No. 21-1164

In the Supreme Court of the United States

LARRY STEVEN WILKINS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
TODD KIM
Assistant Attorney General
WILLIAM B. LAZARUS
JOHN L. SMELTZER
KEVIN W. MCARDLE
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the statutory 12-year deadline for bringing "[a]ny civil action under" the Quiet Title Act, 28 U.S.C. 2409a(g), "except for an action brought by a State," *ibid.*, is jurisdictional.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 2
Statement 2
Argument 7
Conclusion 25

TABLE OF AUTHORITIES

Cases:

Arbaugh v. *Y & H Corp.*, 546 U.S. 500 (2006) 15, 16, 21
Bank One Texas v. *United States*, 157 F.3d 397 (5th Cir. 1998), cert. denied, 526 U.S. 1115 (1999) 18
Block v. *North Dakota*, 461 U.S. 273 (1983) 4, 9, 10, 12, 13
Boechler, P.C. v. *Commissioner*, No. 20-1472 (Apr. 21, 2022) 8
Bowles v. *Russell*, 551 U.S. 205 (2007) 8, 20, 21
D.C. Transit Sys., Inc. v. *United States*, 717 F.2d 1438 (D.C. Cir. 1983) 24
F.E.B. Corp. v. *United States*, 818 F.3d 681 (11th Cir. 2016) 9, 18, 19
Fort Bend Cnty. v. *Davis*, 139 S. Ct. 1843 (2019) 21
George v. *United States*, 672 F.3d 942 (10th Cir.), cert. denied, 568 U.S. 943 (2012) 23
Irwin v. *Department of Veterans Affairs*, 498 U.S. 89 (1990) 17
John R. Sand & Gravel Co. v. *United States*, 552 U.S. 130 (2008) 6, 8, 17, 18, 20
Lombard v. *United States*, 194 F.3d 305 (1st Cir. 1999) 24
Lujan v. *Defenders of Wildlife*, 504 U.S. 555 (1992) 23
Kendall v. *United States*, 107 U.S. 123 (1883) 17

Cases—Continued: Page

Kimble v. *Marvel Entm't, LLC*, 576 U.S. 446 (2015) 16
Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. *Patchak*, 567 U.S. 209 (2012) 3
Musacchio v. *United States*, 577 U.S. 237 (2016) 8
Park Cnty. v. *United States*, 626 F.2d 718 (9th Cir. 1980), cert. denied, 449 U.S. 1112 (1981) 24
North Dakota v. *United States*, No. 20-3489, 2022 WL 1111002 (8th Cir. Apr. 14, 2022) 19
Reed Elsevier, Inc. v. *Muchnick*, 559 U.S. 154 (2010) 8
Richmond, Fredericksburg & Potomac R.R. Co. v. *United States*, 945 F.2d 765 (4th Cir. 1991), cert. denied, 503 U.S. 984 (1992) 18
Rio Grande Silvery Minnow v. *Bureau of Reclamation*, 599 F.3d 1165 (10th Cir. 2010) 19
Robinson v. *United States*, 586 F.3d 683 (9th Cir. 2009) 3
Safe Air for Everyone v. *Meyer*, 373 F.3d 1035 (9th Cir. 2004), cert. denied, 544 U.S. 1018 (2005) 23
Sebelius v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145 (2013) 8
Soriano v. *United States*, 352 U.S. 270 (1957) 17
Spirit Lake Tribe v. *North Dakota*, 262 F.3d 732 (8th Cir. 2001), cert. denied, 535 U.S. 988 (2002) 19
United States v. *Beggerly*, 524 U.S. 38 (1998) ..... *passim*
United States v. *Dalm*, 494 U.S. 596 (1990) 12
United States v. *Kwai Fun Wong*, 575 U.S. 402 (2015) 6, 7, 8, 16, 17, 21

Cases—Continued: Page

United States v. *Mottaz*,
476 U.S. 834 (1986) 4, 9, 10, 11, 12, 13
United States v. *Sherwood*, 312 U.S. 584 (1941) 12
Warren v. *United States*,
234 F.3d 1331 (D.C. Cir. 2000) 19
Wisconsin Valley Improvement Co. v.
United States, 569 F.3d 331 (7th Cir. 2009) 19, 20, 24

Statutes and rules:

Act of Nov. 4, 1986, Pub. L. No. 99-598,
100 Stat. 3351 11
Federal Tort Claims Act, 28 U.S.C. 2401(b) 6, 17
Quiet Title Act, 28 U.S.C. 2409a 2
28 U.S.C. 2409a(a) 3
28 U.S.C. 2409a(f) (1982) 9
28 U.S.C. 2409a(g) ..... *passim*
Tucker Act, 28 U.S.C. 1491 7
28 U.S.C. 2501 17
28 U.S.C. 1346(f) 3
28 U.S.C. 2107 ..... 7, 20
Fed. R. Civ. P.:
Rule 12(b)(1) 3, 4, 5, 21, 22
Rule 12(b)(6) 4, 21
Rule 12(d) 22, 23
Rule 40(e) 21
Rule 56(a) 23
Rule 56(d) 23
Rule 60(b) 13, 14

In the Supreme Court of the United States

No. 21-1164

LARRY STEVEN WILKINS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A12) is reported at 13 F.4th 791. An accompanying memorandum disposition (Pet. App. B1-B6) is not published in the Federal Reporter but is available at 2021 WL 4200563. The order of the district court granting the government's motion to dismiss (Pet. App. D1-D24) is not published in the Federal Supplement but is available at 2020 WL 2732251. The Findings and Recommendation of the magistrate judge in connection with that motion (Pet. App. E1-E18) is unreported. The order of the district court denying petitioner's motion to alter or amend the judgment (Pet. App. C1-C7) is not published in the Federal Supplement but is available at 2020 WL 4596720.

