

Nos. 14-1497 and 15-27

In the Supreme Court of the United States

KANE COUNTY, UTAH, PETITIONER

v.

UNITED STATES OF AMERICA

STATE OF UTAH, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that to establish the existence of “disputed title to real property in which the United States claims an interest,” as required to invoke the waiver of sovereign immunity provided by the Quiet Title Act, 28 U.S.C. 2409a(a), a plaintiff must establish that the United States either explicitly or implicitly disputed the plaintiff’s title to the property in question.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-41¹) is reported at 772 F.3d 1205. The opinion of the district court (Pet. App. 69-114) is reported at 934 F. Supp. 2d 1344.

¹ Unless otherwise noted, references to the Petition Appendix are to the appendix in No. 14-1497.

JURISDICTION

The judgment of the court of appeals was entered on December 2, 2014. Petitions for rehearing en banc were denied on February 17, 2015 (Pet. App. 274). On May 7, 2015, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari in No. 14-1497 to and including June 18, 2015, and the petition was filed on that date. On April 23, 2015, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari in No. 15-27 to and including June 18, 2015. On June 9, 2015, Justice Sotomayor further extended the time to July 3, 2015, and the petition was filed on July 2, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case involves claims by petitioners that there are public rights-of-way crossing certain federal lands in Utah. In Revised Statutes § 2477 (1875) (R.S. 2477), a former provision of federal law previously codified at 43 U.S.C. 932 (1970) and repealed in 1976 subject to a savings provision in the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*, Congress granted “[t]he right of way for construction of highways over public land, not reserved for public uses.” While the FLPMA repealed R.S. 2477, it preserved any valid right-of-way existing on the date of its enactment, October 21, 1976. See 43 U.S.C. 1701 note. R.S. 2477 rights-of-way are easements over lands that are owned by the United States, and they are subject to regulation by the United States as owner of the underlying fee. See *Southern Utah Wilderness Alliance v. Bureau of Land Mgmt.*, 425 F.3d 735, 746 (10th Cir. 2005).

2. a. In April 2008, petitioner Kane County (the County) filed this action under the Quiet Title Act (QTA), 28 U.S.C. 2409a, alleging that five roads were public rights-of-way under R.S. 2477. Pet. App. 3. The QTA waives the United States' sovereign immunity for certain actions to resolve disputes with the United States concerning rights in particular property. Section 2409a(a) provides, with certain exceptions not relevant here, that "[t]he 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).

In 2010, the State of Utah (the State) intervened, contending that it was a joint owner of the rights-of-way at issue pursuant to a Utah statute. Ultimately, petitioners' suit sought to establish that 15 roads were R.S. 2477 rights-of-way.² Pet. App. 3-4.

With respect to several of the roads at issue, the United States argued that petitioners had not established subject matter jurisdiction under the QTA. The United States argued that the waiver of sovereign immunity under the QTA is conditioned on the existence of "disputed title," 28 U.S.C. 2409a(a), and that no such dispute existed with respect to those roads because the United States had not asserted any claim,

² The State and its political subdivisions have in the past seven years filed more than 20 actions in the United States District Court for the District of Utah, claiming title to over 12,000 separate rights-of-way over federal lands in that State. See *Garfield Cnty., Utah (1) v. United States*, No. 2:11-cv-1045, 2015 WL 1757194, at *1 n.2 (D. Utah Apr. 17, 2015) (listing cases filed thus far by Utah and Utah Counties).

or taken any actions, adverse to petitioners' claimed right to use the roads as R.S. 2477 rights-of-way. Pet. App. 71-72. With respect to the other roads at issue, the United States did not contest that "disputed title" existed.

b. In March 2013, after a bench trial, the district court issued two decisions, the first rejecting the United States' jurisdictional arguments and concluding that the court had jurisdiction with respect to all of the roads at issue, Pet. App. 69-114, and the second addressing the merits of petitioners' claims, *id.* at 115-273.

