No. _____

In The

Supreme Court of the United States

LARRY STEVEN WILKINS; JANE B. STANTON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Two Montana landowners filed a quiet title action seeking to resolve a dispute over the scope of an easement held by the United States that runs across their land and the federal government's duties under the easement. The District Court held that the Quiet Title Act's statute of limitations is jurisdictional, found that the landowners did not prove that their claims arose within twelve years of the lawsuit being filed, and dismissed the case. The District Court's treatment of the statute of limitations as jurisdictional—rather than a claim-processing rule—subjected the landowners to different standards for resolving the motion to dismiss, allowing the court to dismiss the case without holding a hearing to determine and resolve disputed facts.

In conflict with the Seventh Circuit, the Ninth Circuit affirmed, holding the Quiet Title Act's statute of limitations is jurisdictional.

The question presented is:

Whether the Quiet Title Act's Statute of Limitations is a jurisdictional requirement or a claim-processing rule?

PARTIES TO THE PROCEEDING

Petitioners Larry Steven Wilkins and Jane B. Stanton were the plaintiffs-appellants below.

Respondent United States of America was the defendant-appellee below.

STATEMENT OF RELATED PROCEEDINGS

Wilkins v. United States, No. 20-35745 (9th Cir.) (opinions issued September 15, 2021; rehearing en banc denied November 23, 2021).

Wilkins v. United States, No. CV 18-147-M-DLC-KLD (D. Mont.) (judgment entered May 26, 2020, motion to alter or amend judgment denied August 11, 2020).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioners Larry Steven (Wil) Wilkins and Jane B. Stanton (landowners) respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The panel opinion of the Court of Appeals, holding that the Quiet Title Act's statute of limitations is jurisdictional, is published at 13 F.4th 791 (9th Cir. 2021) and included in Petitioners' Appendix (App.) A. The panel's unpublished memorandum opinion affirming the judgment of the District Court is included at App. B. The District Court's decision denying the landowners' motion to alter or amend the judgment is included at App. C. The District Court's order granting the motion to dismiss is included at App. D. The Magistrate Judge's findings and recommendations on the motion to dismiss are included at App. E. The Ninth Circuit's order denying the petition for rehearing en banc is included at App. F.

JURISDICTION

The District Court granted the defendants' motion to dismiss on May 26, 2020. The landowners filed a timely appeal to the Ninth Circuit. On September 15, 2021, a panel of the Ninth Circuit affirmed the dismissal of the District Court. The landowners then filed a timely petition for rehearing en banc, which was denied on November 23, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

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

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(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).

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(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his

predecessor in interest knew or should have known of the claim of the United States.

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INTRODUCTION

The Courts of Appeals are divided on the question of whether the Quiet Title Act's statute of limitations is jurisdictional. *See, e.g.*, *Wisconsin Valley Improvement Co. v. United States*, 569 F.3d 331, 334 (7th Cir. 2009) (holding that the Quiet Title Act's statute of limitations is not jurisdictional); *Rio Grande Silvery Minnow (Hybognathus amarus) v. Bureau of Reclamation*, 599 F.3d 1165, 1175 (10th Cir. 2010) (citing circuits holding that Quiet Title Act's statute of limitations is jurisdictional).

The circuit split began before this Court's recent attempt to bring discipline to what legal rules should be properly characterized as jurisdictional. *See Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013) ("[W]e have tried in recent cases to bring some discipline to the use of the term jurisdiction." (quotations omitted)). As a result, most courts that treat the Quiet Title Act's statute of limitations as jurisdictional established their rules without the benefit of this Court's decisions explaining how to determine whether a statute of limitations is jurisdictional.

Until recently, this Court has used the term "jurisdiction" inconsistently in dicta, resulting in confusion among lower courts. *See Sebelius*, 568 U.S. at 153; *see also Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 90 (1998) (jurisdiction "is a word of many, too many, meanings" (internal quotation marks omitted)). It has admittedly

"sometimes mischaracterized claim-processing rules or elements of a cause of action as jurisdictional limitations, particularly when that characterization was not central to the case, and thus did not require close analysis." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161 (2010). Over the past decade, it has worked to correct that mistake and prevent the "untoward consequences" of mislabeling a rule jurisdictional. *Sebelius*, 568 U.S. at 153.

"Branding a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). "Unlike most arguments, challenges to subject-matter jurisdiction may be raised by the defendant at any point in the litigation, and courts must consider them *sua sponte*." *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1849, (2019) (quotations omitted). A jurisdictional rule shifts the burden of proof and allows a court to "proceed as it never could under Rule 12(b)(6) or Fed.R.Civ.P. 56." *Thornhill Publ'g Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) (citation omitted). Because of this unique status, this Court has repeatedly granted certiorari in cases to resolve circuit splits concerning the nature of various legal rules, which has helped to ensure that lower courts do not mislabel claim-processing rules as jurisdictional.[1]

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[1] *See Boechler, P.C. v. Comm'r of Internal Revenue*, 142 S. Ct. 55 (2021) (granting certiorari to decide whether the 30-day rule for filing a petition for review of a notice of determination from the IRS is jurisdictional); *Fort Bend Cty.*, 139 S. Ct. at 1846 (Title VII's charge-filing requirement is not jurisdictional); *Hamer v.*

