit, and then complain that the property owner did not file his suit earlier. This Court should hold that the government is equitably estopped from asserting the statute of limitations as a defense and remand to the District Court so that it can interpret the deed at issue.

IV. The District Court erred in not separately analyzing Mr. Wilkins and Mrs. Stanton’s distinct claim that the Forest Service is overburdening the easement.

Mr. Wilkins and Mrs. Stanton allege two claims for relief in their complaint. First, they allege that the 1962 Easement does not grant an easement for general public use, but rather it grants the right to ingress and egress by the United States, its agencies (namely, the Forest Service), and those who hold specific permits or licenses issued by the United States. 8-ER-1723–24 ¶¶ 30–34. Second, the 1962 Easement

does not allow the government and those it invites on the easement to overburden the servient estate and instead requires the government to ensure reasonable use of its easement. 8-ER-1724 ¶¶ 35–38.

In a footnote, the District Court dismissed this second claim for relief, stating, “To the extent Plaintiffs’ second claim sought to impose an affirmative action duty on the Forest Service to ‘maintain and patrol’ Robbins Gulch Road, this allegation seems to take this claim outside of the QTA.” 1-ER-4 n.2 (citing *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 567 U.S. 209 (2012)). But this Court has said that after *Patchak*, “it remains clear that under both Supreme Court precedent and our precedent that the QTA provides the exclusive remedy for claims involving adverse title disputes with the government.” *McMaster v. United States*, 731 F.3d 881, 899 (9th Cir. 2013). Because Mr. Wilkins and Mrs. Stanton dispute the federal government’s duties under the easement—a question that involves the interpretation of that easement—then the Quiet Title Act is the appropriate cause of action for resolving that dispute. *Waibel Ranches, LLC*, 2024 WL 3384233, at *2 (“The QTA is the appropriate cause of action when ‘the remedy sought pragmatically involve[s] some type of

declaration as to the ownership rights of the parties,’ including ‘disputes over the right to an easement and suits seeking a declaration as to the scope of an easement.’” (quoting *Robinson v. United States*, 586 F.3d 683, 688, 686 (9th Cir. 2009))).

The District Court also stated that it “scoured” the complaint and found “no allegation that the Forest Service failed to ‘patrol’ or ‘maintain’ against any threat other than public use[.]” 1-ER-4 n.2. But the Second Cause of Action alleges that the government has obligations to mitigate *excessive* use of the easement, even by those otherwise authorized to use it. *See* 8-ER-1722. Contrary to the District Court’s determination, the government’s duties under the easement are independent of its rights under the easement. *See Woods v. Shannon*, 344 P.3d 413, 417 (Mont. 2015).

Under Montana law, “the holder of an easement ‘has not only the right but the duty to keep it in repair,’” *id.* at 417 (quoting *Guthrie v. Hardy*, 28 P.3d 467, 477 (Mont. 2001)). As such, “[a]n easement may be extinguished when the holder of the easement uses the easement in a way that overburdens the servient estate or is incompatible with the nature of the easement.” *Id.* In short, even if the 1962 Easement does

not expressly limit who the government can invite to use the easement, the government may not invite use in a manner that overburdens the easement. *See id.* (duty to not overburden easement extends to those the easement holder invites).

Moreover, the “requirement not to cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment ... is an independent requirement on an easement holder’s use of the easement.” *Mattson*, 215 P.3d at 692; *see also id.* at 690 n.9 (quoting *Wilson v. Brown*, 897 S.W.2d 546, 550 (Ark. 1995), for the proposition that “the holder of the dominant estate has a duty to use the property so as not to damage the owner of the servient estate”). This requirement is longstanding in Montana, *Anderson v. Stokes*, 163 P.3d 1273, 1276 (Mont. 2007) (holding that holder of an easement granted in 1949 has duty to keep the easement in repair), and was well established when the 1962 Easement was conveyed, *see* Restatement (Third) of Prop.: Servitudes § 4.13, reporter’s note (2000) (citing Restatement (First) of Prop. § 485 (1944) for the duty of repair).

