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

## BRIEF FOR PETITIONERS


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## Question Presented

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

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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 reproduced in the Appendix to the Petition for Writ of Certiorari (Cert. App.) beginning at A-1. The panel's unpublished memorandum opinion affirming the judgment of the District Court is reproduced beginning at Cert. App. B-1. The District Court's decision denying the Petitioners' (landowners) motion to alter or amend the judgment is reproduced beginning at Cert. App. C-1. The District Court's order granting the motion to dismiss is reproduced beginning at Cert. App. D-1. The Magistrate Judge's findings and recommendations on the motion to dismiss are reproduced beginning at Cert. App. E-1. The Ninth Circuit's order denying the petition for rehearing en banc is reproduced at Cert. App. F-1.

## Jurisdiction

The District Court granted Respondents' motion to dismiss on May 26, 2020. Petitioners 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. Petitioners then filed a timely petition for rehearing en banc, which was denied on November 23, 2021. The Petitioners filed a timely petition for a writ of certiorari on February 18, 2022. This Court granted the Petition on June 6, 2022 and 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.

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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**

Petitioners Larry Steven "Wil" Wilkins and Jane Stanton are Montana landowners who filed this quiet title action to resolve a dispute over the scope of an easement held by the United States across their land and the federal government's duties under that easement. They brought this suit under the Quiet Title Act, 28 U.S.C. §§ 1346(f), 2409a, which allows "citizen[s] involved in a title dispute with the Government to have [their] day in court …." S. Rep. No. 92-575 at 2 (1971).

The District Court dismissed the case for lack of subject-matter jurisdiction before the title dispute could be resolved. It held that the Quiet Title Act's statute of limitations—which provides that an action shall be brought within twelve years from when the plaintiff or his predecessor in interest knew or should have known of the government's adverse claim, 28 U.S.C. § 2409a(g)—is jurisdictional. Cert. App. D-15. Accordingly, the court placed the burden on the landowners to prove that they had brought the complaint within the statute of limitations. Cert. App. D-23. Then, proceeding under the Ninth Circuit's standards for resolving a jurisdictional motion to dismiss, the court dismissed the case without holding an evidentiary hearing to settle disputed facts concerning the timeliness of the filing. *Id.* The Ninth Circuit affirmed.

The lower courts in this case incorrectly held that the Quiet Title Act's statute of limitations is a

jurisdictional bar, rather than a nonjurisdictional claim-processing rule. This Court has "repeatedly held that filing deadlines ordinarily are not jurisdictional." *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013). If Congress wishes to depart from the ordinary circumstance and make a statute of limitations jurisdictional, it must clearly state its intention. *Boechler, P.C. v. Comm'r of Internal Revenue*, 142 S. Ct. 1493, 1497 (2022).

The Quiet Title Act does not clearly state that its statute of limitations is jurisdictional. Neither the statutory text, nor context, nor history provides a clear statement that Congress made the statute of limitations jurisdictional. Instead, they demonstrate that Congress made the statute of limitations a nonjurisdictional affirmative defense.

The judgment of the Ninth Circuit should be reversed.

## Statement of the Case

### A. Factual Background

Mr. Wilkins is a veteran diagnosed with post-traumatic stress disorder. Joint Appendix (JA) 8 ¶ 3. In 2004, he purchased his home in Ravalli County, Montana, near the boundary of the Bitterroot National Forest, on Robbins Gulch Road. *Id.* ¶ 4. Across that dirt lane lives Mrs. Stanton, who purchased her residence on Robbins Gulch Road in 1991 with her husband. JA 108 ¶ 9. Since her husband's passing in 2013, she has lived alone at the house. *See id.*; *see also* 2 Appellants' Excerpts of Record (ER) at 261, Ninth Circuit case no. 20-35745, docket no. 12 (filed Dec. 23, 2020). For their security

and peace of mind, both need to know who can use Robbins Gulch Road and how.

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). JA 23–24. The landowners' predecessors granted the easement in 1962 in two separate deeds with substantially similar language. *See* JA 25–27. The deeds convey to the United States 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." *Id.* at 23. The easement differs in significant ways from the form easements in the Forest Service Handbook used by the agency at the time: whereas the form easements purport to grant to the United States an easement for "highway purposes," JA 16, the 1962 deeds do not, *id.* at 23. The elimination of the highway purpose language from the Robbins Gulch Road easement deeds is consistent with the Forest Supervisor's cover letter that accompanied the proposed deeds. That letter explains that the "[p]urpose of the road" was for "timber harvest." *Id.* at 25. Another significant difference between the form easements and the 1962 deeds is that, unlike the former, the latter state that the easement will be "patrolled." *Compare* JA 16, with *id.* at 23.

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

thru private lands." JA 102–03; JA 58. Since that time, expanded use of the easement has interfered with Mr. Wilkins's and Mrs. Stanton's use and enjoyment of their properties. JA 79–80; JA 86. For example, Mr. Wilkins, Mrs. Stanton, and their neighbors have had to deal with people trespassing, stealing their personal property, shooting at their houses, hunting both on and off the easement, and travelling at dangerous speeds on and around Robbins Gulch Road. JA 79–80; JA 86; JA 10–12 ¶¶ 5–13. In September 2019, someone travelling along the road shot Mr. Wilkins's cat. *Id.* at 9 ¶¶ 12–13. The recent, excessive use of the road and adjacent properties by the public and Forest Service permittees has even caused some neighbors to move. JA 15 ¶ 27.