In its decision on jurisdictional issues, the district court held that it was not necessary for the United States to deny that a road is an R.S. 2477 right-of-way to create a dispute over title for purposes of 28 U.S.C. 2409a(a), so long as the United States had taken some action to "cloud" petitioners' title to claimed roads. Pet. App. 92-102. The court acknowledged that the United States' claim of underlying fee title with respect to the land on which the roads were located was not sufficient to create "disputed title," as a claim of title to the underlying land is not "inherently inconsistent" with another's ownership of an easement over that land. *Id.* at 93 (citation omitted). The court found, however, that the United States had created the requisite "disputed title" by taking a number of actions. Those actions included issuing a land-management plan that included a map that omitted certain of the roads, an action that the court viewed as creating an "ambiguity * * * regarding the [roads'] legal status," even though they "remained open factually," *id.* at 90; and issuing limited right-of-way permits to private individuals for portions of three of the

roads, while expressly disclaiming any intent to affect any existing R.S. 2477 right-of-way, *id.* at 90-91, 99-100.

In its decision on the merits, the district court held that petitioners had established rights-of-way for most of the road segments still in dispute, but not for certain other segments. The court also established various widths for the rights-of-way which it held had vested in the County and State. Pet. App. 272-273.

3. As relevant here, the United States appealed the district court's jurisdictional ruling that petitioners had demonstrated the "disputed title" required by 28 U.S.C. 2409a for claims to six of the roads. Petitioners appealed certain other aspects of the district court's decisions.

The court of appeals reversed the district court's jurisdictional ruling with respect to the six roads. Pet. App. 1-16. The court of appeals held that "to satisfy the 'disputed title' element of the QTA, a plaintiff must show that the United States has either expressly disputed title or taken action that implicitly disputes it." *Id.* at 10. The court emphasized that "a plaintiff need not show the United States took direct action to close or deny access to a road—indirect action or assertions that actually conflict with a plaintiff's title will suffice." *Ibid.* That standard, the court reasoned, ensured the existence of a concrete controversy between the parties, thereby avoiding issuance of advisory opinions in the absence of any dispute. *Ibid.* The court also observed that its construction was consistent with the "established principle that waivers of sovereign immunity are to be read narrowly." *Id.* at 8 (citing *Block v. North Dakota*, 461 U.S. 273, 287 (1983)).

The court of appeals adopted its standard in reliance on two Ninth Circuit decisions using the same standard. Pet. App. 8-9 (discussing *Alaska v. United States*, 201 F.3d 1154 (9th Cir. 2000), and *Mills v. United States*, 742 F.3d 400, 405 (9th Cir. 2014)). The court rejected petitioners' argument that it should adopt a more permissive and vague "cloud on title" standard to which the Ninth Circuit had referred in two other cases that preceded *Mills*, *Leisnoi, Inc. v. United States*, 170 F.3d 1188, 1192 (1999) (*Leisnoi I*), and *Leisnoi, Inc. v. United States*, 267 F.3d 1019, 1023 (2001) (*Leisnoi II*). The court stated that "[t]o the extent the Ninth Circuit still utilizes a 'cloud on title' standard, we would reject it as incompatible with the rule that conditions on a waiver of sovereign immunity are to be specifically observed," explaining that a "cloud on title" standard would provide "little guidance to parties as to what constitutes a title dispute." Pet. App. 10.

The court of appeals then concluded that the United States had not expressly or implicitly disputed title with respect to any of the six roads at issue in the United States' appeal. Pet. App. 11-16. The court explained that, with respect to two of the roads, the land-management plan adopted by the Bureau of Land Management (BLM) for the area stated that it did not affect any valid existing rights, including rights-of-way, and that any potential ambiguity created by the omission of the roads from certain maps was clarified by subsequent maps that made clear that the roads were open. *Id.* at 12-13. With respect to the four Cave Lakes roads, the court of appeals concluded that the United States' statement in its answer that it lacked sufficient information to form a belief as to the

truth of the allegations regarding these roads, and therefore denied them, did not create a “disputed title” sufficient for jurisdiction. *Id.* at 14-15. The court also held that the grant of permits allowing a private entity to improve portions of the roads did not expressly or implicitly dispute petitioners’ rights-of-way, because petitioners did not suggest that the permits interfered with their claimed rights-of-way, and the permits expressly stated that they would be superseded by any R.S. 2477 rights-of-way.³ *Id.* at 16.