JURISDICTION

The judgment of the court of appeals was entered on September 15, 2021. A petition for rehearing en banc was denied on November 23, 2021 (Pet. App. F1). The petition for a writ of certiorari was filed on February 18, 2022. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1962, petitioners' predecessors-in-interest—owners of private land near Connor, Montana—granted to the United States a roadway easement across their property. Pet. App. A4, D21; C.A. E.R. 548, 550-551. The roadway, known as Robbins Gulch Road, runs east from Highway 93 across private land for approximately one mile before entering the Bitterroot National Forest, which is administered by the United States Forest Service. See C.A. E.R. 502-503; C.A. Supp. E.R. 26. Since at least 1972, Forest Service maps have designated the road as a National Forest System road that provides unrestricted access to the Bitterroot National Forest. C.A. Supp. E.R. 25-26, 29-34. Consistent with that designation, the public has used the road for decades to access the forest. C.A. E.R. 303-325.

In 1990 and 2004, respectively, petitioners Jane Stanton and Larry Wilkins acquired separate lots along Robbins Gulch Road. Pet. App. A4, D2; see C.A. E.R. 110, 286-287, 391, 394, 399, 550; D. Ct. Doc. 32-5 (Oct. 11, 2019). Petitioners knew of the public's use of the roadway when they acquired their lots. See C.A. E.R. 331, 343-345, 357, 401; D. Ct. Doc. 31, at 15-17 (Oct. 11, 2019).

2. a. On August 23, 2018, petitioners commenced this action against the United States concerning the 1962 easement under the Quiet Title Act, 28 U.S.C. 2409a. Pet.

App. B2, D21 n.4. The Quiet Title Act permits the United States to be named as a defendant in a civil action "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). Federal district courts exercise exclusive jurisdiction over "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. 1346(f), including suits "seeking a declaration as to the scope of an easement," *Robinson* v. *United States*, 586 F.3d 683, 686 (9th Cir. 2009); see *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 215 (2012).

Petitioners' complaint alleged that the 1962 easement "may not be utilized by the general public and that it may only be used by agents of the United States and specific assignees such as timber contractors." C.A. E.R. 561. They additionally alleged that the easement imposes a duty on the United States "to patrol and maintain" the road, and that the United States had violated that duty by permitting "ongoing unrestricted use by the general public." *Ibid.* Petitioners sought declaratory relief reflecting those understandings. *Id.* at 562.

b. Following discovery, the government moved to dismiss the action for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Pet. App. E3-E4. The government contended (as relevant) that the suit was barred by 28 U.S.C. 2409a(g), which provides that "[a]ny civil action under" the Quiet Title Act, "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." *Ibid.*; Pet. App. E4. Section 2409a(g) specifies that an 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." 28 U.S.C. 2409a(g). The government contended that, under this Court's precedent, Section 2409a(g)'s 12-year bar is jurisdictional. D. Ct. Doc. 31, at 11 (citing, *inter alia*, *Block* v. *North Dakota*, 461 U.S. 273 (1983), and *United States* v. *Mottaz*, 476 U.S. 834 (1986)).

A magistrate judge recommended denying the government's motion. Pet. App. E1-E18. The magistrate judge concluded that Section 2409a(g)'s 12-year bar is not jurisdictional and that the government's statute-of-limitations argument should be analyzed under Federal Rule 12(b)(6) rather than Rule 12(b)(1). *Id.* at E11-E15. The magistrate judge further concluded that various documents on which the government's motion relied to establish petitioners' notice of the scope of the government's interest were "inadmissible" in considering the motion under Rule 12(b)(6) because those documents were not attached to or incorporated by reference into the complaint. *Id.* at E15. The magistrate judge noted that the government would be free to "reassert" its argument that the suit was barred by Section 2409a(g) later in the litigation. *Id.* at E17.

c. The district court rejected the magistrate judge's recommendation and granted the government's motion to dismiss petitioners' suit as untimely under Section 2409a(g). Pet. App. D1-D24. The court observed that this Court in *North Dakota* and *Mottaz* and the Ninth Circuit in subsequent decisions had each concluded that the Quiet Title Act's 12-year time bar is jurisdictional. *Id.* at D6-D15. The district court rejected petitioners' contention that later decisions of this Court addressing other statutes called that conclusion into doubt. *Id.* at D9-D10. To the contrary, the district court noted, this Court's later decision in *United States* v. *Beggerly*,

524 U.S. 38 (1998), had reinforced its conclusion in *North Dakota* and *Mottaz* by holding that Section 2409a(g) is not subject to equitable tolling. Pet. App. D9, D12-D13 (citing *Beggerly*, 524 U.S. at 48-49).

The district court proceeded to consider the government's motion to dismiss under Rule 12(b)(1) and concluded that petitioners' suit was time-barred. Pet. App. D15-D23. The court explained that, under Section 2409a(g), a claim under the Quiet Title Act 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," *id.* at D16 (quoting 28 U.S.C. 2409a(g)), and that the key question in this case was "when a reasonable landowner would have known that the Forest Service believed its easement granted public access or opened the road to the public," *id.* at D18.