Neighborhood Hous. Servs. of Chicago, 138 S. Ct. 13, 16–17, 22 (2017) (time limit for an extension of time to file a notice of appeal is not jurisdictional); *United States v. Wong*, 575 U.S. 402, 409–10 (2015) (Federal Tort Claims Act's statute of limitations is not jurisdictional); *Sebelius*, 568 U.S. at 148–49 (provision of Medicare statute setting 180-day limit for filing appeals to Provider Reimbursement Review Board is not jurisdictional); *Gonzalez v. Thaler*, 565 U.S. 134, 137 (2012) (provision of Antiterrorism and Effective Death Penalty Act of 1996, requiring the certificate of appealability to indicate which specific issue or issues satisfy the Act's requirement that a petitioner make a substantial showing of the denial of a constitutional right, is not jurisdictional); *Stern v. Marshall*, 564 U.S. 462, 479 (2011) (bankruptcy statute's requirement that "personal injury tort" claims be tried in district court, rather than bankruptcy court, is not jurisdictional); *Henderson*, 562 U.S. at 438–41 (deadline on filing appeals to Veterans Court is not jurisdictional); *Holland v. Florida*, 560 U.S. 631, 645 (2010) (statute of limitations on petitions for federal habeas relief by state prisoners is not jurisdictional); *Dolan v. United States*, 560 U.S. 605, 610–11 (2010) (statutory deadline for ordering restitution is not jurisdictional); *Reed Elsevier*, 559 U.S. at 157 (requirement that copyright be registered before filing suit is not jurisdictional); *Union Pac. R.R. Co. v. Brotherhood of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 71–72 (2009) (procedural rule requiring proof of conferencing prior to arbitration of minor disputes before the National Railroad Adjustment Board is not jurisdictional); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 504–05, 516 (2006) (Title VII's employee-numerosity requirement for establishing "employer" status under the Act is not jurisdictional); *Eberhart v. United States*, 546 U.S. 12, 15–16 (2005) (per curiam) (rules setting forth time limits for a defendant's motion for a new trial are not jurisdictional); *Scarborough v. Principi*, 541 U.S. 401, 411–12 (2004) (Equal Access to Justice Act's 30-day deadline for attorney fee applications and its application-content specifications are not jurisdictional); *Kontrick v. Ryan*, 540 U.S. 443, 452–54 (2004) (time constraints for objecting to bankruptcy discharge is not jurisdictional).

This Court's review is again needed to resolve a circuit split about the nature of a claim-processing rule. Below, the panel entrenched the circuit split over the Quiet Title Act's statute of limitations by not applying this Court's recent precedents, instead relying on past Ninth Circuit precedent to hold that the Quiet Title Act's statute of limitations is jurisdictional. App. A-7 (citing *Skranak v. Castenada*, 425 F.3d 1213 (9th Cir. 2005); *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189 (9th Cir. 2008); *Fidelity Expl. & Prod. Co. v. United States*, 506 F.3d 1182 (9th Cir. 2007)). As a result, property owners in quiet title cases, like the landowners here, are procedurally hamstrung and unable to make their case. A jurisdictional time bar subjects litigants to different standards for resolving motions to dismiss and, as happened below, allows courts to dismiss cases without holding a hearing to determine and resolve disputed facts.

The petition should be granted to bring uniformity among the lower courts and to ensure the Quiet Title Act's statute of limitations is not mislabeled as a jurisdictional rule.

STATEMENT OF THE CASE

A. Factual Background

Larry Steven "Wil" Wilkins is a veteran diagnosed with post-traumatic stress disorder. 2 Appellants' Excerpts of Record (ER) at 110 ¶ 3, Ninth Circuit case no. 20-35745, docket no. 12 (filed Dec. 23, 2020). In 2004, he purchased property in rural Montana and moved to Robbins Gulch Road in Ravalli County. *Id.* ¶ 4. Across the road lives Jane Stanton, who purchased property and moved to Robbins Gulch Road

in 1990 with her husband. 3 ER at 394 (Depo. Stanton, 17:1). Since 2013, when Mrs. Stanton's husband passed away, she has been the sole owner of her property. 2 ER at 261.

Both Mr. Wilkins's and Mrs. Stanton's properties are burdened by an easement owned by the federal government and managed by the United States Forest Service (Forest Service). 2 ER at 262; 2 ER at 286–87; 2 ER at 282; 2 ER at 227. The landowners' predecessors granted the easement in 1962 in two separate deeds that contain substantially the same language. 2 ER at 227; 2 ER at 234. The easement conveys to the United States "and its assigns" 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." 2 ER at 227.[2] According to a contemporaneous statement by the then-Forest Supervisor to the grantors, the "[p]urpose of the road" was for "timber harvest." 2 ER at 244.

Until recently, the Forest Service's management of the easement has ensured that use of the easement did not unreasonably burden Mr. Wilkins's and Mrs. Stanton's property. But in September 2006, the Forest Service commissioned a sign to be installed along Robbins Gulch Road that read "public access

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[2] The easement differs in significant ways from the form easements in the Forest Service Handbook used by the agency at the time. Namely, the form easements purport to grant the United State an easement for "highway purposes," 2 ER at 149, whereas the 1962 deeds state that the easements are "for a road as now constructed and in place." 2 ER at 227. Also, unlike the form easements, the 1962 deeds state that the easement road will be "patrolled." *Id*.

thru private lands." 3 ER at 516; 3 ER at 518. Since that sign was installed, traffic along the easement has increased. 3 ER at 333 (Depo. Wilkins, 28:17). The expanded use of the easement has interfered with Mr. Wilkins's and Mrs. Stanton's use and enjoyment of their property. 3 ER at 359 (Depo. Wilkins, 132:22–133:24); 3 ER at 410 (Depo. Stanton, 79:5–80:22).