Additionally, the increased use of the easement has caused erosion of the road that affects the adjacent properties. JA 108–09. The road condition has caused sediment and silt to build up on the underlying properties and has washed out portions of those properties. *See* JA 32, 86. Making things worse, the Forest Service's maintenance of the easement has in recent years become infrequent. JA 72, Cert. App. E-16–17.

In 2007, the Bitterroot National Forest—as part of a Service-wide policy to provide "clear identification of roads, trails, and areas for motor vehicle use on each National Forest," 70 Fed. Reg. 68,264, 68,264 (Nov. 9, 2005)—began a process to determine which Forest Service-managed roads should be open to the public, JA 28–29. In September, a year after the Forest Service commissioned the "public access thru private lands" sign, it issued a proposed action scoping document about the process. *Id*. In that document, the

Forest Service proposed no public use of Robbins Gulch Road. *Id.* at 32.

During the beginning of this travel management planning process, Mr. Wilkins spoke with then-Darby District Ranger Chuck Oliver about the problems occurring because of the public's use of the road. JA 6–7. Mr. Oliver suggested that Mr. Wilkins work through the travel management process to resolve his concerns. *Id.* The planning process took over eight years, culminating in the Forest Service's final decision in May 2016. Press Release, U.S. Forest Serv., *Bitterroot National Forest Releases Travel Plan Decision and Final EIS* (May 11, 2016).[1] After originally proposing to allow no public use of the easement, JA 32, the final travel plan decision allowed use of the easement by the public in summer and autumn. JA 14 ¶ 26; 2 ER at 131.

The Bitterroot's final travel plan decision only exacerbated the problems occurring on the easement. In December 2017, after the second autumn under the travel plan, the landowners and their neighbors met with Forest Service officials and requested that the Forest Service help address these problems. JA 14 ¶ 26; *id.* 88–90. The Forest Service declined. JA 14 ¶ 26. Not only did the agency disagree that the easement is limited in scope, it also disclaimed its obligations under the easement to patrol or maintain the road. *Id.*; *id.* at 89; 2 ER at 64; JA 105 (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 owners of the servient estates.

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[1] https://www.fs.usda.gov/detail/bitterroot/news-events/?cid=FSEPRD500391

JA 14 ¶ 26. In May 2018, as seasonal summer traffic was about to begin, counsel for Mr. Wilkins 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 the agency 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 Quiet Title Act suit in August 2018, one month after the Forest Service Office of the General Counsel responded to Mr. Wilkins's letter. JA at 106. 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 id.* at 119.[2] Specifically, Mr. Wilkins and Mrs. Stanton brought two claims for relief: one alleging that the easement does not allow the general public to use the road, the other alleging that the government has a duty to maintain and patrol the road to ensure that

[2] Montana law governs the interpretation of 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."); H.R. Rep. No. 92-1559 at 10 (1972) (letter from the Attorney General to the Speaker of the House in support of legislation allowing for quiet title actions against the United States and stating that "[t]he State law of real property would of course apply to decide all questions not covered by Federal law.").

use of the easement does not unreasonably burden the servient estates. *Id.* at 117–18.

In October 2019, prior to the close of discovery, the government filed a motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See* District Court docket nos. 24, 30 (listed as relevant docket entries, JA at 1). It argued that the landowners did not bring the case within the Quiet Title Act's twelve-year statute of limitations. *See* Cert. 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. Cert. App. D-20. The landowners responded that the Quiet Title Act's statute of limitations is nonjurisdictional, and therefore the case could not be resolved on a motion to dismiss. *See* Cert. 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), the claims did not accrue until the Forest Service put up the 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); Cert. 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."). That sign was commissioned in September 2006, less than 12 years before the lawsuit was filed. JA at 102–03.

The magistrate judge recommended that the motion to dismiss be denied. Cert. App. E-18. She concluded that the Quiet Title Act's statute of

limitations is nonjurisdictional. Cert. 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. Cert. App. E-17.

The government objected to the findings and recommendations, reiterating the arguments made in its motion to dismiss. Cert. App. D-5. The District Court rejected the magistrate's findings and recommendations and held that the Quiet Title Act's statute of limitations is jurisdictional. Cert. App. D-15. As a result of that holding, the court applied the Ninth Circuit standard for resolving a "factual attack" on subject-matter jurisdiction "meaning the facts negating jurisdiction exist outside the complaint[.]" Cert. App. D-4. Under this standard, "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." Cert. App. D-4 (citing *Kingman Reef Atoll Investments, L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008); *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." Cert. App. D-4–5 (citing *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)). Without holding an evidentiary hearing to resolve disputed facts, the District Court concluded that the landowners failed to meet their burden to establish jurisdiction and therefore dismissed the case. *Id.* at D-23–24.

Mr. Wilkins and Mrs. Stanton filed a motion to alter or amend the judgment under Federal Rule of

Civil Procedure 59(e) regarding their second claim for relief. On August 11, 2020, the District Court denied the motion, Cert. 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. Cert. App. A-12; Cert. App. B-6. In a published opinion, the panel held that the Quiet Title Act's statute of limitations is jurisdictional. Cert. App. A-10. In a separate unpublished opinion, the panel, reviewing the District Court's order for clear error, affirmed the dismissal. Cert. App. B-5. Mr. Wilkins and Mrs. Stanton filed a petition for rehearing en banc, which the Ninth Circuit denied on November 23, 2021. Cert. App. F-1.

Mr. Wilkins and Mrs. Stanton filed their Petition for Writ of Certiorari on February 18, 2022. This Court granted the Petition on June 6, 2022.