ARGUMENT

Petitioners contend (14-1497 Pet. 13-30; 15-27 Pet. 13-26) that the court of appeals erred in holding that to bring an action under the Quiet Title Act’s waiver of sovereign immunity in Section 2409a(a), a plaintiff must demonstrate that the United States has explicitly or implicitly disputed the plaintiff’s title to the property in question. The court of appeals’ decision is correct, and it does not squarely conflict with any decision of another court of appeals. Further review is unwarranted.

1. The court of appeals correctly held that the QTA’s requirement that there be “disputed title” is satisfied only when the United States “has either

³ The court of appeals made several other rulings that are not at issue before this Court. The court reversed certain of the district court’s merits determinations concerning roads for which jurisdiction was not at issue, Pet. App. 28-35, including its rulings concerning the width of certain R.S. 2477 rights-of-way, and it remanded for additional proceedings, *id.* at 36-41. The court also rejected the contention of amici conservation groups that the QTA’s statute of limitations had run with respect to petitioners’ R.S. 2477 claim to the North Swag road. *Id.* at 17-27.

expressly disputed title or taken action that implicitly disputes it.” Pet. App. 10.

a. The QTA “provide[s] the exclusive means by which adverse claimants [can] challenge the United States’ title to real property.” *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 132 S. Ct. 2199, 2207 (2012) (*Patchak*) (citations omitted). The QTA waives the United States’ sovereign immunity in order to permit the United States to be sued “to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights.” 28 U.S.C. 2409a(a). This Court has recognized that the QTA’s provisions are subject to the well-established principle that “when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied.” *Block v. North Dakota*, 461 U.S. 273, 287 (1983).

Section 2409a(a) requires the plaintiff to demonstrate that “title” to the property in question is “disputed.” 28 U.S.C. 2409a(a). The court of appeals correctly held that Section 2409a(a) requires the United States to have explicitly or implicitly disputed the plaintiff’s rights in the property. The statute’s use of the term “disputed” indicates that title to the property must, at the outset of the litigation, be the present subject of a controversy between the parties—*i.e.*, the United States and the party seeking to quiet title. See *Black’s Law Dictionary* 572 (10th ed. 2014) (“dispute” is a “conflict” or “controversy” between parties); *Webster’s II New Riverside University Dictionary* 389 (1994) (to “dispute” is to “question the truth or validity of” or “strive against”); accord *McMaster v. United*

States, 177 F.3d 936, 939 (11th Cir. 1999) (“As the phrase itself demonstrates, there must be a dispute, and that dispute must relate to ‘title to real property.’”) (citing 28 U.S.C. 2409a(a)), cert. denied, 528 U.S. 1118 (2000).

If a party claims title but the United States does not make any explicit or implicit claim of an interest adverse to that party, then, one would not understand title to be “disputed.” In the case of an easement like the rights-of-way at issue here, for instance, the United States’ claim of the underlying fee interest in the land is not sufficient to create “disputed” title, as the United States’ ownership of the underlying fee is not adverse to the rights of the party claiming the right to use the easement. See *United States v. Bedford Assocs.*, 657 F.2d 1300, 1316 (2d Cir. 1981) (Section 2409a “permits the government to be named as a defendant whenever it claims an interest in real property that is adverse to that of the plaintiff.”) (internal quotation marks omitted), cert. denied, 456 U.S. 914 (1982). Nor would title be “disputed” simply because a dispute might arise in the future. Rather, Section 2409a(a) requires that there must be a present dispute over title—in other words, the United States must have made a claim adverse to the other party’s title.

Several provisions of the QTA reinforce that conclusion. Section 2409a(d) requires that “[t]he 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.*” 28 U.S.C. 2409a(d) (emphasis added). Similarly, 28 U.S.C. 1346(f) provides that “the district courts shall have exclusive original juris-

diction 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.*” *Ibid.* (emphasis added). To invoke jurisdiction under the QTA, then, a complaint must set out that the United States has asserted some claim of right, title, or interest that conflicts with the right, title, or interest claimed by the plaintiff.

