No. 21-1164

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The question presented asks this Court to resolve a circuit split on an important question of law. The Ninth Circuit's decision in this case, and the government's arguments against certiorari, conflict with this Court's recent precedents on how courts should determine whether a statute of limitations is jurisdictional. This Court should grant review.

ARGUMENT

I. There is a circuit split on an important question of law

There is an irreconcilable circuit split on the question of whether the Quiet Title Act's statute of limitations is jurisdictional. Petition for Writ of Certiorari (Pet.) at 11–18. The government downplays this split by noting that only one circuit has held that the statute of limitations is not jurisdictional. Brief for the Respondent in Opposition (BIO) at 18. But it is not unusual for this Court to grant certiorari in cases where only one circuit went against several others. *See, e.g.*, *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 20-1566, slip op. at 4 (U.S. Apr. 21, 2022) (Resolving a split where "[t]he Ninth Circuit stands alone …."). And when, as here, the Ninth Circuit is on the wrong side of the split, the consequences are particularly significant because of the scope of the court's territorial jurisdiction. *See* Pet. at 27. This Court's review is needed to resolve the split and ensure that lower courts do not mislabel the Quiet Title Act's statute of limitations as jurisdictional.

The government suggests that the Seventh Circuit may reconsider its position and resolve the split. BIO at 20. That is unlikely. Although the

Seventh Circuit reached its decision over a decade ago, it addressed the argument the government now makes today. *See Wisconsin Valley Imp. Co. v. United States*, 569 F.3d 331, 334 (7th Cir. 2009). The government suggests that the Seventh Circuit might reach a different holding if it could address this Court's decision in *John R. Sand & Gravel Co. v. United States*, where this Court did not apply the recent standards for determining whether a limitations period is jurisdictional because it had previously provided a definitive interpretation on the jurisdictional nature of the Tucker Act's statute of limitations. BIO at 20 (citing *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134 (2008)). But even though *Wisconsin Valley* did not consider *John R. Sand & Gravel*, the Seventh Circuit explicitly rejected the argument that this Court's Quiet Title Act cases definitively hold that the statute of limitations is jurisdictional. *Wisconsin Valley*, 569 F.3d at 334 (citing *Block v. North Dakota*, 461 U.S. 273, 292 (1983)).[1] It is doubtful that the Seventh Circuit would reconsider its position especially because in the years since *Wisconsin Valley*, this Court has brought "discipline to the use of the term jurisdiction." *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013) (quotations omitted).

Furthermore, the government's argument goes both ways. If the Seventh Circuit can reconsider its previous decision, so can other circuits. Many circuits have reconsidered holdings on various statutes of limitations in light of *United States v. Kwai Fun*

[1] The Seventh Circuit's holding is not dictum because it was central to the decision and the court modified the judgment owing to the holding. *Wisconsin Valley*, 569 F.3d. at 335–36.

Wong, 575 U.S. 402 (2015). *See* Pet. at 16. It is possible that, given the opportunity, these circuits will reconsider their decisions on the Quiet Title Act's statute of limitations.[2] Only this Court's review can resolve the current split and prevent any future split.

II. The Quiet Title Act's statute of limitations is not one of the rare jurisdictional statutes of limitations

As this Court recently reiterated, "we treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is." *Boechler, P.C. v. Comm'r of Internal Revenue*, No. 20-1472, slip op. at 3 (U.S. Apr. 21, 2022) (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515 (2006)). To determine whether such a requirement is jurisdictional, "the 'traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences.'" *Boechler*, slip op. at 3 (quoting *Wong*, 575 U.S. at 410). The Quiet Title Act's statute of limitations lacks any clear statement that Congress intended it to be jurisdictional.

Here, as in *Boechler*, "the text does not clearly mandate the jurisdictional reading." Slip op. at 4. Indeed, the language in *Boechler* was a closer call because of the "awkward structure" of the statute of limitations. *Id.* Here, the language is similar to the "mundane statute-of-limitations language" at issue in *Wong*. *See* 575 U.S. at 410; *compare* 28 U.S.C. § 2401(b), *with* 28 U.S.C. § 2409a(g). Like in *Wong*,

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[2] Recently the Eighth Circuit, applying circuit precedent, treated the Quiet Title Act's statute of limitations as jurisdictional. *N. Dakota, ex rel. Wrigley v. United States*, No. 20-3489, slip op. at 6, 2022 WL 1111002 at *2 (8th Cir. Apr. 14, 2022). The plaintiffs, however, did not ask the court to reconsider its past holding.

this ordinary statute of limitations language does not provide a clear statement that it is jurisdictional.

Similarly, the Quiet Title Act, like the statute in *Boechler*, lacks a "clear tie between the deadline and the jurisdictional grant." Slip op. at 6. In *Boechler*, this Court found no clear tie between the limitations period and the jurisdictional grant even though both were in the same sentence. *Id.* In the Quiet Title Act, there is even more separation between the statute of limitations and the jurisdictional grant. *See* 28 U.S.C. §§ 1346(f), 2409a(g).