## Summary of Argument

When Congress enacts a statute of limitations as a jurisdictional bar, rather than as a nonjurisdictional claim processing rule, it must clearly state that intention. *Boechler,* 142 S. Ct. at 1497. In passing the Quiet Title Act, Congress did not clearly state that the statute of limitations is jurisdictional. *See* 28 U.S.C. §§ 1346(f), 2409a.

Neither the statutory text, nor the statutory context, nor the legislative history provides a clear statement that the statute of limitations is jurisdictional. 28 U.S.C. §§ 1346(f), 2409a. The statutory text uses "mundane statute-of-limitations language, saying only what every time bar, by

definition, must: that after a certain time a claim is barred." *United States v. Wong*, 575 U.S. 402, 410 (2015) (discussing Federal Tort Claims Act). As for context, Congress placed the Quiet Title Act's statute of limitations in a separate section from the jurisdictional grant, *see* 28 U.S.C. §§ 1346(f), 2409a, which indicates that the time bar is nonjurisdictional. *See Wong*, 575 U.S. at 411 (citing *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 439–40 (2011); *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 164–65 (2010); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515 (2006); *Zipes v. Trans World Airlines*, 455 U.S. 385, 393–94 (1982)). Further, the legislative history shows that both Congress and the Department of Justice understood that the statute of limitations would be a waivable affirmative defense, not a jurisdictional rule. H.R. Rep. No. 92-1559 at 8.

The courts below cited sporadic and casual use of the word "jurisdiction" in this Court's previous Quiet Title Act cases to conclude that this Court has already held the statute of limitations to be jurisdictional. *See* Cert. App. A-8–9 (citing *Block v. N.D. ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273 (1983); *United States v. Beggerly*, 524 U.S. 38, 48 (1998)); *see also Fid. Expl. & Prod. Co. v. United States,* 506 F.3d 1182, 1185 (9th Cir. 2007) (citing *United States v. Mottaz*, 476 U.S. 834 (1986)). But those Quiet Title Act cases "predate this Court's effort to 'bring some discipline' to the use of the term 'jurisdictional.'" *Boechler,* 142 S. Ct. at 1500 (quoting *Henderson*, 562 U.S. at 435). "Passing references" that a prescription is "'jurisdictional' in prior Court opinions … display the terminology employed when the Court's use of 'jurisdictional' was 'less than meticulous' …." *See Fort Bend Cnty. v. Davis*, 139 S. Ct. 1843, 1848 n.4 (2019)

(quoting *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004)). Such casual and inexact use does not equate to a holding that the Quiet Title Act's statute of limitations is jurisdictional.

Indeed, *United States v. Beggerly*, the most recent of the Court's cases on the Quiet Title Act's statute of limitations, indicates that it is nonjurisdictional. *See* 524 U.S. at 48. There, all the parties and the Court agreed that, unlike a jurisdictional statute of limitations, the Quiet Title Act's statute of limitations requires a court to consider some equitable doctrines in determining whether a complaint is timely. *See id.* at 48–49 (the Quiet Title Act "has already effectively allowed for equitable tolling," but does not allow "*additional* equitable tolling" (emphasis added)); *id.* at 49 (Stevens, J, concurring) ("As the Court correctly observes, the text of the Quiet Title Act, 28 U.S.C. § 2409a(g), expressly allows equitable tolling[.]"); Petitioner's Brief at 28, *United States v. Beggerly*, 524 U.S. 38 (No. 97-731) ("The QTA's statute of limitations therefore has an express 'discovery rule' that already incorporates equitable considerations."). *Beggerly* also leaves open the question of whether the doctrines of equitable estoppel or fraudulent concealment apply in Quiet Title Act cases. 524 U.S. at 49–50 (Stevens, J., concurring); *id.* at 48 (citing *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990)). By recognizing that the statute of limitations incorporates equitable doctrines, and by suggesting that other equitable doctrines may apply, *Beggerly* supports the position that the Quiet Title Act's statute of limitations is nonjurisdictional. *Cf. Wong*, 575 U.S. at 409 (a jurisdictional statute of limitations prevents courts from applying equitable considerations).

The Quiet Title Act does not clearly state that its statute of limitations is jurisdictional. And none of the Court's previous cases holds that the Quiet Title Act's statute of limitations is jurisdictional. The judgment of the Ninth Circuit should be reversed.

## Argument

### I.

### The Quiet Title Act Does Not Clearly State That Its Statute of Limitations Is Jurisdictional

As the Court recently reiterated, "we treat a procedural requirement as jurisdictional only if Congress 'clearly states' that it is." *Boechler*, 142 S. Ct. at 1497 (quoting *Arbaugh*, 546 U.S. at 515). 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.'" *Id.* (quoting *Wong*, 575 U.S. at 410). The Court examines 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.*, 559 U.S. at 166); *see also Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1158 (10th Cir. 2013) (en banc) (Gorsuch, J., concurring), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

It is a steep burden to demonstrate that a rule is jurisdictional. Even "[w]here multiple plausible interpretations exist—only one of which is jurisdictional—it is difficult to make the case that the jurisdictional reading is clear." *Boechler*, 142 S. Ct. at 1498. "Time and again," the 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." *Wong*, 575 U.S. at 410 (quoting *Henderson*, 562 U.S. at 435). Indeed, the 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).

The traditional tools of statutory construction demonstrate that, in passing the Quiet Title Act, Congress did not make the statute of limitations jurisdictional.