Because the requirement not to overburden an easement is an independent aspect of the easement, it must be analyzed separately from the rights the easement holder possesses. That is why Mr. Wilkins and Mrs. Stanton brought two claims of relief. And these independent claims accrued at different times because the government's actions expressing its view of its rights under the Easement will not necessarily express its views of its obligations under the Easement. *Michel*, 65 F.3d at 132.

For most of the history of the Easement, the Forest Service had ensured that use of the Easement did not cause unreasonable damage to the servient estate or interfere unreasonably with its enjoyment. 8-ER-1717 ¶ 18. Based on these actions, the landowners and their predecessors would have reasonably assumed that the Forest Service believed it had obligations under the Easement. *See Waibel Ranches*, 2024 WL 3384233, at *2 (stating that the government's actions can support belief about terms of an easement (citing *Shultz*, 886 F.2d at 1160)). But the Forest Service's tone changed nine months before the Complaint was filed.

In 2017, the Forest Service stated its position that it had no obligations under the terms of the Easement. 7-ER-1417 (Depo. Winthers 14:14–15:17). Specifically, on December 4 of that year, then-District Ranger Eric Winthers met with several residents of Robbins Gulch Road. 7-ER-1416 (Depo. Winthers 12:9–18). At the meeting, residents expressed concern about the problems caused by the Forest Service’s lack of road maintenance, and Mr. Winthers implied that the Forest Service had no duty to maintain the Easement. 7-ER-1417 (Depo. Winthers 14:14–15:17). Mr. Winthers’ implication was made explicit seven months later in a letter from an attorney in the Forest Service’s general counsel office. 7-ER-1320. That letter disclaimed any duty to maintain the Easement. The landowners filed their lawsuit nine months after the meeting and one month after the general counsel’s letter, well within the Quiet Title Act’s twelve-year statute of limitations.

That July letter also expressly disclaimed any duty to ensure reasonable use of the Easement. 7-ER-1320. The only other indication of the government’s position on this issue was earlier that year, when Forest Service law enforcement officer Stephanie Zacha mistakenly told a resident of Robbins Gulch Road that the Forest Service had no

jurisdiction over the off-Forest portion of Robbins Gulch Road. 7-ER-1419–20 (Depo. Winthers, 25:8–26:5). Even if the landowners’ claim about the government’s duties under the Easement accrued when Officer Zacha made those statements, the Complaint was filed within the twelve-year statute of limitations.

In short, the government rejects any obligation to ensure reasonable use of the Easement. 7-ER-1320. Consequently, problems on the road have increased, and those using the road have unreasonably interfered with Plaintiffs’ enjoyment of their own properties. Mr. Wilkins, Mrs. Stanton, and their neighbors have had to deal with people trespassing, stealing their personal property, shooting at their houses, hunting both on and off the easement, and travelling at dangerous speeds on and around Robbins Gulch Road. 8-ER-1517, 8-ER-1522 (Stanton Depo. 31:9–32:2; 51:20–52:7); 8-ER-1582–83 (Wilkins Depo. 127:17–129:2, 133:10–12); 7-ER-1333. Increased use of the Easement has caused sediment and silt to build up on the underlying properties, resulting in the wash-out of portions of those properties. 8-ER-1576 (Wilkins Depo. 102:03–103:06). But despite this increasing burden on the servient estate, the Forest Service has decreased the

amount of maintenance it conducts on the Easement. 8-ER-1517 (Stanton Depo. 30:7–8, Aug. 15, 2019).

Because the government rejects that it has any obligations under the Easement, and because the government's obligations are an independent requirement on its use of the Easement, Mr. Wilkins and Mrs. Stanton brought a separate and independent claim to address this aspect of the easement. The District Court should have analyzed these claims separately from the claim asking the court to define how the government can use its Easement. This Court should reverse the judgment of the District Court and remand to the District Court so that it can address both claims separately.

CONCLUSION

This Court should reverse the judgment of the District Court and remand for a decision on the scope of the Easement and the government's obligations under the Easement. In the alternative, this Court should vacate the judgment of the District Court and remand for

a trial on whether Mr. Wilkins and Mrs. Stanton timely filed their claims.

DATED: March 14, 2025.

Respectfully submitted,

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STATEMENT OF RELATED CASES

This case is related to the previous appeal: *Wilkins, et al. v. United States*, No. 20-35745.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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