Due to this expanded use, Mr. Wilkins, Mrs. Stanton, and their neighbors have had to deal with trespassers on their private property, theft of their personal property, people shooting at their houses, people hunting both on and off the easement, and people travelling at dangerous speeds on and around Robbins Gulch Road. 3 ER at 359 (Depo. Wilkins, 132:22–133:24); 3 ER at 410 (Depo. Stanton, 79:5–80:22); 2 ER at 114–15 ¶¶ 5–13. In September 2019, someone travelling along the road shot Mr. Wilkins's cat. 2 ER at 111 ¶¶ 12–13. The recent, excessive use of the road and adjacent property by the public and Forest Service permittees has even caused some neighbors to move. 2 ER at 116 ¶ 27.

Additionally, the increased use of the easement has caused erosion of the road that affects the adjacent property. 3 ER at 542 ¶ 15. The road condition has caused sediment and silt to build up on the underlying properties, and has caused washout on those properties. 3 ER at 352 (Depo. Wilkins, 103:3–6). The Forest Service's maintenance of the easement, however, has become more sporadic in recent years. 3 ER at 351 (Depo. Wilkins, 100:25–101:8).

In 2017, the landowners and their neighbors requested that the Forest Service help address these problems. 2 ER at 116 ¶ 26; 3 ER at 433 (Depo. Winthers, 14:14–15:17). The Forest Service declined.

2 ER at 116 ¶ 26. Not only did the agency disagree that the easement is limited in scope, it also disclaimed any obligations under the easement. 2 ER at 64; 3 ER at 544 (Answer denying that landowners are entitled to requested relief). It informed the property owners that it would manage the easement however it wished, and that it owed no duties to the underlying owners. 2 ER at 116 ¶ 26. A few months later, Mr. Wilkins's attorney followed up with a letter to the United States Department of Agriculture Office of the General Counsel. *See* 2 ER at 64. In July 2018, the Office of the General Counsel reiterated the Forest Service's position that it could allow whomever it wanted on the easement and that all management decisions were at the Forest Service's sole discretion. *Id.*

B. Procedural Background

Unable to get help from the Forest Service, Mr. Wilkins and Mrs. Stanton filed this suit in August 2018. *See* 3 ER at 548. Brought under the Quiet Title Act, the Complaint asked the District Court to interpret the easement under Montana law to determine the lawful use of the easement and the government's duties under it. *See* 3 ER at 562.[3]

In October 2019, the government moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), arguing that the landowners did not bring the case within the Quiet

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[3] Montana law governs the easement at issue here. *See Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378–79 (1977) ("Under our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States.").

Title Act's twelve-year statute of limitations. *See* App. E-1. The government could "not pin down precisely when Plaintiffs' claims expired" but argued that the claims accrued more than twelve years before the lawsuit was filed. App. D-20. The landowners responded that the Quiet Title Act's statute of limitations is not jurisdictional, and that the case could not be resolved on a motion to dismiss. *See* App. E-2. The landowners further argued that based on the Forest Service's actions in managing the easement, including statements by Forest Service officers to the landowners and their neighbors, that the claims only accrued when the Forest Service put up a sign that read "public access thru private lands." *See* Opening Brief Section IV-E, Ninth Circuit case no. 20-35745, docket no. 11 (filed Dec. 23, 2020); App. E-16–17 (Magistrate Judge stating that "Landowners filed this lawsuit because of the alleged changes in the scope of the USFS's operation and management of the easement."). The Forest Service commissioned the sign in September 2006, eleven years and eleven months before the lawsuit was filed. 3 ER at 516; 3 ER at 518.

Magistrate Judge DeSoto recommended that the motion to dismiss be denied. App. E-18. Judge DeSoto concluded that the Quiet Title Act's statute of limitations is not jurisdictional. App. E-14. Hence, the government's motion to dismiss for lack of jurisdiction was improper, and its statute of limitations arguments should be decided on a motion for summary judgment or trial. App. E-17.

The government objected to the findings and recommendations, and reiterated the arguments made in its motion to dismiss. App. D-5. The District

Court held that the Quiet Title Act's statute of limitations is jurisdictional, App. D-15, and placed the burden on the landowners to prove that they had brought the complaint within the statute of limitations. App. D-23. The District Court, without holding an evidentiary hearing to determine and resolve disputed facts, concluded that the landowners failed to meet their burden and dismissed the case. *Id.*

Mr. Wilkins and Mrs. Stanton filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). On August 11, 2020, the court denied the motion, App. C-7. Mr. Wilkins and Mrs. Stanton appealed on August 26, 2020. 3 ER at 564.

On September 15, 2021, the Ninth Circuit panel affirmed the judgment of the District Court. App. A-12; App. B-6. In a published opinion, the panel held that the Quiet Title Act's statute of limitations is jurisdictional. App. A-10. In a separate unpublished opinion, the panel, reviewing the District Court's order for clear error, affirmed the dismissal. App. B-5. Mr. Wilkins and Mrs. Stanton filed a petition for rehearing en banc, which the Ninth Circuit denied on November 23, 2021. App. F-1.