### A. The Quiet Title Act Uses Only Mundane Statute-of-Limitations Language

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 (discussing Federal Tort Claims Act). Although the statute uses the word "shall," 28 U.S.C. § 2409a(g), the Court has "rejected the notion that all mandatory prescriptions, however emphatic," are jurisdictional. *Henderson*, 562 U.S. at 439 (quotations omitted).

While the statute of limitations "uses mandatory language, it does not expressly refer to subject-matter

jurisdiction or speak in jurisdictional terms." *Musacchio*, 577 U.S. at 246 (discussing statute of limitations for non-capital criminal offenses). The language does "not speak to a court's authority or refer in any way to the jurisdiction of the district courts …." *Fort Bend Cnty.*, 139 S. Ct. at 1850–51 (quotations and citations omitted) (discussing Title VII's charge-filing requirement). In short, the language provides no "clear indication that Congress wanted that provision to be treated as having jurisdictional attributes." *Henderson*, 562 U.S. at 439 (discussing time limit to appeal to veteran claims decision).

The Quiet Title Act uses terms similar to other statutes of limitations that the Court has held to be nonjurisdictional. In *Henderson*, the Court deemed nonjurisdictional a time limit stating that a veteran seeking review of a determination of disability benefits "shall file a notice of appeal with the Court within 120 days after the date on which notice of the decision is mailed." 562 U.S. at 438 (quoting 38 U.S.C. § 7266(a)). In *Kontrick v. Ryan,* the Court held that filing deadlines for objecting to a debtor's discharge in bankruptcy—objections that "shall be filed no later than 60 days after the first date set for the meeting of creditors"—were nonjurisdictional. 540 U.S. 443, 454 (2004). And the Quiet Title Act's statute of limitations is less emphatic than the nonjurisdictional limitations provision at issue in *Wong*, which said that an untimely tort claim shall be "'forever' barred …." 575 U.S. at 411.

The Court has repeatedly stated that "[s]tatutes of limitations and other filing deadlines 'ordinarily are not jurisdictional.'" *Musacchio*, 577 U.S. at 246 (quoting *Auburn Reg'l Med. Ctr.*, 568 U.S. at 154). As

a result, "'when Congress does not rank a [prescription] as jurisdictional, courts should treat the restriction as nonjurisdictional in character.'" *Fort Bend Cnty.*, 139 S. Ct. at 1850 (quoting *Arbaugh*, 546 U.S. at 515–16 (footnote and citation omitted)). Here, the operative text indicates that the Quiet Title Act's statute of limitations is nonjurisdictional.

### B. Congress Indicated That the Quiet Title Act's Statute of Limitations Is Nonjurisdictional By Codifying It in a Separate Section from the Grant of Jurisdiction

"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*, 455 U.S. at 393–94); *see also Fort Bend Cnty.*, 139 S. Ct. at 1850 (Title VII's grant of jurisdiction is in a separate provision as the nonjurisdictional charge-filing requirement). The Quiet Title Act's separation of its jurisdictional grant from its statute of limitations further demonstrates that Congress did not intend the time limit to be jurisdictional.

The Quiet Title Act's statute of limitations appears in 28 U.S.C. § 2409a(g), whereas a different section of Title 28, § 1346(f), confers power on federal district courts to hear claims under the statute. The Quiet Title Act's jurisdictional grant is placed in the same section as jurisdictional grants from other statutes, including the Federal Tort Claims Act, which the Court examined in *Wong*, 575 U.S. at 412. *Compare* 575 U.S. at 412 (citing 28 U.S.C. § 1346(b)(1)

("'district courts ... shall have exclusive jurisdiction' over tort claims against the United States")); *with* 28 U.S.C. § 1346(f) ("The district courts shall have exclusive original jurisdiction" over quiet title actions.). That Congress placed the Quiet Title Act's jurisdictional grant among the jurisdictional grants of other acts with nonjurisdictional statutes of limitations (and not with its own statute of limitations) indicates that Congress did not intend to make the Quiet Title Act's statute of limitations jurisdictional. *See Wong*, 575 U.S. at 411–12; *cf. Henderson*, 562 U.S. at 439 ("Congress elected not to place the 120–day limit in the VJRA subchapter entitled 'Organization and Jurisdiction.'").

Nothing in § 1346(f) "'conditions its jurisdictional grant on' compliance with" the statute of limitations. *Musacchio*, 577 U.S. at 247 (quoting *Reed Elsevier*, 559 U.S. at 165). And nothing "otherwise links those separate provisions." *Wong*, 575 U.S. at 412. The jurisdictional grant provides that 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. § 1346(f). Nothing in the provision "clearly link[s]" the "jurisdictional grant[] to a filing deadline." *Boechler*, 142 S. Ct. at 1498 (discussing limit to file a petition for review in the Tax Court).

The Quiet Title Act's jurisdictional grant does not mention the statute of limitations, and the statute of limitations does not mention the jurisdictional grant. A law that drew a clear link between a limitations period and jurisdiction would "plainly condition[] the [court's] jurisdiction" on compliance with the statute

of limitations. *Boechler*, 142 S. Ct. at 1499; *see id.* ("'The Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1).'" (quoting 26 U.S.C. § 6330(e)(1))). But no such link exists in the Quiet Title Act.

If Congress wanted to link the statute of limitations to the court's jurisdiction, it would have done so. Indeed, a different provision of the Quiet Title Act expressly links jurisdiction to the government's actions in the case. Subsection (e) provides that, "[i]f the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial," then "the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than" the Quiet Title Act. 28 U.S.C. § 2409a(e). That Congress expressly discussed jurisdiction in one part of the Quiet Title Act, but did not link jurisdiction to the statute of limitations, further demonstrates the nonjurisdictional nature of the statute of limitations. *See Boechler*, 142 S. Ct. at 1500.