In addition, the QTA’s statute of limitations provisions are premised on the United States’ assertion of an adverse claim. Section 2409a(g) thus provides that the limitations period for a plaintiff other than a State is “deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.” 28 U.S.C. 2409a(g). This language confirms that the United States must have made a claim creating a disputed title for an action to arise in which the United States can be joined as a party, as well as for the 12-year limitations period to commence.

b. Petitioners contend (14-1497 Pet. 17-20; 15-27 Pet. 18-20) that the “disputed title” requirement is satisfied whenever the United States’ actions create a “cloud on title.” Before the court of appeals, petitioners argued that a “cloud on title” arose as a result of various actions by the United States that, in petitioners’ view, suggested that the United States did not recognize the roads in question as rights-of-way under R.S. 2477. See 15-27 Pet. C.A. Reply Br. 3-11. The court of appeals correctly rejected that argument.

As an initial matter, R.S. 2477 rights-of-way are easements, and as the court of appeals noted, “[e]asements and servient estates can (and usually do) peaceably coexist.” Pet. App. 16 (quoting *George v. United*

States, 672 F.3d 942, 947 (10th Cir.), cert. denied, 133 S. Ct. 432 (2012)). R.S. 2477 rights-of-way create limited rights that are subject to regulation by the United States as owner of the underlying fee. See *Southern Utah Wilderness Alliance v. Bureau of Land Mgmt.*, 425 F.3d 735, 746 (10th Cir. 2005) (*SU-WA*). Federal land-management actions therefore generally will not contradict a claim of an R.S. 2477 right-of-way unless the management action explicitly or implicitly disputes or contradicts the right-of-way as claimed. Under petitioners' amorphous "cloud on title" standard, however, virtually any generally applicable federal management plan or other activity in the area of a claimed R.S. 2477 route could be characterized as "clouding" the claim to that right-of-way.

Petitioners' claims in this case demonstrate the extent to which their "cloud on title" standard would dilute Section 2409a(a)'s "disputed title" requirement. As the court of appeals explained, some of the actions on which petitioners relied, such as a land-management plan that omitted certain of the roads from a map of the area, were "at best ambiguous," and involved no actions suggesting that petitioners did not possess R.S. 2477 rights-of-way in the roads. Pet. App. 12. The other actions on which petitioners relied, such as the grant of certain permits expressly not intended to limit any rights-of-way, explicitly disclaimed any intention to dispute petitioners' rights.⁴ *Id.* at 14-15.

⁴ The County argues that "disputed title" exists under 28 U.S.C. 2409a(a) because the United States "continues to dispute the width" of the rights-of-way. 14-1497 Pet. 20. The County, however, does not point to any actions taken by the United States prior to the filing of this suit that explicitly or implicitly disputed the

Far from construing Section 2409a(a)'s waiver of sovereign immunity "strictly," then, petitioners would eviscerate the requirement of "disputed title" by finding it satisfied whenever the United States engages in general land-management activities that have no effect on parties' rights-of-way, or takes actions that disclaim any intention to affect any rights-of-way. *Block*, 461 U.S. at 287. As a result, the United States would be subject to myriad suits in the absence of any dispute with the plaintiffs, based on actions that are equivocal or entirely consistent with the plaintiffs' claimed rights in the property. That problem is particularly acute in the context of R.S. 2477 rights-of-way, which may have been created without formal documentation, and are subject to continuing regulation by the United States as owner of the underlying fee. See Pet. App. 10. As the court of appeals explained, moreover, parties would have "little guidance * * * as to what constitutes a title dispute," and courts could find themselves issuing advisory opinions in the absence of any concrete controversy between the parties. *Ibid.*

Petitioners do not provide any textual basis supporting their argument that Section 2409a(a)'s "disputed title" requirement can be satisfied even when the United States does not dispute title—much less the "unmistakable statutory expression of congressional intent" necessary to establish a waiver of sovereign immunity. *FAA v. Cooper*, 132 S. Ct. 1441, 1448 (2012). Rather, petitioners rely only on a committee

width of the rights-of-way at issue here. Section 2409a(a)'s requirement of "disputed title" indicates that the dispute must exist at the outset of a case for the United States to be made a defendant. See pp. 8-9, *supra*.