REASONS TO GRANT THE PETITION

I. Certiorari Should Be Granted To Resolve a Circuit Split About Whether the Quiet Title Act's Statute of Limitations Is Jurisdictional

The circuit courts are split on whether the Quiet Title Act's statute of limitations is jurisdictional. The Seventh Circuit has held that the Quiet Title Act's statute of limitations is not jurisdictional. *Wisconsin*

Valley, 569 F.3d at 334. Seven others have held that the statute of limitations is jurisdictional. *See Kingman Reef*, 541 F.3d 1189; *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 769 (4th Cir. 1991); *Bank One Tex., N.A. v. United States*, 157 F.3d 397, 403 (5th Cir. 1998); *Spirit Lake Tribe v. North Dakota*, 262 F.3d 732, 737–38 (8th Cir. 2001); *Knapp v. United States*, 636 F.2d 279, 282 (10th Cir. 1980); *F.E.B. Corp. v. United States*, 818 F.3d 681, 685 n.3 (11th Cir. 2016); *Cheyenne Arapaho Tribes of Oklahoma v. United States*, 558 F.3d 592, 595 (D.C. Cir. 2009).

A. The circuit split began before this Court's recent cases describing how to determine whether a statute of limitations is jurisdictional

Nearly all the circuits that have held that the Quiet Title Act's statute of limitations is jurisdictional did so before this Court's recent cases articulating the standards for determining whether a rule is jurisdictional. Most of the circuits holding that the Quiet Title Act's statute of limitations is jurisdictional are based on one passing reference to jurisdiction in *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 292 (1983).[4] But as this Court has recently made clear, lower courts should not read too much into this Court's passing use of "jurisdiction." *Cf.*

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[4] *See Skranak*, 425 F.3d at 1216 (citing *Block*, 461 U.S. at 292); *Bank One Tex.*, 157 F.3d at 403 (same); *F.E.B. Corp.*, 818 F.3d at 685 n.3 (same); *see also Spirit Lake Tribe*, 262 F.3d at 737–38 (citing *Block*, 461 U.S. at 286); *Warren v. United States*, 234 F.3d 1331, 1335 (D.C. Cir. 2000) (same); *Richmond, Fredericksburg & Potomac R.R. Co.*, 945 F.2d at 769 (citing *Block*, 461 U.S. at 282–83).

Hamer v. Neighborhood Hous. Servs. of Chicago, 138 S. Ct. 13, 21 (2017) ("The mandatory and jurisdictional formulation is a characterization left over from days when we were less than meticulous in our use of the term jurisdictional." (quotations omitted)).

In *Block*, this Court considered (1) whether the Quiet Title Act provides the exclusive procedure by which a claimant can judicially challenge the title of the United States to real property, and (2) whether the Quiet Title Act's statute of limitations is applicable where the plaintiff is a state. 461 U.S. at 276–77. *Block* did not, however, consider whether the Quiet Title Act's statute of limitations is jurisdictional. *Block* made one passing reference in the conclusion of its opinion that the courts below would lack jurisdiction if the suit were barred by the statute of limitations. *Id.* at 292. But this Court has "described such unrefined dispositions as drive-by jurisdictional rulings that should be accorded no precedential effect on the question whether the federal court had authority to adjudicate the claim in suit." *Arbaugh*, 546 U.S. at 511 (quotations omitted).

Unlike other circuits, the Seventh Circuit refused to read too much into *Block*'s drive-by reference. *Wisconsin Valley*, 569 F.3d at 334. In *Wisconsin Valley*, Judge Easterbrook, writing for the court, recognized that *Block* was "yet another example of the tendency … to employ the word [jurisdiction] loosely," and was not meant to opine on the jurisdictional nature of the Quiet Title Act's statute of limitations. *Id*. Because "not every reference to 'jurisdiction' in the Supreme Court's large corpus of decisions means 'subject-matter jurisdiction' in the contemporary

sense," the Seventh Circuit held that the Quiet Title Act's statute of limitations was not jurisdictional. *Id.*

The decision in *Wisconsin Valley* was prescient. In the past decade, this Court has worked to clearly define when statutes of limitations and other legal rules are jurisdictional. *See*, n.1, *supra*. This Court has held that, absent a clear statement from Congress to the contrary, a statute of limitations is not jurisdictional. *United States v. Wong*, 575 U.S. 402, 409–10 (2015). Because most of the circuits analyzed the Quiet Title Act's statute of limitations decades ago, they were unable to apply the clear statement test to their holdings.

B. This Court's recent cases undermine the reasoning of those circuits that have held the Quiet Title Act's statute of limitations is jurisdictional

This Court's recent decisions demonstrate the flawed reasoning of those circuits that have held the Quiet Title Act's statute of limitations is jurisdictional. In addition to *Block*'s passing reference to jurisdiction, those circuits justified their conclusions based on the Quiet Title Act's waiver of sovereign immunity. *Spirit Lake Tribe*, 262 F.3d at 737–38 ("Because the QTA waives the government's sovereign immunity … the QTA statute of limitations acts as a jurisdictional bar …." (citing *Block*, 461 U.S. at 280)); *Knapp*, 636 F.2d at 282 ("As a condition to suit against the sovereign, the 12-year rule must be strictly construed in favor of the sovereign."); *Bank One Tex.*, 157 F.3d at 403 ("[B]ecause it circumscribes the scope of a waiver of sovereign immunity, the statute of limitations manifests a jurisdictional prerequisite, rather than an affirmative defense.");

Richmond, Fredericksburg & Potomac R.R. Co., 945 F.2d at 769 ("Because the limitations period represents a condition on the waiver of federal sovereign immunity, it is a jurisdictional prerequisite to suit[.]" (citing *Block*, 461 U.S. at 282–83)).