### C. The Legislative and Statutory History Shows That Both Congress and the Department of Justice Understood That the Statute of Limitations Would Be a Nonjurisdictional Affirmative Defense

The legislative and statutory history confirm the nonjurisdictional nature of the Quiet Title Act's statute of limitations. Although the Court has warned that it "doubt[s]" that "legislative history alone could provide a clear statement" that a statute of limitations is jurisdictional, it has looked at legislative history for

further insight into legislative intent. *Wong*, 575 U.S. at 412. Here, the legislative history doesn't just lack a clear statement that the Quiet Title Act's statute of limitations is jurisdictional; it states directly that the statute of limitations was intended to be a waivable affirmative defense.

Congress passed the Quiet Title Act in 1972. *Block*, 461 U.S. at 282. Congress wanted to allow citizens to initiate lawsuits to resolve property disputes with the federal government. *See* S. Rep. No. 92-575 at 1. "Grave inequity often has resulted to private citizens who are thereby excluded, without benefit of a recourse to the courts, from lands they have reason to believe are rightfully theirs." *Id.*; *see also* John Montague Steadman, "*Forgive U.S. Its Trespasses?": Land Title Disputes with the Sovereign—Present Remedies and Prospective Reform*, 1972 Duke L.J. 15, 70 (arguing that Congress should "provide a mechanism to resolve all land title disputes with the sovereign, present and future").

Because the United States had never waived sovereign immunity for quiet title actions, title that was disputed between private parties and the federal government could be quieted only when the government initiated suit. S. Rep. No. 92-575 at 2 ("What this bill does is enable a citizen involved in a title dispute with the Government to have his day in court—something he does not now get unless or until the Government elects to initiate suit."). The Senate Committee on Interior and Insular Affairs recognized that "[s]overeign immunity or the infallibility of the Crown, so to speak, became imbedded in the common law of England and so came into our American law," but "this principle is not appropriate where the courts

are established … to serve the people." *Id.* at 1. Accordingly, Congress waived sovereign immunity for quiet title actions. *See* H.R. Rep. No. 99-924 at 2 (1986).

The language in the initial bill was "short and simple." *Block*, 461 U.S. at 282. It stated in its entirety: "The United States may be named a party in any civil action brought by any person to quiet title to lands claimed by the United States." 117 Cong. Rec. 46,371, 46,380 (1971). In response to this initial draft, the Department of Justice proposed an alternative, which became the basis for the final version of the bill. *Block*, 461 U.S. at 282; H.R. Rep. No. 92-1559 at 4 ("The language of the committee amendment embodies the recommendations of the Department of Justice."). The Department originally suggested that a six-year statute of limitations would be appropriate and that the act only be given prospective effect. *Block*, 461 U.S. at 283; Dispute of Titles on Public Lands: Hearing Before the Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, 92d Cong. 31 (1971). After Congress rejected the Department's proposal that the Act only be forward-looking, the Department recommended that the Quiet Title Act include a twelve-year statute of limitations and suggested the "knew or should have known" tolling language that was eventually included in the statute. H.R. Rep. No. 92-1559 at 8.

In recommending the later amendments to the statutory language, the Department of Justice explained how the statute of limitations would work in litigation: "The plaintiff would merely have to state that he did not learn of the claim of the United States and had no reason to know of the claim more than

12 years prior to the filing of his claim." H.R. Rep. No. 92-1559 at 8. "If the United States wished to assert that the statute of limitations had run, it would then have the burden of establishing this fact." *Id.*

The Department of Justice thus recognized that the Quiet Title Act's statute of limitations would be an affirmative defense, like most other statutes of limitations. *See* Fed. R. Civ. P. 8(c)(1) (listing affirmative defenses a "party must affirmatively state" including "statute of limitations"); *see Buchler v. United States*, 384 F. Supp. 709, 714 (E.D. Cal. 1974) (Plaintiffs failed to allege when their claim accrued, yet "[t]he complaint … does purport to set out a federal cause of action under that section and is not insubstantial and frivolous. Thus, a motion to dismiss cannot be granted in this case for lack of subject matter jurisdiction"); *Parker v. U.S. By & Through Dep't of Interior Bureau of Land Mgmt.*, 431 F. Supp. 226, 231 (W.D. Okla. 1977) (rejecting statute of limitations defense after bench trial).

The Department recognized that it would bear the burden of proving that defense, and that it could waive the defense if it "wished" not to "assert that the statute of limitations had run …." H.R. Rep. No. 92-1559 at 8. Those are the hallmarks of a nonjurisdictional statute of limitations. *See Boechler,* 142 S. Ct. at 1497. But the government has since reversed its position, now arguing that the statute of limitations is jurisdictional, that it cannot be waived, and that plaintiffs in quiet title cases have the burden of proving that the action is timely. *See* Cert. App. D-4–5.

The House and Senate reports contradict the government's new position. The reports explain that

the purpose of the Quiet Title Act is to provide property owners with ample opportunity to resolve title disputes against the government, S. Rep. No. 92-575 at 1–2, and a jurisdictional statute of limitations would undermine that purpose. The reports also include copies of the Department's recommendations (including the recommendation that the statute of limitations be a waivable affirmative defense) and note that the bill's final language adopts those recommendations. H.R. Rep. No. 92-1559 at 4. Finally, the reports explain that Section 1 of the bill would amend "Section 1346," which "presently contains subsections providing for jurisdiction over specified civil actions in the district courts," to add jurisdiction over quiet title actions. *Id.* at 2. In contrast, when discussing the bill's limitations provision, the reports merely repeat the statutory language, saying nothing about jurisdiction. *See id.* at 3.