The district court found that a reasonable landowner would have possessed that knowledge prior to August 23, 2006, 12 years before the complaint was filed. Pet. App. D20-D23. The court explained that, since at least 1972, public Forest Service maps have identified Robbins Gulch Road as a National Forest System road that provides unrestricted access to National Forest lands. *Id.* at D21. The court observed that "[t]h[o]se maps tell a clear story—the Forest Service has been informing the public since, at least, 1972 that it may access the Bitterroot National Forest by using" Robbins Gulch Road. *Ibid.* The court additionally found that "the public heard th[at] message and has been using the road as a public access route since that time," and that "[a] reasonable landowner observing this public use would have known to check local maps to see whether the road was designated as public or restricted" and, "[u]pon doing

so, * * * would have been aware of the Forest Service's adverse claim prior to August 23, 2006." *Id.* at D21-D22.

Finally, the district court noted that the Forest Service had temporarily closed the road to the public in May 2006 due to unsafe conditions, "erecting a physical barrier and posting a sign," which "would have provided a reasonable landowner with notice of the Forest Service's adverse claim." Pet. App. D22-D23. The court concluded that, "[a]lthough the record contains evidence that [petitioners'] claims likely accrued sometime in the 1970s, the record is abundantly clear that [the claims] accrued, at the latest, on May 3, 2006." *Id.* at D23. The court denied petitioners' subsequent motion to alter or amend the judgment. *Id.* at C1-C7.

3. The court of appeals affirmed. Pet. App. A1-A12, B1-B6.

a. In its published opinion, the court of appeals agreed with the district court that the Quiet Title Act's 12-year bar is jurisdictional under *North Dakota* and subsequent circuit precedent. Pet. App. A6-A7. The court rejected petitioners' contention that *North Dakota* and circuit precedent had been abrogated by this Court's decision in *United States* v. *Kwai Fun Wong*, 575 U.S. 402 (2015), which held that the limitations periods applicable to claims under the Federal Tort Claims Act, 28 U.S.C. 2401(b), are not jurisdictional. 575 U.S. at 407-421; see Pet. App. A6-A10. The court of appeals explained that *Kwai Fun Wong* had not purported to overrule *North Dakota* and "should not be read as blanketly overturning all prior Court decisions treating a statute of limitations as jurisdictional." Pet. App. A9. To the contrary, the court noted that *Kwai Fun Wong* had reaffirmed the continuing vitality of the Court's holding in *John R. Sand & Gravel Co.* v. *United States*, 552 U.S.

130 (2008), which had held that the limitations provision in 28 U.S.C. 2501 applicable to claims under the Tucker Act, 28 U.S.C. 1491, is jurisdictional. Pet. App. A9 (citing *Kwai Fun Wong*, 575 U.S. at 416).

b. In a separate, unpublished memorandum disposition, the court of appeals affirmed the district court's determination that petitioners' claims in this case are untimely because they accrued more than 12 years before the complaint was filed. Pet. App. B1-B6. The court held that petitioners' claims accrued "when a reasonable landowner should have known of the government's position that its easement allowed for public use of the road." *Id.* at B4. And it concluded that the district court did not clearly err in finding that the "historic maps," the "historic public use of the road," and the May 2006 closure "should have alerted a reasonable landowner of the government's view regarding public access of the easement more than twelve years before [petitioners] filed suit." *Id.* at B6.

4. The court of appeals denied a petition for rehearing without recorded dissent. Pet. App. F1.

ARGUMENT

Petitioners contend (Pet. 11-28) that the district court erred in dismissing their action under the Quiet Title Act for lack of jurisdiction based on petitioners' failure to bring the suit before the 12-year deadline set forth in 28 U.S.C. 2409a(g). The court of appeals correctly rejected that contention. The decision below does not conflict with any decision of this Court and accords with the decisions of nearly every other circuit to address the issue. The lopsided (7-1) circuit conflict that petitioner asserts (Pet. 11-12) between that consensus and an outlier decision of the Seventh Circuit does not warrant this Court's review. But even if the question

presented otherwise warranted review, this case would be an unsuitable vehicle to address it because petitioners' suit is barred by the Quiet Title Act's 12-year deadline regardless of whether that deadline is jurisdictional.

1. The court of appeals held that the Quiet Title Act's 12-year time bar is jurisdictional under this Court's precedent. Pet. App. A4-A10. That holding is correct and does not warrant further review.

To determine whether a statutory deadline is jurisdictional, courts ask whether "traditional tools of statutory construction * * * plainly show that Congress imbued [the] procedural bar with jurisdictional consequences." *Boechler, P.C.* v. *Commissioner*, No. 20-1472 (Apr. 21, 2022), slip op. 3 (quoting *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015)). Although Congress must "speak clearly" to give a deadline jurisdictional significance, it need not "incant magic words." *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Instead, in ascertaining whether "Congress has made the necessary clear statement," courts "examine the 'text, context, and relevant historical treatment' of the provision at issue." *Musacchio* v. *United States*, 577 U.S. 237, 246 (2016) (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 166 (2010)). Thus, for example, although the statutory text itself may provide a clear indication that a time limit is jurisdictional by "expressly refer[ring] to subject-matter jurisdiction or speak[ing] in jurisdictional terms," *ibid.*, "'precedent and practice in American courts'" may also demonstrate that Congress chose to "rank a time limit as jurisdictional." *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155 (quoting *Bowles* v. *Russell*, 551 U.S. 205, 209 n.2 (2007)); see *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 133-139 (2008).