But, as this Court has made clear in its recent decisions "it makes no difference" to the jurisdictional question "that a time bar conditions a waiver of sovereign immunity, even if Congress enacted the measure when different interpretive conventions applied …." *Wong*, 575 U.S. at 420. The waiver of sovereign immunity is irrelevant because this Court "treat[s] time bars in suits against the Government …. the same as in litigation between private parties." *Id.* But nearly all the opinions holding that the Quiet Title Act's statute of limitations is jurisdictional rely on the waiver of sovereign immunity to justify their holdings. Because those courts did not have the benefit of this Court's recent decisions, they issued holdings based on faulty premises.

C. Only this Court can resolve the circuit split

The decision below ensures that the circuit split will persist. Despite recognizing "tension between *Wong*'s reasoning and the analysis underlying Ninth Circuit precedent interpreting the jurisdictional nature of the [Quiet Title Act's] statute of limitations," the court below chose not to overturn its previous precedents. App. A-9. Now, the Ninth Circuit's holding that the Quiet Title Act's statute of limitations is jurisdictional can only be overruled on discretionary, en banc review. *See* App. A-7–9. Without this Court's intervention, the Ninth Circuit

will remain in conflict with the Seventh Circuit indefinitely.

Furthermore, if this Court does not grant certiorari, it is likely that the circuit split will deepen. Unlike the Ninth Circuit, some courts will reconsider their previous holdings on whether the Quiet Title Act's statute of limitations is jurisdictional. Indeed, prior to the decision below, two district courts in the Ninth Circuit held that, in light of *Wong*, the Quiet Title Act's statute of limitations is not jurisdictional. *Payne v. U.S. Bureau of Reclamation*, No. CV 17-00490-AB (MRWx), 2017 WL 6819927 (C.D. Cal. Aug. 15, 2017); *Bar K Ranch, LLC v. United States*, No. CV-19-6-BU-BMM, 2019 WL 5328782 (D. Mont. Oct. 21, 2019).

Some circuits will follow suit and hold that the Quiet Title Act's statute of limitations is not jurisdictional. Many of these circuits have already applied this Court's recent cases to other statutes of limitations and claim-processing rules, in some cases reversing decisions that previously held a rule is jurisdictional.[5] These circuits have not had the

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[5] *See In re Bonvillian Marine Serv., Inc.,* 19 F.4th 787, 790 (5th Cir. 2021) (overturning, in light of *Wong*, previous standard for determining whether a rule is jurisdictional); *Gad v. Kansas State Univ.*, 787 F.3d 1032, 1039–40 (10th Cir. 2015) (holding that Title VII's requirement that a claimant verify the charges against an employer is not jurisdictional and stating "To the extent our previous cases would require a contrary result," *Wong* and other superseding contrary decisions from this Court control); *Sisseton-Wahpeton Oyate of Lake Traverse Rsrv. v. U.S. Corps of Eng'rs*, 888 F.3d 906, 917 n.4 (8th Cir. 2018) (recognizing *Wong*'s effect on analysis of whether a statute of limitations is jurisdictional, but stating that "because we decide the issue on

opportunity to revisit their Quiet Title Act cases, but if they continue their trend and apply this Court's recent cases to hold that the Quiet Title Act's statute of limitations is not jurisdictional, then they will issue decisions in conflict with the decision below.

Some circuits may reaffirm their previous holdings that the Quiet Title Act's statute of limitations is jurisdictional, but that will not bring uniformity to the issue. The Eleventh Circuit, for example, recently relied on the passing reference in *Block* to hold that, despite *Wong*, the Quiet Title Act's statute of limitations is jurisdictional. *F.E.B. Corp.*, 818 F.3d at 685 n.3. But that decision only reinforced the existing circuit split with the Seventh Circuit.

Only this Court can resolve the split over whether the Quiet Title Act's statute of limitations is jurisdictional. The petition for a writ of certiorari should be granted.

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other grounds, this case is not an appropriate vehicle to reconsider our prior decision that § 2401(a) is a jurisdictional statute of limitations."); *Edmonson v. Eagle Nat'l Bank*, 922 F.3d 535, 546–47 (4th Cir. 2019) (Applying this Court's recent cases to hold, in conflict with the D.C. circuit, that the Real Estate Settlement Procedures Act's statute of limitations is not jurisdictional); *Myers v. Comm'r of Internal Revenue Serv.*, 928 F.3d 1025, 1035 (D.C. Cir. 2019) (holding that Internal Revenue Code provision requiring aggrieved claimant to file petition for Tax Court review within 30 days is not jurisdictional and stating that "the Court has not yet identified a single filing deadline that meets the 'clear statement' test").

II. Certiorari Should Be Granted Because the Decision Below Conflicts with This Court's Precedents About How Courts Determine Whether an Act's Statute of Limitations Is Jurisdictional

This Court's decade-long quest to bring discipline to the use of the term jurisdiction has resulted in clear standards for how a court should determine the jurisdictional nature of a statute of limitations. *See Wong*, 575 U.S. at 410–20. But the court below did not apply these standards, instead opting to rely on out-of-date Ninth Circuit cases. *See* App. A-7 (citing *Skranak*, 425 F.3d 1213; *Kingman Reef*, 541 F.3d 1189; *Fidelity Expl. & Prod. Co.*, 506 F.3d 1182). In doing so, the court below issued a decision in conflict with this Court's recent precedents.