In 1986, Congress amended the Quiet Title Act to exempt States from the statute of limitations in most situations. Pub. L. No. 99-598, 100 Stat 3351 (Nov. 4, 1986). But "in amending" the statute "after its enactment, Congress declined … to say anything specific about whether the statute of limitations imposes a jurisdictional bar." *Wong*, 575 U.S. at 412. The only mentions of jurisdiction in the report are (1) a statement that, prior to the Quiet Title Act, "jurisdiction was not provided in United States courts for actions to quiet title to property claimed by the United States unless the United States itself brought suit," H.R. Rep. No. 99-924 at 2, and (2) references to certain types of property subject to a federal agency's "jurisdiction," which would still be subject to the statute of limitations. *Id.* at 3.

To be sure, the House Report on the 1986 Amendments notes that, in passing the Quiet Title Act, "the United States waived its sovereign immunity and permitted plaintiffs to name it as a party defendant in civil actions to adjudicate title disputes involving real property." H.R. Rep. No. 99-924 at 2. But "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 does not answer the jurisdictional question because this Court "treat[s] time bars in suits against the Government … the same as in litigation between private parties." *Id.*

"Neither the text nor the context nor the legislative history indicates (much less does so plainly) that Congress meant to enact something other than a standard time bar." *Wong*, 575 U.S. at 410. "Congress thus failed to provide anything like the clear statement this Court has demanded before deeming a statute of limitations to curtail a court's power." *Id.* at 412.

## II.

## The Court Has Never Held That the Quiet Title Act's Statute of Limitations Is Jurisdictional

The courts below cited sporadic and casual use of the word "jurisdiction" in this Court's previous Quiet Title Act cases to conclude that this Court has already held that the statute of limitations is jurisdictional. *See* Cert. App. A-8–9 (citing *Block*, 461 U.S. 273; *Beggerly*, 524 U.S. 38, 48 (1998)); *see also Fid. Expl. & Prod. Co.*, 506 F.3d at 1185 (citing *Mottaz*, 476 U.S.

834. But these Quiet Title Act cases "predate this Court's effort to 'bring some discipline' to the use of the term 'jurisdictional.'" *Boechler*, 142 S. Ct. at 1500 (quoting *Henderson*, 562 U.S. at 435). Until recently, this Court has "more than occasionally used the term 'jurisdictional' to describe emphatic time prescriptions in rules of court." *Eberhart v. United States*, 546 U.S. 12, 18 (2005) (per curiam) (quotations omitted) (discussing Fed. R. Crim. P. 33(a)'s seven-day time limit for requesting a new trial). The "resulting imprecision" often "obscured the central point" of those cases, causing lower courts to equate "mandatory" with "jurisdictional." *Id.*

This Court has referred to these types of offhand statements 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). In short, "[p]assing references" that a prescription is "'jurisdictional' in prior Court opinions … display the terminology employed when the Court's use of 'jurisdictional' was 'less than meticulous.'" *Fort Bend Cnty.*, 139 S. Ct. at 1848 n.4 (quoting *Kontrick*, 540 U.S. at 454).

This Court continues to bring discipline to the use of the word jurisdiction because "[t]he distinction [between a jurisdictional and nonjurisdictional prescription] matters." *Boechler*, 142 S. Ct. at 1497. "Branding a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system." *Henderson*, 562 U.S. at 434. "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 Cnty.*, 139 S. Ct. at 1849 (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).

As demonstrated here, labeling a prescription as jurisdictional greatly affects how the case is litigated and decided. *See* Cert. App. D-4–5. Despite their demonstration of multiple disputed material facts, Mr. Wilkins and Mrs. Stanton were unable to make out their case on the merits because they were forced to proceed under the abridged process for resolving a motion to dismiss for lack of subject-matter jurisdiction. *Compare* Cert. App. D-4–5 (stating standard for resolving a Fed. R. Civ. P. 12(b)(1) motion to dismiss), *with* Cert. App. E-17 (magistrate judge stated that, "[u]nder 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"). They presented testimony disputing the government's account of the Forest Service's 2006 order regarding the public's use of the easement, *see* JA 8 ¶¶ 5–6; *id.* at 73–74; *id.* at 87; they presented witnesses that contradicted the testimony in the government's declarations, *see* JA 10–15; they presented evidence that maps that depict Forest Service roads—especially those maps produced prior to the recent travel management planning process—do not necessarily depict roads that are open to the public, JA 19; *id.* at 21; and they presented evidence of statements from Forest Service officials about the easement that caused the landowners to delay filing the lawsuit. JA 6–7. All to no avail, thanks to the

burden-shifting consequence of the jurisdictional tag that the District Court placed on the statute of limitations. *See* Cert. App. D-4–5, D-23. For Mr. Wilkins and Mrs. Stanton, that jurisdictional label puts them in the same position of landowners prior to the Quiet Title Act: "involved in a title dispute with the Government" but unable to "have [their] day in court … unless or until the Government elects to initiate suit." S. Rep. No. 92-575 at 2.