report on the bill that became the QTA as support for their construction of the “disputed title” requirement. 14-1497 Pet. 18, 20-21; 15-27 Pet. 14, 21. “Legislative history,” however, “cannot supply a waiver that is not clearly evident from the language of the statute.” *Cooper*, 132 S. Ct. at 1448. In any event, the passage on which petitioners rely sheds no light on the “disputed title” requirement. The passage in question reviewed the English common law origins of the quiet title action, noting that such actions arose in courts of equity to permit landowners to “maintain a suit to remove a cloud on title.” H.R. Rep. No. 1559, 92d Cong., 2d Sess. 6 (1972). That reference to removing a “cloud on title” does not suggest the absence of any need for an actual dispute over title under the QTA. The examples cited in the report similarly do not suggest that no live dispute was required. Moreover, the paragraph closes with the caveat that “this [discussion], of course, is merely included to show the history of this type of action.” *Ibid.* Therefore, the legislative history’s discussion of English quiet title actions does not support petitioners’ view of the scope of Congress’s waiver of the sovereign immunity of the United States by authorizing civil actions “to adjudicate a disputed title to real property in which the United States claims an interest,” 28 U.S.C. 2409a(a).

c. Petitioners also appear to argue, for the first time in this Court, that the “disputed title” requirement is satisfied any time parties (including petitioners themselves) “dispute[] the United States’ claim of interest,” even if the United States does not assert any interest that is adverse to that party’s rights. 14-1497 Pet. 24; 15-27 Pet. 19. As an initial matter, petitioners did not raise that argument in the court of

appeals, and the court therefore did not address it. This Court does not ordinarily entertain questions that were not pressed or passed upon below, because it is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

In any event, petitioners’ argument lacks merit. Petitioners suggest no reason to conclude that the requisite “dispute[]” over title exists whenever a party other than the United States decides that it wishes to file suit to establish the extent of the United States’ interest in particular property. See *Cooper*, 132 S. Ct. at 1448. The statutory provisions discussed above, moreover, repeatedly refer to a claim of interest “by the United States”: the United States’ assertion of a claim starts the limitations period in certain situations, 28 U.S.C. 2409a(g), and the plaintiff must set forth the United States’ claim in the complaint, 28 U.S.C. 2409a(d); see also 28 U.S.C. 1346(f). Petitioners’ reading, moreover, would vastly expand the QTA’s waiver of sovereign immunity by permitting jurisdiction to be founded on a plaintiff’s one-sided view or its dissatisfaction with the United States’ interest in the property, even in the absence of any claim by the United States that is actually adverse to the plaintiff’s title. Petitioners point to no indication in the statutory text that Congress intended such a sweeping waiver of the United States’ immunity.

2. a. Contrary to petitioners’ contentions (14-1497 Pet. 25; 15-27 Pet. 13-18), the court of appeals’ decision does not conflict with decisions of the Ninth Circuit.

In the decision below, the court of appeals expressly adopted the test for “disputed title” set forth in the most recent Ninth Circuit decision on the issue, *Mills*

v. *United States*, 742 F.3d 400 (9th Cir. 2014). See Pet. App. 9. In *Mills*, the Ninth Circuit held that a QTA suit claiming title to an R.S. 2477 right-of-way did not satisfy the “disputed title” requirement because “the United States [did] not expressly dispute the existence of an R.S. 2477 right-of-way” for the route at issue, and it also had not “taken an action that implicitly disputes [that route’s] right-of-way.” *Mills*, 742 F.3d at 405; accord *Alaska v. United States*, 201 F.3d 1154, 1164-1165 (9th Cir. 2000) (“[a] title cannot be said to be ‘disputed’ by the United States if it has never disputed it”). Although the State asserts (15-27 Pet. 17) that *Mills* is “irrelevant” because the “federal land management agencies named in the suit” lacked authority to determine the right-of-way, the court of appeals did not rely on that fact. Rather, the court explained that the federal agencies, in disclaiming authority to determine the right-of-way, had “not expressly dispute[d] the existence of” the right-of-way. 742 F.3d at 405.