A. This Court's recent precedents hold that Congress must clearly state when a statute of limitations is jurisdictional

This Court's recent precedents make clear "that most time bars are nonjurisdictional." *Wong*, 575 U.S. at 410. "Time and again," this Court has "described filing deadlines as 'quintessential claim-processing rules,' which 'seek to promote the orderly progress of litigation,' but do not deprive a court of authority to hear a case." *Id.* (quoting *Henderson*, 562 U.S. at 435).

This Court has articulated a "readily administrable bright line" rule to determine whether a filing rule is jurisdictional. *Arbaugh*, 546 U.S. at 516. Absent a "clear statement" from Congress, courts should treat filing deadlines "as nonjurisdictional in character." *Sebelius*, 568 U.S. at 153 (quotations omitted). Congress need not "'incant magic words'" to

make a rule jurisdictional, but "traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences." *Wong*, 575 U.S. at 410 (quoting *Sebelius*, 568 U.S. at 153). It is a steep burden to demonstrate that a rule is jurisdictional. Indeed, this Court "has not yet identified a single filing deadline that meets the 'clear statement' test." *Myers v. Comm'r of Internal Revenue Serv.*, 928 F.3d 1025, 1035 (D.C. Cir. 2019); *see also* Petition for a Writ of Certiorari 17, *Boechler, P.C. v. Comm'r of Internal Revenue* (No. 20-1472), cert. granted Sept. 30, 2021.

In recent years, lower courts have followed this Court's lead, applying the clear statement test to determine that other statutes of limitations are not jurisdictional. *See* Section I-C, *supra*; *see also Herr v. U.S. Forest Service*, 803 F.3d 809, 818 (6th Cir. 2015) (suggesting that other courts' holdings about the jurisdictional nature of the general statute of limitations for civil actions against the federal government are outdated because they "have not grappled with the Supreme Court's recent cases limiting the concept of jurisdiction" or "considered the impact" of *Wong*). The court below, however, failed to apply the clear statement test in holding that the Quiet Title Act's statute of limitations is jurisdictional.

B. The Quiet Title Act does not provide a clear statement that the statute of limitations is jurisdictional

In enacting the Quiet Title Act, Congress did not clearly state its intention to make the statute of limitations jurisdictional. The Quiet Title Act provides that "[a]ny 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." 28 U.S.C. § 2409a(g). "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." *Id.*

The Quiet Title Act thus uses "mundane statute-of-limitations language, saying only what every time bar, by definition, must: that after a certain time a claim is barred." *Wong*, 575 U.S. at 410. Indeed, the Quiet Title Act's statute of limitations uses practically the same language as the Federal Tort Claims Act's time bar that *Wong* held is not jurisdictional. *Id.* The only difference is the Federal Tort Claims Act's statute of limitations is more forceful, stating that an untimely action "shall be *forever* barred …." 28 U.S.C. § 2401(b) (emphasis added). If the Federal Tort Claims Act's statute of limitations is not jurisdictional, then the similarly worded, yet less definitive, Quiet Title Act statute of limitations cannot be either.

Furthermore, Congress separated the Quiet Title Act's statute of limitations from its grant of jurisdiction. 28 U.S.C. §§ 1346(f), 2409a(g). The Quiet Title Act grants federal 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." Pub. L. No. 92-562, 86 Stat. 1176, 1176 (Oct. 25, 1972), *codified at* 28 U.S.C. § 1346(f). This grant of jurisdiction is not only in a different section of the Act from the statute of limitations, but also codified in a separate section of the U.S. Code. *Id.*

"This Court has often explained that Congress's separation of a filing deadline from a jurisdictional grant indicates that the time bar is not jurisdictional." *Wong*, 575 U.S. at 411 (citing *Henderson*, 562 U.S. at 439–40; *Reed Elsevier*, 559 U.S. at 164–65; *Arbaugh*, 546 U.S. at 515; *Zipes v. Trans World Airlines*, 455 U.S. 385, 393–94 (1982)); *see also Davis,* 139 S. Ct. at 1850 (Title VII's grant of jurisdiction is in a separate provision as the nonjurisdictional charge-filing requirement). This separation further demonstrates that the Quiet Title Act's statute of limitations "does not speak in jurisdictional terms or refer in any way to the jurisdiction of the district courts." *Wong*, 575 U.S. at 411 (quotations omitted). As a result, the Quiet Title Act lacks a clear statement that its statute of limitations is jurisdictional.

C. Instead of applying this Court's recent precedents, the court below applied outdated circuit precedent

The court below did not apply the clear statement test, however, and instead relied on previous Ninth Circuit precedents to reach its holding. *See* App. A-7 (citing *Skranak*, 425 F.3d at 1216; *Kingman Reef*, 541 F.3d at 1195). But both *Skranak* and *Kingman Reef* rely on premises directly contradicted by this Court's cases. *See Skranak*, 425 F.3d at 1216; *Kingman Reef*, 541 F.3d at 1195. In *Skranak*, the Ninth Circuit stated that "[t]he Quiet Title Act is a waiver of sovereign immunity" and "[i]f the statute of limitations has run on a waiver of sovereign immunity, federal courts lack jurisdiction." 425 F.3d at 1216. *Kingman Reef* also followed the mistaken assumption that Congress's waiver of sovereign immunity matters in interpreting the jurisdictional nature of the statute of limitations.