In contrast to the dispute here, whether the statute of limitations is jurisdictional did not matter to this Court's Quiet Title Act precedents. In those cases, the Court was not asked to determine, nor did it need to determine, whether the Quiet Title Act's statute of limitations goes to a court's authority to hear a case. Simply put, the distinction did not affect the outcome of the cases. Accordingly, the Court's less than meticulous use of the word "jurisdictional" in those cases does not answer the question presented here.

### A. The Court Has Credited Statements That a Prescription Is "Jurisdictional" Only When That Prescription Was the Subject of a Definitive Earlier Interpretation

Because the Court has previously used "jurisdiction" to mean something other than the power of a court to hear a case, not all of its statements that a rule is "jurisdictional" are binding on the question of whether a rule speaks to a court's subject-matter jurisdiction. *See Kontrick*, 540 U.S. at 454; *Fort Bend Cnty.*, 139 S. Ct. at 1848 n.4; *Eberhart*, 546 U.S. at 16. Rather, only when the Court has provided "'a definitive earlier interpretation'" on the jurisdictional status of a rule will it treat that precedent as binding.

*Wong*, 575 U.S. at 416 (quoting *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 138 (2008)).

Such a definitive earlier interpretation is one in which the Court explicitly and unambiguously holds that a prescription is jurisdictional. *Cf. Arbaugh*, 546 U.S. at 511 ("unrefined dispositions" about jurisdiction "should be accorded no precedential effect" (quotations omitted)); *Reed Elsevier*, 559 U.S. at 161 (noting instances where courts "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"). Thus, a decision that merely uses the term "jurisdictional" in passing, without analysis, and especially during the period prior to the Court's effort to bring discipline to the use of that term, is not a definitive interpretation. *Fort Bend Cnty.*, 139 S. Ct. at 1848 n.4; *Eberhart*, 546 U.S. at 16.

In *John R. Sand & Gravel*, the Court elaborated on what constitutes a definitive earlier interpretation that a statutory prescription is jurisdictional. 552 U.S. at 137–38. There, in holding that the Tucker Act's statute of limitations is jurisdictional, the Court looked to 125 years of precedent that had held that the "court of claims limitations statute" was a non-waivable time limit that went to the court's ability to hear a case. *Id.* at 134–35. In those previous cases, the jurisdictional nature of the Tucker Act's statute of limitations was directly presented and necessary to the outcome of those cases.

In *Kendall v. United States*, the Court held that, in cases brought under the precursor to the Tucker Act, "'it [was] the duty of the court to raise the

[timeliness] question whether it [was] done by plea or not.'" *Kendall v. United States*, 107 U.S. (17 Otto) 123, 125–26 (1883). Four years later, in *Finn v. United States*, the Court reiterated that the Court of Claims limitations statute was jurisdictional. 123 U.S. 227, 232–33 (1887). In *Finn*, the government had arguably waived any limitations-based defense by voluntarily referring the case to the Court of Claims, so this Court had to decide whether such a waiver was possible. *John R. Sand & Gravel Co.*, 552 U.S. at 134–35 (citing *Finn*, 123 U.S. at 232). This Court held that the statute of limitations was not an affirmative defense and thus could not be waived. 123 U.S. at 232–33. The Court reaffirmed *Kendall* and *Finn* in the subsequent decades. *See John R. Sand & Gravel Co.,* 552 U.S. at 135 (citing cases).

In contrast to *John R Sand*, *Fort Bend* and *Eberhart* show how the Court determines that it has not decided whether a prescription is jurisdictional. *See Fort Bend Cnty.*, 139 S. Ct. at 1848 n.4; *Eberhart*, 546 U.S. at 16. In *Fort Bend*, the Court did not rely on a decades-old passing statement that Title VII's charge-filing rule was a "jurisdictional prerequisite[]," *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798 (1973), to decide whether that rule went to a court's authority to hear the case. *Fort Bend Cnty.*, 139 S. Ct. at 1848 n.4. Instead, the Court recognized that those cases were from a time "when the Court's use of 'jurisdictional' was 'less than meticulous,'" and, thus, were not determinative of whether the rule was jurisdictional in the proper sense of the word. *Id.* (quoting *Kontrick*, 540 U.S. at 454).

In *Eberhart*, the Court held that Federal Rule of Criminal Procedure 33(a)'s seven-day time limit for

requesting a new trial is nonjurisdictional. 546 U.S. at 19. Prior to *Eberhart*, the Court had referred to the time limit as "mandatory and jurisdictional," which led lower courts to hold that the time limit implicated their subject-matter jurisdiction. *Id.* Yet, in holding to the contrary, this Court underscored that it did not need to overrule its prior decisions, because those precedents "do not hold the limits of the Rules to be jurisdictional in the proper sense" of the word. *Id.* at 16. Instead, those imprecise uses of the word jurisdiction reflected a time when the Court used "jurisdictional" in a way that did not mean "subject-matter" jurisdiction. *See id.* at 16.

### B. The Court Has Never Provided a Definitive Earlier Interpretation About Whether the Quiet Title Act's Statute of Limitations Is Jurisdictional

The Court has never directly considered whether the Quiet Title Act's statute of limitations is jurisdictional. The questions presented in the Court's previous cases did not ask the Court to determine whether the statute of limitations goes to a court's subject-matter jurisdiction, and the outcome of those cases did not require this Court to answer that question. Unlike with the Tucker Act, the Court has never held that the Quiet Title Act's statute of limitations is exempt from waiver, or that a court has an independent duty to raise the question.