The court of appeals properly applied those principles in determining that Section 2409a(g)'s 12-year bar is jurisdictional under this Court's precedent. Pet. App. A4-A10.

a. This Court "has twice concluded that * * * compliance with the limitations period" in the Quiet Title Act "is jurisdictional." *F.E.B. Corp.* v. *United States*, 818 F.3d 681, 685 (11th Cir. 2016) (citing *Block* v. *North Dakota*, 461 U.S. 273 (1983), and *United States* v. *Mottaz*, 476 U.S. 834 (1986)). The lower courts here properly adhered to this Court's decisions in according Section 2409a(g)'s time bar jurisdictional significance.

i. The Court in *North Dakota* specifically recognized that the Quiet Title Act's 12-year bar—then codified at 28 U.S.C. 2409a(f) (1982)—limits federal courts' "jurisdiction" over actions brought under the Act. 461 U.S. at 292. *North Dakota* involved a suit by a State under the Quiet Title Act claiming land that the United States regarded as its own. *Id.* at 277-278. The government contended that North Dakota's suit was barred by the limitations period because the State had notice of the government's claim to the land more than 12 years before filing suit. *Id.* at 279.

This Court rejected North Dakota's contentions that the limitations period did not apply, making clear that Congress intended it to operate as a categorical, absolute bar. *North Dakota*, 461 U.S. at 284-290. The Court rejected North Dakota's argument that "it c[ould] avoid the [Act's] statute of limitations and other restrictions" by invoking other causes of actions independent of the Quiet Title Act. *Id.* at 284; see *id.* at 280-285. The Court held that "Congress intended the [Quiet Title Act] to provide the exclusive means by which adverse claimants

could challenge the United States' title to real property." *Id.* at 286. Otherwise, the Court explained, "all of the carefully crafted provisions of the [Act] deemed necessary for the protection of the national public interest could be averted," and in particular North Dakota's position would allow the "12-year statute of limitations * * * [to] be avoided," which would lead to "an unlimited number of suits involving stale claims." *Id.* at 284-285.

The *North Dakota* Court also rejected the State's alternative argument that the Quiet Title Act's time bar did not apply to suits brought by States. 461 U.S. at 287-290. The Court explained that the Act waives the federal government's sovereign immunity and that, "when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed." *Id.* at 287. The Court found "no merit" in North Dakota's contention that the Quiet Title Act's waiver of sovereign immunity should be construed flexibly so as not to bar actions brought by States. *Id.* at 288. The *North Dakota* Court accordingly held that, "[i]f the State's suit was filed more than 12 years after its action accrued, the suit [wa]s barred by § 2409a(f)." *Id.* at 293. The Court did not resolve whether the suit was time-barred, noting that "the lower courts made no findings as to the date on which North Dakota's suit accrued." *Ibid.* But the Court made clear that, "[i]f North Dakota's suit [wa]s barred by § 2409a(f), the courts below had no jurisdiction to inquire into the merits" of the suit. *Id.* at 292.

Three years after *North Dakota*, the Court reaffirmed the jurisdictional nature of the Quiet Title Act's time bar in *Mottaz*, *supra*. See Pet. App. D9. *Mottaz*

involved a suit by an individual who held a fractional interest in certain lands held in trust by the government, alleging that the government had sold the lands without her consent and seeking to void the sale. 476 U.S. at 836-838. This Court held that the claimant's suit was governed by the Quiet Title Act and barred by its 12-year limitations period. *Id.* at 841-851.

The *Mottaz* Court explained that, when the United States "consents to be sued, the terms of its waiver of sovereign immunity define the extent of the court's jurisdiction," and the Quiet Title Act's time bar "is a central condition of the consent given by the Act." 476 U.S. at 841, 843. That condition, the Court observed, "reflects a clear congressional judgment that the national public interest requires barring stale challenges to the United States' claim to real property, whatever the merits of those challenges." *Id.* at 851. Having concluded that the plaintiff's suit was barred under the Quiet Title Act, the Court considered whether other statutes "conferred jurisdiction" on the lower courts to adjudicate the suit and concluded that none did so. *Id.* at 841; see *id.* at 844-851.

In November 1986, several months after this Court's decision in *Mottaz*, Congress amended the Quiet Title Act to address suits brought by States. Act of Nov. 4, 1986, Pub. L. No. 99-598, 100 Stat. 3351. The 1986 amendment modified the 12-year bar to exclude actions brought by States. *Ibid.* (redesignating the time bar as Section 2409a(g), inserting language excepting from that general time bar "an action brought by a State," and enacting new subsections (h)-(m) that prescribe special rules for suits by States). The 1986 amendment thus responded to the Court's holding in *North Dakota* that the pre-1986 version of the generally applicable 12-year

limitations period applied to suits by States by establishing a distinct regime for suits by States. Cf. 461 U.S. at 287-290. But the amendment left unaltered the Court's conclusion in *North Dakota*, then-recently reiterated in *Mottaz*, that the limitations period operates as a jurisdictional bar.

ii. Petitioners do not address *Mottaz*. They dismiss (Pet. 12, 22) this Court's decision in *North Dakota* as a "'drive-by' jurisdictional ruling" that made only "passing reference to jurisdiction" and lacks precedential force. See Pet. 13. That contention lacks merit.