541 F.3d at 1195. As this Court has clearly stated, "it makes no difference" to the jurisdictional question "that a time bar conditions a waiver of sovereign immunity …." *Wong*, 575 U.S. at 420.

Skranak and *Kingman Reef* also conflict with this Court's decisions because the Ninth Circuit cases do not cite, much less analyze, the Quiet Title Act's jurisdictional grant in 28 U.S.C. § 1346(f). *Skranak*, 425 F.3d 1213; *Kingman Reef*, 541 F.3d 1189;[6] *Fidelity Expl. & Prod. Co.*, 506 F.3d 1182. Despite this Court clearly explaining that Congress's separation of a filing deadline from a jurisdictional grant indicates that the time bar is not jurisdictional, the court below relied on previous Ninth Circuit cases and again failed to cite or discuss the Quiet Title Act's jurisdictional grant. App. A-7.

The court below believed it did not have to apply the clear statement test because of this Court's decisions in *Block* and *United States v. Beggerly*, 524 U.S. 38 (1998). *See* App. A-9. But neither holds that the Quiet Title Act's statute of limitations is jurisdictional. *Block* was, at most, a "drive-by" jurisdictional ruling that has no precedential effect. *See* Section I-A, *supra*. *Beggerly* also does not hold that the Quiet Title Act's statute of limitations is jurisdictional and, in fact, supports the view that the

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[6] The panel in *Kingman Reef* incorrectly implied that the whole of the Quiet Title Act is codified at 28 U.S.C. § 2409a. *Compare Kingman Reef*, 541 F.3d at 1195, *with* Pub. L. No. 92-562, 86 Stat. at 1176. The only reference to 28 U.S.C. § 1346(f) is when the panel quotes verbatim 28 U.S.C. § 2409a(e) in footnote 5. *Kingman Reef*, 541 F.3d at 1200 n.5. But the *Kingman Reef* court did not quote § 1346(f) itself, let alone examine the jurisdictional implications of its separation from the statute of limitations.

Quiet Title Act's statute of limitations is not jurisdictional. 524 U.S. at 49.

In *Beggerly*, this Court considered whether the Quiet Title Act's statute of limitations allows for equitable tolling. *Id.* at 48–49. It concluded that the statute of limitations "effectively allow[s] for equitable tolling" and, as a result, declined to allow further equitable tolling outside the statutory language. *Id.* at 48.

In engaging with the question of how much equitable tolling the Quiet Title Act allows, this Court indicated that the Act's limitations period is not jurisdictional. For, if a time bar is jurisdictional, a court has no authority to hear a case "even if equitable considerations would support extending the prescribed time period." *Wong*, 575 U.S. at 408–09. If the Quiet Title Act's statute of limitations were jurisdictional, that would have answered the question presented in *Beggerly* without further analysis. Instead, this Court had to examine whether and how much equitable tolling is allowed under the Quiet Title Act's statute of limitations because that limitations period is not jurisdictional.[7] While *Beggerly* noted that the District Court dismissed for lack of subject matter jurisdiction, 524 U.S. at 41, this statement, like the one in *Block*, was an unanalyzed statement that was not central to the case.

Justice Stevens's concurrence also supports the conclusion that the Quiet Title Act's statute of

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[7] This Court's holding that the Quiet Title Act's statute of limitations is mandatory does not imply that the rule is jurisdictional because "a rule may be mandatory without being jurisdictional …." *Fort Bend Cty.*, 139 S. Ct. at 1852.

limitations is not jurisdictional. *See Beggerly*, 524 U.S. at 49–50 (Stevens, J., concurring). He noted that the case did not present the question of "whether a doctrine such as fraudulent concealment or equitable estoppel might apply if the Government were guilty of outrageous misconduct that prevented the plaintiff, though fully aware of the Government's claim of title, from knowing of her own claim." *Id.* at 49. In such a case, Justice Stevens opined, the Quiet Title Act might allow for equitable tolling. *Id.* at 50. The Court's opinion also provides support for Justice Stevens's position. *Id.* at 48 (citing *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990)). But, if the Quiet Title Act's statute of limitations were jurisdictional, then it would foreclose a suit even where the government was guilty of outrageous misconduct. *See Wong*, 575 U.S. at 408–09. Thus, contrary to the Ninth Circuit's reading, the opinions in *Beggerly* support the position that the Quiet Title Act's statute of limitations is not jurisdictional.

Wong itself also undermines the Ninth Circuit's argument that *Block* and *Beggerly* hold that the Quiet Title Act's statute of limitations is jurisdictional. In *Wong*, this Court mentioned only one statute, the Tucker Act, it held to be jurisdictional prior to the adoption of the clear statement test. 575 U.S. at 416. The *Wong* Court discussed a recent case that "refused to overturn our century-old view that the Tucker Act's time bar is jurisdictional," and not apply the clear statement test, only because the Tucker Act's statute of limitations had been the subject of "a definitive earlier interpretation." *Id.* (quotations omitted). This Court, however, did not mention any other statutes that are not subject to the clear statement test or any other cases where this Court has made a definitive

earlier interpretation about a jurisdictional rule. This Court's failure to mention any other statute suggests that the Tucker Act is unique in not being subject to the clear statement test.