The government does not engage with the text or structure of the Quiet Title Act's statute of limitations. But even if it offered a different interpretation, that would not mean that the statute of limitations is jurisdictional. "Where multiple plausible interpretations exist—only one of which is jurisdictional—it is difficult to make the case that the jurisdictional reading is clear." *Boechler*, slip op. at 5. In passing the Quiet Title Act, Congress did not clearly state that the statute of limitations is jurisdictional.

III. This Court has never held that the Quiet Title Act's statute of limitations is jurisdictional

The government does not attempt to apply the traditional rules of statutory construction to the Quiet Title Act's statute of limitations. Instead, it relies on three of this Court's precedents. BIO at 9–13. But these decisions "all predate this Court's effort to 'bring some discipline' to the use of the term 'jurisdictional.'" *See Boechler*, slip op. at 8 (quoting *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011))

(rejecting Commissioner's reliance on decades-old cases). Therefore, the statements in those cases are, at most, "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." *See Arbaugh,* 546 U.S. at 511 (quotations omitted).

In *Block*, this Court did not consider whether the Quiet Title Act's statute of limitations is jurisdictional. 461 U.S. at 276–77. The opinion merely made a passing reference that the courts below would lack jurisdiction if the suit were barred by the statute of limitations. *Id.* at 292. That single off-hand reference does not equate to a holding that the Quiet Title Act's statute of limitations is jurisdictional. *See Wisconsin Valley*, 569 F.3d at 334.

United States v. Mottaz, 476 U.S. 834 (1986), decided only three years after *Block*, provides even less support for the argument that the Quiet Title Act's statute of limitations is jurisdictional. In *Mottaz*, the plaintiff sued the United States and argued that the government's sale of her interests in tribal lands was illegal. *Id.* at 836. The Court considered whether the dispute could be brought under the General Allotment Act of 1887, which granted the interests, or whether it must be brought under the Quiet Title Act. *Id.* at 846–47. Like *Block*, *Mottaz* held that the Quiet Title Act is the exclusive means for challenging the federal government's interest in property. *Id.*

Mottaz did not, however, consider whether the Quiet Title Act's statute of limitations is jurisdictional. Although the Court discussed the Act's waiver of sovereign immunity and described its statute of limitations as "carefully crafted," none of

that pertains to whether the statute of limitations is jurisdictional. 476 U.S. at 841, 844. "[I]t makes no difference" to the jurisdictional question "that a time bar conditions a waiver of sovereign immunity …." *Wong*, 575 U.S. at 420. And "a rule may be mandatory without being jurisdictional …." *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1852 (2019). *Mottaz* does not hold that the Quiet Title Act's statute of limitations is jurisdictional.

United States v. Beggerly, 524 U.S. 38 (1998), the most recent of this Court's cases on the Quiet Title Act's statute of limitations, indicates that the Quiet Title Act's statute of limitations is not jurisdictional. In *Beggerly*, this Court considered whether the Quiet Title Act's statute of limitations allows for equitable tolling. *Id.* at 48–49. But whether a statute of limitations allows for equitable tolling is a separate question from whether a statute of limitations is jurisdictional. *See Boechler,* slip op. at 8. Indeed, whether a statute of limitations allows for equitable tolling is the second step in the analysis, and is only answered after a court first determines that the statute of limitations is not jurisdictional. *See id.* (first holding that the statute of limitations was not jurisdictional then analyzing whether the statute allows for equitable tolling). That this Court in *Beggerly* answered the second step of the inquiry implies that the Quiet Title Act's statute of limitations is not jurisdictional.

The government argues that the Court in *Beggerly* could have pursued "a shorter analytical path to the same conclusion," BIO at 15, but that is incorrect. The holding in *Beggerly* suggests that lower courts will apply some equitable considerations in determining

whether a Quiet Title Act case is timely. 524 U.S. at 48. If *Beggerly* held that the Quiet Title Act's statute of limitations is jurisdictional, then courts would be foreclosed from applying any equitable considerations. *See Wong*, 575 U.S. at 408–09.

Not only does *Beggerly* recognize that the Quiet Title Act's statute of limitations "effectively allow[s] for equitable tolling," 524 U.S. at 48, the decision leaves open the question of whether the statute of limitations may be tolled for equitable considerations not at issue in the case. *Id.* at 49–50 (Stevens, J., concurring); *id.* at 48 (citing *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990)). As Justice Stevens noted in his concurrence, the Court's majority opinion does not decide "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 49–50 (Stevens, J., concurring). The majority opinion supports Justice Stevens's position. *See id.* at 48 (quoting *Irwin*, 498 U.S. at 96, for the proposition that "[w]e have allowed equitable tolling in situations … where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass"). But a court may only consider the factors highlighted by Justice Stevens if the statute of limitations is not jurisdictional. *See Wong*, 575 U.S. at 408–09. Accordingly, the fact that the Court left open the possibility of equitable tolling further supports the conclusion, adopted by the Seventh Circuit but rejected by the Ninth Circuit below, that the Quiet Title Act's statute of limitations is not jurisdictional.

