No. 23-1103

IN THE
Supreme Court of the United States

Sawtooth Mountain Ranch, LLC, et al.,

Petitioners,

v.

United States Forest Service, et al.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Ninth Circuit

PETITION FOR REHEARING (BASED ON *CORNER POST v. BOARD OF GOVERNORS*) AFTER DENIAL OF PETITION FOR A WRIT OF CERTIORARI

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PETITION FOR REHEARING AFTER DENIAL OF PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully move pursuant to Rule 44.2, for an order (1) vacating its denial of the petition for writ of certiorari, entered on June 10, 2014, and (2) granting the petition. As grounds for this motion, Petitioners state the following.

1. The Court's July 1, 2024 Decision in *Corner Post, Inc. v. Board of Governors*, no. 22-1008, Shows the Way.

Following the denial of certiorari in this case, the Court decided *Corner Post*. Both cases turn on the application of statutes of limitations and how to apply them fairly. As explained in *Corner Post*, the key lies in the wording of the statute and its fair application to the parties.

Both this case and *Corner Post* involve almost identically worded statutes of limitations:

The statute at bar:	*Corner Post* statute:
"within twelve years of the date upon which it accrued" 28 U.S.C. §2409a	"within six years after the right of action first accrues" 28 U.S.C. §2401(a)

The key in both cases lies in the concept of "accrual" of a cause of action.

In *Corner Post*, this Court held that the time to sue, i.e., the date on which the statute of limitations began to run, would be the date upon which the

plaintiff suffered injury, as that would be the date upon which the cause of action "accrued."

In both cases, the lower courts held that the statute of limitations began to run on the date that the government did something — regardless of whether that government action actually inflicted damage. In *Corner Post*, the action was the adoption of a regulation. Here, the action was signing of a deed. In neither case did that action cause injury. By the time injury was inflicted, the statutory time period (if measured from the date of the initial action) had run.

Corner Post's extensive discussion of "accrual" of causes of action and the use of that term in statutes of limitations precludes the necessity to rehearse that analysis here. Suffice it to note that, in this case, Petitioners' predecessor granted the government (in 2005) an easement that it intended to be a bucolic trail through a working cattle ranch. Years later (in 2014), the government announced that it would develop a paved commuter road across the easement. When Petitioners thereafter filed suit (in 2019), the lower courts held it was too late and the statute of limitations had run (even though the complaint was filed well within the statutory period if measured from the government's announcement of its extensive plans).[1]

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[1] The issue is complicated by the fact that the district court treated the statute of limitations as "jurisdictional" and not subject to alteration. During the pendency of this appeal, this Court decided *Wilkins v. United States*, 598 U.S. 152 (2023) and held that this specific statute of limitations was ***not*** jurisdictional. The Ninth Circuit nonetheless affirmed.

In *Corner Post*, the Court's focus was on the fact that the plaintiff did not have a cause of action until long after the limitations period would have run ***if*** the time began to run upon the adoption of the regulation. Concluding that the plaintiff's cause of action did not "accrue" until years later, the Court held that the statutory standard had not been met.

So, here, although the Petitioners' predecessors were aware that the government had a claim to an interest in the easement, they were not aware of the expansive nature of the government's plans until the government revealed those plans in 2014. The lower courts applied the statute of limitations rigidly, holding that (as the government urged) it began to run on the day that Petitioners' predecessors signed the easement deed — even though the mere existence of that easement changed nothing.

Had Petitioners' predecessors filed suit in 2005, right after the easement deed was signed, nothing would have been accomplished. The government's plans were not revealed until many years later. ***That*** is when any action would have "accrued."

As shown in the Petition for Certiorari, the theory of this case fits well with *Corner Post*. The petition shows that, statutes of limitations — which this Court has now made clear are generally not jurisdictional, see *United States v. Wong*, 575 U.S. 402, 410 (2015) — are to be applied in a way that is fair. Thus, the concept of "equitable tolling" should be presumptively considered applicable. *Boechler, P.C. v. Commissioner*, 142 S. Ct. 1493, 1500 (2022). Applying that concept here (as the lower courts refused to do) would have delayed the accrual of a

filing deadline until after the true extent of the government's plans became known.

2. The Ninth Circuit Needs to be Reined in.

The Ninth Circuit Court of Appeals evidently does not feel bound by this Court's decisions. This case is only the most recent example. Notwithstanding the decision in *Wilkins*, handed down while this appeal was pending, the Ninth Circuit insisted on effectively reinstating the now moribund idea that statutes of limitations are "jurisdictional." This Court laid that concept to rest. These Petitioners deserve to have their case adjudicated based on the current law as laid down here.

Certiorari needs to be granted.

Conclusion

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioners pray that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

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July 5, 2024

Certificate of Counsel

As counsel for the petitioners, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

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