The central thrust of the Court's reasoning in *North Dakota* was that the "carefully crafted" scheme that Congress had created in the Quiet Title Act was meant to be exclusive and that its restrictions—in particular, its 12-year limitations period—cannot be circumvented by invoking other forms of judicial redress or by interpreting its restrictions flexibly. See 461 U.S. at 280-290. The Court held that "North Dakota's action may proceed, if at all, only under the [Quiet Title Act]." *Id.* at 292-293. And the Court's conclusion that, if North Dakota's suit was untimely, the "courts below had no jurisdiction to inquire into the merits," *id.* at 292, was the culmination of its analysis.

The *North Dakota* Court's characterization of the time bar as jurisdictional accorded with the prevailing interpretive principle that the United States, "as sovereign, is immune from suit save as it consents to be sued, * * * and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States* v. *Sherwood*, 312 U.S. 584, 586 (1941); see *North Dakota*, 461 U.S. at 287 (citing, *inter alia*, *Sherwood*, 312 U.S. at 591); see also, *e.g.*, *Mottaz,* 476 U.S. at 841 (citing *Sherwood*, 312 U.S. at 586); *United States* v.

Dalm, 494 U.S. 596, 608 (1990) (citing *North Dakota* and *Mottaz* for the principle that a time bar conditioning a waiver of immunity limits a court's jurisdiction). As *North Dakota* and *Mottaz* each recognized, the Quiet Title Act's 12-year bar conditions the Act's waiver of sovereign immunity, and that aspect of the bar was central to the Court's analysis. *Mottaz*, 476 U.S. at 841; *North Dakota*, 461 U.S. at 283-285, 287. The Court's description of the limitations period as jurisdictional cannot fairly be dismissed as an afterthought.

b. This Court's treatment of the Quiet Title Act's 12-year bar as jurisdictional in *North Dakota* and *Mottaz* was reinforced by its subsequent holding in *United States* v. *Beggerly*, 524 U.S. 38 (1998), that the time bar is not subject to equitable tolling. *Id.* at 48-49.

i. In *Beggerly*, the United States had brought a quiet-title action against the respondents concerning certain property, but the parties settled that action, resulting in entry of judgment quieting title in favor of the United States in return for a monetary payment. 524 U.S. at 39. Twelve years after that judgment was entered—and more than 12 years after the government had commenced the original suit—the respondents brought their own action seeking to set aside the earlier settlement agreement and seeking damages concerning the disputed land. *Id.* at 39-40. The district court dismissed the suit for lack of jurisdiction, but the Fifth Circuit reversed. *Id.* at 41. The court of appeals held that the district court had jurisdiction over the respondents' action seeking to set aside the earlier judgment under both Federal Rule of Civil Procedure 60(b) and the Quiet Title Act, *Beggerly*, 524 U.S. at 41, and it "vacated the settlement agreement" and directed the district court to

enter judgment quieting title in favor of the respondents. *Id.* at 42.

This Court reversed. *Beggerly*, 524 U.S. at 42-49. The Court held that, in the particular circumstances of that case, Rule 60(b) did not authorize an independent action to reopen the earlier judgment. *Id.* at 47. The Court further rejected the Fifth Circuit's conclusion that the Quiet Title Act "provided jurisdiction" to the district court "to quiet title to the property in respondents' favor." *Ibid.* The Court explained that, although the Act authorizes actions naming the United States as a defendant if the dispute involves real property in which the government claims an interest, that authorization is subject to "an express 12-year statute of limitations," and the Fifth Circuit had acknowledged that the respondents knew of the government's claim more than 12 years before they filed suit. *Id.* at 48.

The Court in *Beggerly* rejected the Fifth Circuit's view that the Quiet Title Act's limitations period is subject to equitable tolling. 524 U.S. at 48-49. The Court observed that the Act "already effectively allowed for equitable tolling" of a kind "by providing that the statute of limitations will not begin to run until the plaintiff 'knew or should have known of the claim of the United States.'" *Id.* at 48. Based on that statutory language and the "unusually generous nature of the [Quiet Title Act's] time period," the Court concluded that "extension of the statutory period by additional equitable tolling would be unwarranted." *Id.* at 48-49. The Court found such equitable tolling "particularly" inconsistent with the Quiet Title Act because it "deals with ownership of land." *Id.* at 49. The Court noted the "special importance that landowners know with certainty what

their rights are," and it observed that "[e]quitable tolling of the already generous statute of limitations * * * would throw a cloud of uncertainty over these rights," which would be "incompatible with the Act." *Ibid.*

ii. Petitioners contend (Pet. 22-23) that *Beggerly* supports construing the Quiet Title Act's time bar as non-jurisdictional because the Court in that case found equitable tolling inapplicable based on the statutory text, structure, and subject matter, rather than by referring to the limitations period as jurisdictional. But the Court in *Beggerly* relied on those indicia of statutory meaning to reject the Fifth Circuit's view that the Quiet Title Act "provided jurisdiction" to the district court to grant relief that was sought outside the statutory 12-year period. 524 U.S. at 47; see *id.* at 47-49. The Court interpreted the Act's authorization to parties to bring, and to courts to adjudicate, certain actions against the government to contain an express, built-in temporal limitation. *Id.* at 48.