None of this Court's previous cases provided "'a definitive earlier interpretation'" on the question presented in this petition. *See Wong*, 575 U.S. at 416 (quoting *John R. Sand & Gravel*, 552 U.S. at 138). In *John R. Sand & Gravel*, the "question presented [was] whether a court must raise on its own the timeliness of a lawsuit filed in the Court of Federal Claims, despite the Government's waiver of the issue." 552 U.S. at 132. In answering that question, this Court relied on a case from 1883 that interpreted the predecessor to the Tucker Act and held that "'*it [was] the duty of the court to raise the [timeliness] question whether it [was] done by plea or not*.'" *Id.* at 134 (quoting *Kendall v. United States*, 107 U.S. (17 Otto) 123, 125–26 (1883)) (alterations and emphasis in original). This Court's 125 years of cases interpreting the Tucker Act and its predecessor acts directly addressed the jurisdictional status of the statute of limitations. This Court's cases interpreting the Quiet Title Act do not.

This Court has never held that a court must raise *sua sponte* the Quiet Title Act's statute of limitations. Instead, in this Court's Quiet Title Act cases, whether the statute of limitations is jurisdictional "was not central to the case[s], and thus did not require close analysis." *See Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161 (2010). In short, there is "no such 'long line' of authority" holding that the Quiet Title Act's statute of limitations is jurisdictional. *See Boechler*, slip op. at 8. This Court should grant certiorari to answer and resolve the circuit split on that question.

IV. The District Court's holding that the Quiet Title Act's statute of limitations is jurisdictional caused it to apply an improper standard of review

The government speculates that the District Court would have reached the same outcome even if it had correctly held that the Quiet Title Act's statute of limitations is not jurisdictional. BIO at 21–24. But the government's argument is only a guess, and whether this suit is timely is not the question presented to this Court. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this Court is a court of review, not of first view); *see also Boechler*, slip op. at 11 (remanding to lower court to decide whether petitioner is entitled to equitable tolling of the statute of limitations).

It is unknown what outcome the District Court would have reached if it had applied the correct standard of review. Pet. at 26–27. What *is* known is that the District Court's incorrect holding about the jurisdictional nature of the Quiet Title Act's statute of limitations affected its analysis. The District Court placed the burden on Petitioners to prove that their case was timely. Petitioners' Appendix (App.) at D-23. If the statute of limitations is not jurisdictional, then the burden is on the government to prove that the case is untimely. *See Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1122 (9th Cir. 2007). The District Court also noted that it could "resolve factual disputes with or without a hearing." App. at D-4. If the statute of limitations is not jurisdictional, then all disputed facts must be construed in favor of Petitioners at the summary judgment stage. *See Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982).

As a result, Petitioners were unable to fully present their argument that their case was timely. They noted that maps that depict Forest Service roads do not necessarily depict roads that are open to the public. 2 Appellants' Excerpts of Record (ER) at 183, 185, 224, Ninth Circuit case no. 20-35745, docket no. 12 (filed Dec. 23, 2020). They presented sworn declarations about the use of the road, which evidence contradicted the government's declarations. *See* 2 ER at 114–16. They also submitted declarations that disputed the government's characterization of the 2006 Forest Service 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). Finally, Petitioners presented evidence of statements from Forest Service officials that caused Petitioners to delay filing their lawsuit. 2 ER at 88 (Depo. Oliver, 38:23–25). But, because the District Court held that the statute of limitations is jurisdictional, it did not have to consider these disputed facts, much less take Petitioners evidence as true for purposes of resolving the government's motion. App. at D-4.

The government argues that if the District Court had held that the statute of limitations is not jurisdictional, it could have treated the motion to dismiss as a motion for summary judgment. BIO at 22. But then the District Court would have had to apply the standards for resolving a motion for summary judgment and would have placed the burden on the government to prove that Petitioners' action was untimely. In a case where the government could "not pin down precisely when Plaintiffs' claims expired," App. D-20, it is conjecture to argue that the District Court would have reached the same conclusion under the proper standard of review and

burden of proof. This is especially true in the Ninth Circuit, where it is more difficult to trigger the statute of limitations for a dispute over an easement than a dispute over fee title. *See McFarland v. Norton*, 425 F.3d 724, 726–27 (9th Cir. 2005); *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995).

In answering the question presented, however, this Court does not need to search through the record to determine whether Petitioners' claims are timely. *Cf. Boechler*, slip op. at 11 (remanding to decide whether petitioner is entitled to equitable tolling). Indeed, this Court cannot properly answer that question because the District Court's holding prevented Petitioners from fully developing and presenting an adequate record to dispute the government's contentions that the case is untimely.

Instead, this Court should grant certiorari to resolve the legal question regarding whether the Quiet Title Act's statute of limitations is jurisdictional. This Court can then remand to allow the District Court to apply the correct standard of review and answer the as yet undeveloped, fact-bound question of whether this case was brought within the Quiet Title Act's statute of limitations.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED: May 2022.

Respectfully submitted,

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