Petitioners rely (15-27 Pet. 13-18) on two earlier Ninth Circuit decisions in which the court held that “a third party’s claim of an interest of the United States can suffice if it clouds the plaintiff’s title.” *Leisnoi, Inc. v. United States*, 170 F.3d 1188, 1192 (1999); see *Leisnoi, Inc. v. United States*, 267 F.3d 1019 (2001). There, an Alaska Native Corporation (Leisnoi) brought a QTA claim to quiet title to land it had received from the United States, even though the United States did not claim any adverse interest in the property. The court held that title was “disputed” because a third party had asserted in state court that Leisnoi did not own the land and that the land should be returned to the United States. 267 F.3d at 1024.

That holding is incorrect because Section 2409a(a) requires that the United States itself have “disputed” the plaintiff’s title. See pp. 13-14, *supra*.

Leisnoi does not squarely conflict with the decision below. For one thing, *Leisnoi* concerned a situation in which a third party purported to assert, on behalf of the United States, a claim adverse to the plaintiff’s title. Here, by contrast, petitioners argue (*e.g.*, 15-27 Pet. 19) that their own claim to R.S. 2477 rights-of-way supplies the requisite dispute with the United States, even though the United States itself has not asserted any claim adverse to petitioners’. It is unclear whether the *Leisnoi* court would have considered that sort of one-sided claim to constitute “disputed title.” In addition, there is reason to doubt that *Leisnoi* represents the Ninth Circuit’s current understanding of the “disputed title” requirement. In its subsequent decision in *Mills*, the Ninth Circuit stated that “[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.” 742 F.3d at 405. The court did not qualify that statement or mention the *Leisnoi* decisions, *ibid.*, and it applied the test—whether the United States has explicitly or implicitly disputed title—that the Tenth Circuit applied in this case. See pp. 14-15, *supra*.

If given the opportunity, moreover, the Ninth Circuit might reconsider *Leisnoi* (to whatever extent it may survive *Mills*) in light of this Court’s recent decision in *Patchak*. There, this Court held that a claim by a party who sought to challenge the United States’ authority to acquire particular property in trust for an Indian tribe, but who did not assert any competing right in the property, does not fall within the QTA.

The Court explained that the QTA applies only to suits by “adverse claimants, meaning plaintiffs who themselves assert a claim to property *antagonistic to the Federal Government’s*.” 132 S. Ct. at 2207 (emphasis added). While the Court did not have occasion to address the particular situation presented in *Leisnoi*, in which a third party asserted that the United States had an adverse claim, *Leisnoi* is in considerable tension with this Court’s emphasis on adversity between the two parties to the QTA suit. The two parties in *Leisnoi*—Leisnoi and the United States—were not adverse to each other, because the United States did not dispute Leisnoi’s rights. *Patchak* strongly suggests that the QTA was not the proper vehicle for bringing that claim.⁵

b. Petitioners also argue (14-1497 Pet. 14-15; 15-27 Pet. 22-25) that the court of appeals’ decision is in tension with the courts’ understanding concerning when claims accrue for purposes of the QTA’s statute of limitations. The QTA’s general statute of limita-

⁵ Amicus Mountain States Legal Foundation (at 14-18) asserts that additional decisions adopted a “doubt on title” standard that conflicts with the decision below. That is incorrect. Those decisions did not address whether the United States need not actually take actions explicitly or implicitly disputing the plaintiff’s title. See *Lonatro v. United States*, 714 F.3d 866 (5th Cir. 2013) (dispute must be between the plaintiff and the United States); *Wisconsin Valley Imp. Co. v. United States*, 569 F.3d 331, 335 (7th Cir. 2009) (assuming that the United States must assert claim adverse to plaintiff’s); *Cadorette v. United States*, 988 F.2d 215, 224 (1st Cir. 1993) (condemnation proceeding resolved any dispute); *Ginsberg v. United States*, 707 F.2d 91, 93 (4th Cir. 1983) (landlord-tenant dispute not cognizable under QTA); *Bedford Assocs.*, 657 F.2d at 1316 (United States’ claimed interest need not be fee title, but may be a lesser interest adverse to the plaintiff’s).

tions (which does not apply to suits brought by a State) provides that a QTA claim is “deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.” 28 U.S.C. 2409a(g).⁶ Petitioners argue that courts have held that the limitations period begins running upon notice of a “cloud on title,” and that if Section 2409a(a) requires the United States to have implicitly or explicitly asserted an interest in the property, the limitations period could begin running before the plaintiff is able to bring suit. 15-27 Pet. 22. Petitioners are incorrect.