The *Beggerly* Court discussed the availability of equitable tolling specifically because that was the ground that the Fifth Circuit had asserted for excusing the untimeliness of the respondents' suit under the Quiet Title Act. 524 U.S. at 48. Other attributes of jurisdictional requirements—such as the fact that they cannot "be forfeited or waived," *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500, 514 (2006) (citation omitted)—were not at issue. And even if the Court in *Beggerly* might have pursued a shorter analytical path to the same conclusion that equitable tolling of the Act's time bar is unavailable, that conclusion is consistent with, and indeed amplifies, the Court's earlier recognition in *North Dakota* and *Mottaz* that Congress intended the Act's limitations period to

operate as an absolute bar on a court's adjudicating actions filed out of time. See pp. 9-13, *supra*.

c. Petitioners contend (Pet. 15, 18-21) that the court of appeals should have disregarded this Court's precedent addressing the Quiet Title Act's time bar in light of more recent decisions addressing whether limitations periods and other requirements in different statutes are jurisdictional. That contention lacks merit.

As an initial matter, petitioners err in asserting (Pet. 15) that decisions like *North Dakota* lack precedential force because they applied a different analytical approach than courts typically apply today, by giving greater significance to whether a particular limitations period conditions a waiver of sovereign immunity. This Court has made clear that *stare decisis* principles apply with "enhanced force" to decisions that "interpret[] a statute," irrespective of the particular interpretive methodology that those past decisions applied. *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 456 (2015). "All [of this Court's] interpretive decisions, in whatever way reasoned, effectively become part of the statutory scheme, subject (just like the rest) to congressional change." *Ibid.* And "considerations favoring *stare decisis* are 'at their acme'" in "'cases involving property and contract rights.'" *Id.* at 457 (citations omitted).

To the extent petitioners suggest (Pet. 18-21) that this Court's recent decisions articulating a "bright line" rule for determining whether requirements are jurisdictional, *Arbaugh*, 546 U.S. at 515, have implicitly abrogated its decisions interpreting the Quiet Title Act, that suggestion is unsound. Petitioners principally rely (Pet. 18-21) on this Court's decision in *Kwai Fun Wong*, *supra*, which held that different statutory limitations periods—the time bars in

the Federal Tort Claims Act, 28 U.S.C. 2401(b)—are not jurisdictional and are subject to equitable tolling. 575 U.S. at 407-412. But in reaching that conclusion, the Court in *Kwai Fun Wong* "never purported to overrule" *North Dakota*, *Mottaz*, or *Beggerly*, Pet. App. A9 (citation omitted), and petitioner cites no other decision of this Court that has done so.

This Court has previously declined to construe intervening cases articulating new approaches to particular types of statutory questions as silently overturning past decisions that performed a different mode of analysis. For example, in decisions tracing back to the 19th century, this Court construed 28 U.S.C. 2501 and its precursors—governing what are today suits against the United States under the Tucker Act in the Court of Federal Claims—to be jurisdictional for the same reason *North Dakota* identified: that the consent of the United States to be sued in that court restricts the court's jurisdiction to claims filed within the limitation period. See *Kendall* v. *United States*, 107 U.S. 123, 125-126 (1883); see also, *e.g.*, *Soriano* v. *United States*, 352 U.S. 270, 272-276 (1957). The Court has continued to accord those decisions *stare decisis* effect despite its recognition that subsequent cases had adopted and applied a different analytical approach. See *John R. Sand & Gravel*, 552 U.S. at 133-139 (discussing, *e.g.*, *Kendall*, 107 U.S. at 124-126).

The Court in *John R. Sand & Gravel* acknowledged that, in *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990), it had adopted "'a more general rule' to replace" its earlier approach in *Kendall* and other cases "for determining whether a Government-related statute of limitations is subject to equitable tolling."

552 U.S. at 137. But the Court declined to construe *Irwin* as having implicitly overruled those precedents "without mentioning the matter," noting that *Irwin* had "dealt with a different limitations statute" and had "recognized that it was announcing a general prospective rule, which does not imply revisiting past precedents." *Ibid.* (citation omitted).

The same circumspect approach is called for here. Indeed, in *Kwai Fun Wong*, the Court acknowledged and reaffirmed its determination in *John R. Sand & Gravel* to "le[ave] in place" existing precedents that had applied an approach different than the one that the Court articulated in *Irwin*. 575 U.S. at 416. The Court explained that *stare decisis* required adhering to those precedents where they apply irrespective of any tension between their reasoning and that of the Court's later decisions addressing other statutes. *Ibid.* It would be incongruous to interpret *Kwai Fun Wong*'s articulation of the approach for determining whether a time limit or other requirement is jurisdictional as itself implicitly abrogating decisions construing other laws. See *F.E.B. Corp.*, 818 F.3d at 685 n.3 (acknowledging *Kwai Fun Wong* but explaining that, "[p]ursuant to [*Kwai Fun Wong*'s] emphasis on stare decisis principles, we adhere to [this] Court's previous treatment of the [Quiet Title Act's] statute of limitations as jurisdictional").