In conflict with this Court's recent precedents, the court below failed to apply the clear statement test. This Court should grant the petition to ensure that the Quiet Title Act's statute of limitations is not mislabeled as a jurisdictional rule.

III. Certiorari Should Be Granted Because Whether the Quiet Title Act's Statute of Limitations Is Jurisdictional Affects Landowners' Ability To Vindicate Their Property Rights

By holding that the Quiet Title Act's statute of limitations is jurisdictional, the District Court and the court below deprived the landowners of the normal procedural safeguards of the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

In the Ninth Circuit, a defendant may make a "facial or factual" attack on jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). If a defendant makes a "factual attack (meaning the facts negating jurisdiction exist outside the complaint) no presumption of truthfulness attaches to plaintiff's allegations, a court may freely consider extrinsic evidence, and it may resolve factual disputes with or without a hearing." App. D-4 (citing *Kingman Reef*, 541 F.3d at 1195; *Roberts v. Corrothers*, 812 F.3d 1173, 1177 (9th Cir. 1987)). Additionally, "[a]lthough the defendant is the moving party, the plaintiff bears the burden of satisfying the court as to its jurisdiction." App. D-4–5 (citing *Safe*

Air, 373 F.3d at 1039). The plaintiff "must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction" regardless of the stage of the litigation. *Safe Air*, 373 F.3d at 1039.[8]

As a result, the District Court's holding on the jurisdictional nature of the Quiet Title Act's statute of limitations affected how the case was decided. The landowners were procedurally hamstrung and unable to make their case, despite demonstrating multiple disputed material facts. *See* App. E-17 (magistrate judge stated that "Under the facts alleged, it is therefore unclear whether, over twelve years ago, a reasonable landowner would have known the scope of the easement claimed by the United States."). The landowners presented testimony disputing the government's account of the Forest Service's 2006 order, *see* 2 ER at 110 ¶¶ 5–6; 3 ER at 352 (Depo. Wilkins, 104:8–9); 3 ER at 412 (Depo. Stanton, 86:2–4); they presented witnesses that contradicted the testimony in the government's declarations, *see* 2 ER at 114–16; and they presented evidence of statements from Forest Service officials about the scope of the easement that caused the landowners to delay filing the lawsuit. 2 ER at 88 (Depo. Oliver, 38:23–25). The District Court, however, did not hold a hearing to determine and resolve disputed facts. *See* App. D-4–5.

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[8] The Ninth Circuit continues to employ the "factual attack" standard despite this Court's statement in *Lujan v. Defenders of Wildlife* that "each element" of a jurisdictional claim "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." 504 U.S. 555, 561 (1992).

In short, because the District Court determined that the Quiet Title Act's statute of limitations is jurisdictional, it was able to circumvent the usual litigation processes. *See Thornhill Publ'g Co.*, 594 F.2d at 733.[9]

The decision below places these harsh consequences on property owners in Quiet Title Act cases. The effects are especially consequential in the Ninth Circuit, where the federal government owns over half the land in the states within the court's jurisdiction. *See* Carol Hardy Vincent & Laura A. Hanson, Congressional Research Service, *Federal Land Ownership: Overview and Data* 7–8 (Feb. 2020).[10] Quiet title cases are more likely to arise in the western United States, and now plaintiffs in these cases will be hampered by the decision below.

This Court has emphasized the "harsh consequences" that result from labeling a rule

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[9] The same problems arise in other circuits. Other court apply the facial-factual distinction for motions to dismiss for lack of subject matter jurisdiction. *See GBForefront, L.P. v. Forefront Mgmt. Grp., LLC*, 888 F.3d 29, 35 (3d Cir. 2018); *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980); *Glob. Tech., Inc. v. Yubei (XinXiang) Power Steering Sys. Co.*, 807 F.3d 806, 810 (6th Cir. 2015); *Branson Label, Inc. v. City of Branson, Mo.*, 793 F.3d 910, 914 (8th Cir. 2015); *Garcia v. Copenhaver, Bell & Assocs., M.D.'s, P.A.*, 104 F.3d 1256, 1260 (11th Cir. 1997). In some instances, plaintiffs in Quiet Title Act cases have to supply sufficient evidence to defeat a jurisdictional motion to dismiss without conducting any discovery. *See Cheyenne Arapaho Tribes of Oklahoma*, 558 F.3d at 595 (affirming motion to dismiss quiet title case for lack of jurisdiction and concluding that "the district court did not abuse its discretion in denying jurisdictional discovery …").

[10] *Available at* https://crsreports.congress.gov/product/pdf/R/R42346.

jurisdictional. *Wong*, 575 U.S. at 409. Jurisdictional rules are "unique in our adversarial system" and can be used to "disturbingly disarm litigants." *Sebelius*, 568 U.S. at 153. "The Court has therefore stressed the distinction between jurisdictional prescriptions and nonjurisdictional claim-processing rules[.]" *Fort Bend Cty.*, 139 S. Ct. at 1849.

Based on a "drive-by" jurisdictional reference in this Court's cases, and in conflict with this Court's most recent cases, the court below entrenched a circuit split about the jurisdictional nature of the Quiet Title Act's statute of limitations. This Court should grant the petition to ensure that courts do not continue to mischaracterize the Quiet Title Act's statute of limitations as jurisdictional.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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