The decisions on which petitioners rely do not suggest that a QTA claim accrues in the absence of an implicit or explicit assertion of an adverse claim by the United States. To the contrary, they explain that such an adverse claim by the United States—not simply equivocal action consistent with the United States’ regulatory responsibilities—is necessary for a plaintiff’s QTA claim to accrue. See *San Juan Cnty., Utah v. United States*, 754 F.3d 787, 793 (10th Cir. 2014) (“[i]n other words, the period begins when the Quiet Title Act claimant ‘knew or should have known of the existence of *some* assertion—some claim—by the government of an adverse right’”) (citation omitted); *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 599 F.3d 1165, 1176 (10th Cir. 2010); *Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 738 (8th Cir. 2001) (“the limitations period is triggered when a

⁶ The QTA also provides limitations periods for certain claims by States. They similarly begin running when the State knew or should have known of “the claims of the United States,” 28 U.S.C. 2409a(h), or received notice of the “Federal claim to the lands,” 28 U.S.C. 2409a(i)-(k).

landowner has reason to know that the government claims some type of adverse interest in that land”), cert. denied, 535 U.S. 988 (2002); *California v. Yuba Goldfields, Inc.*, 752 F.2d 393, 396-397 (9th Cir. 1985) (same), cert. denied, 474 U.S. 1005 (1985); *Knapp v. United States*, 636 F.2d 279, 283 (10th Cir. 1980) (same).

The passages on which petitioners rely concern the fact that Section 2409a does not require the government to claim “full legal title” or fee-simple title—either to create the “dispute[]” necessary to invoke Section 2409a(a)’s waiver of sovereign immunity or to trigger Section 2409a(g)’s limitations period. *Spirit Lake*, 262 F.3d at 738. Rather, the government’s adverse claim may be a claim of any “right, title or interest” adverse to the plaintiff’s. 28 U.S.C. 2409a(d); see *Bedford Assocs.*, 657 F.2d at 1316. In that context, courts have used the phrase “cloud on title” to express the point that the United States need not claim fee title in order to trigger the limitations period—rather, it must simply claim some interest or right adverse to the plaintiff’s. *Rio Grande Silvery Minnow*, 599 F.3d at 1176; *Knapp*, 636 F.2d at 283.

Petitioners are therefore incorrect in contending that the decision below “guarantees that the limitations period will often expire *before* a QTA action exists.” 15-27 Pet. 24. An action by the United States that does not explicitly or implicitly dispute a plaintiff’s claim to an R.S. 2477 right-of-way provides no grounds for naming the United States in a suit to adjudicate title—and it would also not trigger the limitations period. Pet. App. 23.

3. The State contends (15-27 Pet. 21) that the ruling below “permits the United States * * * to man-

age public lands in a manner that contradicts the State's title, but when sued to remove the cloud that the United States' management creates, to refuse to assert its interest in the property, by either express or implicit means." The premise of that argument is incorrect. As discussed above, petitioners at most possess rights-of-way under R.S. 2477—not fee simple in the roads. See pp. 10-11, *supra*. Because "R.S. 2477 rights of way across federal lands are subject to regulation by the relevant federal land management agencies," *SUWA*, 425 F.3d at 746, the government's land management activities do not necessarily throw petitioners' rights-of-way into doubt, much less create "disputed title." If, however, the government takes any action, including "indirect action," that conflicts with a right-of-way asserted by petitioners, or makes "assertions that actually conflict with [petitioners'] title," those actions or assertions will suffice to create the "disputed title" in land "to which the United States claims an interest" required for invoking the waiver of sovereign immunity under 28 U.S.C. 2409a(a).

CONCLUSION

The petitions for writs of certiorari should be denied.
Respectfully submitted.

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