2. As petitioners acknowledge (Pet. 12), with one exception, every other court of appeals to consider the issue has reached the same conclusion as the decision below, recognizing that the Quiet Title Act's time bar is a jurisdictional limitation. See *Richmond, Fredericksburg & Potomac R.R. Co.* v. *United States*, 945 F.2d 765, 769 (4th Cir. 1991), cert. denied, 503 U.S. 984 (1992); *Bank One Texas* v. *United States*, 157 F.3d 397, 402-403

(5th Cir. 1998), cert. denied, 526 U.S. 1115 (1999); *North Dakota* v. *United States*, No. 20-3489, 2022 WL 1111002, at *2 (8th Cir. Apr. 14, 2022) (citing *Spirit Lake Tribe* v. *North Dakota*, 262 F.3d 732, 738 (8th Cir. 2001), cert. denied, 535 U.S. 988)); *Rio Grande Silvery Minnow* v. *Bureau of Reclamation*, 599 F.3d 1165, 1175-1176 (10th Cir. 2010); *F.E.B. Corp.*, 818 F.3d at 685; *Warren* v. *United States*, 234 F.3d 1331, 1335 (D.C. Cir. 2000); Pet. App. A4-A10.

Petitioners err in contending (Pet. 11-17) that review is warranted to resolve a conflict between those seven circuits and *Wisconsin Valley Improvement Co.* v. *United States*, 569 F.3d 331 (7th Cir. 2009). Although the Seventh Circuit in that case stated that the Quiet Title Act's limitations period is not jurisdictional, *id.* at 333-335, its outlier position does not warrant this Court's review.

As a threshold matter, the Seventh Circuit's discussion of whether the Quiet Title Act's limitations period is jurisdictional in *Wisconsin Valley* was dictum. The court held that a dam operator's claim that it held a flowage easement over federal lands was barred because the suit was filed more than twelve years after a reasonable landowner would have been on inquiry notice of the government's claim that no valid easement existed. 569 F.3d at 335-336. The court speculated that, under an alternative reading of the time bar that no party had endorsed, the plaintiff's claim might have accrued even earlier, when the United States acquired title to the land subject to the asserted easement. *Id.* at 335. The court stated that it did not need to resolve that dispute because it viewed the time bar as not jurisdictional. *Id.* at 334-335. But the Seventh Circuit would have had no need to resolve that issue in any event, or

to address whether the QTA's time bar was jurisdictional, because the plaintiff's claim was barred under either interpretation. See *id.* at 334-336.

Moreover, the Seventh Circuit in *Wisconsin Valley* did not grapple with several of this Court's then-recent decisions that bore directly on its reasoning. For example, the Seventh Circuit construed *Irwin* as having categorically "resolved" that a timely suit is not a prerequisite to jurisdiction and as "incompatible with a 'jurisdictional' characterization of a statute of limitations." 569 F.3d at 333. But *Wisconsin Valley* failed to address this Court's decision in *John R. Sand & Gravel*, which, as discussed above, specifically declined to read *Irwin* as overruling this Court's past decisions that had specifically treated Section 2501's time bar as "jurisdictional." 552 U.S. at 134; see *id.* at 136-138; see pp. 17-18, *supra*. The Seventh Circuit also cited *Arbaugh* in stating that "it is hard to understand how a 'jurisdictional' tag may be attached to any period of limitations." *Wisconsin Valley*, 569 F.3d at 333. But it did not confront this Court's post-*Arbaugh* decision in *Bowles*, *supra*, which held that the statutory deadline for filing a notice of appeal in civil cases, 28 U.S.C. 2107, "is a jurisdictional requirement," 551 U.S. at 214; see *id.* at 208-215. The Court in *Bowles* perceived no inconsistency between that conclusion and its decision in *Arbaugh*. See *id.* at 211 (distinguishing *Arbaugh* and explaining that it did not "aid [the] petitioner").

The Seventh Circuit does not appear to have addressed Section 2409a(g)'s deadline since *Wisconsin Valley* or revisited its reasoning in that case in light of *John R. Sand & Gravel*, *Bowles*, and other decisions. Especially given the possibility that the Seventh Circuit could reconsider the relevant portions of that decision,

either through rehearing en banc or under Seventh Circuit Rule 40(e), and thereby eliminate the tension petitioner alleges (Pet. 11-14) with every other circuit to consider the issue, further review is unwarranted.

3. Even if the question presented otherwise warranted review, this case would be an unsuitable vehicle to address it because the question lacks practical significance in this case.

The most typical consequences of treating a limitations period as jurisdictional are that it cannot be "'forfeited or waived'" by the parties, and must be raised by a court on its own motion, *Arbaugh*, 546 U.S. at 514 (citation omitted); see, *e.g.*, *Fort Bend Cnty.* v. *Davis*, 139 S. Ct. 1843, 1848-1852 (2019), and that a court cannot "create equitable exceptions," *Bowles*, 551 U.S. at 214, such as by equitably tolling a deadline, see *Kwai Fun Wong*, 575 U.S. at 409. None of those consequences is implicated here. The government timely sought dismissal based on the Quiet Title Act's statute of limitations. See pp. 3-4, *supra*. And equitable tolling of that bar is categorically unavailable, in this case and all others, under this Court's decision in *Beggerly*, 524 U.S. at 48-49.

Instead, petitioners contend (Pet. 25-27) that the lower courts' characterization of the Quiet Title Act's limitations period as jurisdictional affected the procedural posture in which the district court evaluated the untimeliness of petitioners' suit. The magistrate judge, who treated the time bar as non-jurisdictional, reasoned that the government's argument must be considered under Federal Rule of Civil Procedure 12(b)(6), rather than Rule 12(b)(1), and that Rule 12(b)(6) would preclude the court from considering certain documents on which the government's motion to dismiss relied that

were not attached to or incorporated by reference into the complaint. Pet. App. E15. Petitioners assert (Pet. 25-26) that, under Ninth Circuit precedent, analyzing the government's limitations-period argument under Rule 12(b)(1) altered the procedures the district court applied and the allocation of the burden of proof.

Those purported procedural consequences, however, have no bearing on the proper disposition of the case and would provide no sound basis for disturbing the district court's or the court of appeals' judgments. If petitioners were correct that the Quiet Title Act's time bar were not jurisdictional, it would have been appropriate for the district court to treat the government's motion to dismiss—which relied on materials outside the pleadings—as a motion for summary judgment. See Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56."). The court could then have ruled on the motion in that posture provided that all parties had "a reasonable opportunity to present all the material that is pertinent to the motion." *Ibid.*

Although the district court here did not need to pursue that course—in light of its determination that the Quiet Title Act's limitations period is jurisdictional, Pet. App. D6-D15—if petitioners prevailed on the question presented in this Court, affirmance of the district court's judgment on that basis still would be appropriate without the need for any further proceedings in the district court. As the Ninth Circuit has held, where a district court improperly analyzes a motion under Rule 12(b)(1) and grants the motion, the court of appeals may review the district court's ruling "as a grant of summary

judgment." *Safe Air for Everyone* v. *Meyer*, 373 F.3d 1035, 1040 & n.4 (2004), cert. denied, 544 U.S. 1018 (2005). In doing so, the court "review[s] the ruling de novo," "[v]iew[s] the evidence in the light most favorable to the nonmoving party," and "determine[s] whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." *Id.* at 1040 n.4. The court "do[es] not weigh the evidence or determine the truth of the matter, but only determine[s] whether a genuine issue of material fact exists for trial." *Ibid.*; see Fed. R. Civ. P. 56(a).

That approach is permissible here because petitioners had an opportunity to conduct discovery and did not assert a need for additional time to gather and present evidence on the timeliness issue. See Fed. R. Civ. P. 12(d), 56(d); see also *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (indicating that jurisdictional questions such as standing may be resolved at summary judgment). Instead, they responded to the motion to dismiss as if it were a summary-judgment motion. See C.A. Supp. E.R. 12-24. And affirmance is warranted because no genuine dispute of fact exists that petitioners' claims accrued at least 12 years before they filed suit.

Petitioners' complaint makes clear that their claims arise out of public use of Robbins Gulch Road, and the claims turn on whether the 1962 easement permits public use. See C.A. E.R. 550-561; see also Pet. App. B4-C5, C3-C6. As a result, the Quiet Title Act's 12-year period for filing suit began to run when a reasonable landowner would have known of the government's claim that the easement allows for public use of the road. See 28 U.S.C. 2409a(g); see also Pet. App. D18. That trigger "is an exceedingly light one." *George* v. *United States*,

672 F.3d 942, 944 (10th Cir.) (Gorsuch, J.), cert. denied, 568 U.S. 943 (2012). The clock begins when "a party should have reasonably discovered an adverse property interest asserted by the United States." *D.C. Transit Sys., Inc.* v. *United States*, 717 F.2d 1438, 1441 (D.C. Cir. 1983); see also *Lombard* v. *United States*, 194 F.3d 305, 309 (1st Cir. 1999); *Park Cnty.* v. *United States*, 626 F.2d 718, 720 n.6 (9th Cir. 1980) (per curiam), cert. denied, 449 U.S. 1112 (1981). The "time starts under § 2409a(g) with notice of a problem as well as with actual knowledge of an adverse claim." *Wisconsin Valley*, 569 F.3d at 335.

As the lower courts correctly held, a reasonable landowner would have been on notice of the Government's claim prior to August 23, 2006, twelve years before the complaint was filed. Pet. App. B2, B5-B6, D20-D23. Since at least 1972, Forest Service maps have apprised the public that Robbins Gulch Road is a National Forest System road that provides unrestricted access to the Bitterroot National Forest. C.A. Supp. E.R. 25-26, 29-34. Consistent with the maps, the recreating public has used the road for decades to access the National Forest. C.A. E.R. 303-325. Petitioners acknowledged in their depositions that they were aware of such use when they purchased their properties. See *id.* at 331, 343-345, 357, 401; D. Ct. Doc. 31, at 15-17. Finally, the Forest Service temporarily closed the road to the public on May 3, 2006, due to unsafe conditions, which made clear that the agency considered the road to be otherwise open to public use. C.A. E.R. 471-472, 501.

As the district court recognized, the question whether petitioners' claims accrued outside the 12-year limitations period is not a close one. Pet. App. D23. Their claims likely accrued "sometime in the 1970s,"

decades before they filed suit in 2018. *Ibid.* But at a minimum, "the record is abundantly clear that [their claims] accrued, at the latest, on May 3, 2006." *Ibid.* Regardless of whether the 12-year bar is jurisdictional, the government is and would be entitled to judgment as a matter of law that petitioners' claims are untimely. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
TODD KIM
Assistant Attorney General
WILLIAM B. LAZARUS
JOHN L. SMELTZER
KEVIN W. MCARDLE
Attorneys

APRIL 2022