Furthermore, references to jurisdiction in these cases do not equate to an opinion on whether the Quiet Title Act's statute of limitations goes to a court's authority to hear the case. "[J]urisdiction … is a word of many, too many, meanings …." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 90 (1998)

(quotations & citation omitted). "[N]ot every reference to 'jurisdiction' in the Supreme Court's large corpus of decisions means 'subject-matter jurisdiction' in the contemporary sense." *Wisconsin Valley Imp. Co. v. United States*, 569 F.3d 331, 334 (7th Cir. 2009) (holding that the Quiet Title Act's statute of limitations is nonjurisdictional). Only recently—after this Court decided the previous Quiet Title Act cases—has the Court "facilitated" "[c]larity" by using "the label 'jurisdictional' not for claim-processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Kontrick*, 540 U.S. at 455. The Court's previous Quiet Title Act cases do not hold that the statute of limitations is jurisdictional.

### 1. *Block v. North Dakota* held that the Quiet Title Act's statute of limitations applied to States, but it did not hold that the Quiet Title Act's statute of limitations is jurisdictional

Contrary to the Ninth Circuit's reading of *Block*, Cert. App. A-8–9, this Court has never definitively held that the Quiet Title Act's statute of limitations is jurisdictional. In *Block*, the 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. The Court held that the Quiet Title Act is the exclusive procedure to challenge the government's title and that the statute of limitations applied to North Dakota. *Id.* at 277.

This Court was not asked to determine, nor did it determine, whether the Quiet Title Act's statute of limitations was jurisdictional. Indeed, the Court was in no position to decide that question because the lower courts "made no findings as to the date on which North Dakota's suit accrued …." 461 U.S. at 293. Instead, the Court remanded the case to the district court to make findings about when North Dakota's claims accrued. *Id.*

In arguing the case, the government said that the district court lacked "jurisdiction" because the action was untimely. Petitioner's Brief at 5, *Block v. N. Dakota*, 461 U.S. 273 (No. 81-2337). But the government made its statute-of-limitations argument in its answer and in a cross-motion for summary judgment (rather than a motion to dismiss), *id.* at 5–6, consistent with the Department of Justice's position when it drafted the Quiet Title Act's statute of limitations that it provides only an affirmative defense. H.R. Rep. No. 92-1559 at 8.

Despite North Dakota's having produced no evidence about when its claim accrued, the federal government produced a witness at trial who testified that North Dakota knew about the adverse claim more than twelve years before the filing date. Petitioner's Brief at 6–7, *Block*; Transcript of Oral Argument at 9–10, *Block v. North Dakota*, 461 U.S. 273 (No. 81-2337). If the statute of limitations was a jurisdictional requirement, then North Dakota's failure to adduce any evidence should have been the end of its case. *Cf. Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1122 (9th Cir. 2007) ("[B]ecause the statute of limitations is an affirmative defense, the defendant bears the burden of proving

that the plaintiff filed beyond the limitations period."). But the federal government did not argue that North Dakota had the burden on the statute-of-limitations question. *See* Transcript of Oral Argument at 9–10, *Block*.

Thus, in *Block*, the government was using "the term 'jurisdictional' to describe" an "emphatic time prescription[]" rather than one that went to the court's power to hear the case. *Eberhart*, 546 U.S. at 18 (per curiam); *see also Kontrick*, 540 U.S. at 455 (advising "litigants" to begin using the term "jurisdictional" "only for prescriptions delineating the classes of cases … falling within a court's adjudicatory authority"). It argued that the lower court must dismiss the case because it had proved that North Dakota had filed out of time. *See* Petitioner's Brief at 6, 24–25 & n.16, *Block*. Based on how it argued the statute of limitations defense, the federal government evidently did not believe that the lower courts lacked subject-matter jurisdiction over North Dakota's case.

The Court's opinion reflects this understanding of the statute of limitations as a mandatory (but not jurisdictional) claim-processing rule. In remanding the case to the district court, the Court stated that "the federal defendants are correct: If North Dakota's suit is barred by § 2409a(f), the courts below had no jurisdiction to inquire into the merits." *Block*, 461 U.S. at 292. That statement "is correct not because the District Court [would] lack[] *subject-matter jurisdiction*, but because district courts must observe the clear limits of the [time-bar] when they are properly invoked." *Eberhart*, 546 U.S. at 17. In other words, this Court was stating that, because the government had raised the statute of limitations, the

courts below could not decide the merits of the case *if the complaint had been filed out of time*. This Court was not stating that the statute of limitations went to a court's power to hear the case. Rather, the Court's statement merely embodies a "'less than meticulous'" use of the word "'jurisdictional,'" which "has obscured the central point of" its statement, *i.e.* "when the Government objected to a filing untimely under [the statute of limitations], the court's duty to dismiss … was mandatory." *Eberhart*, 546 U.S. at 18 (quoting *Kontrick*, 540 U.S. at 454); *Fort Bend Cnty.*, 139 S. Ct. at 1852 (a time-bar can be mandatory without being jurisdictional).

Indeed, interpreting *Block*'s reference to "jurisdiction" as meaning "subject-matter jurisdiction" would contradict the reasoning of the opinion. In answering the questions presented, the Court extensively relied on the Quiet Title Act's legislative history. 461 U.S. at 282–84; *id.* at 282 n. 11 (citing S. Rep. No. 92-575, H.R. Rep. No. 92-1559)). As noted above, that same legislative history demonstrates that the statute of limitations was intended to be a waivable affirmative defense. H.R. Rep. No. 92-1559 at 8. Predictably, *Block* makes no reference to the legislative history regarding the nonjurisdictional nature of the statute of limitations because this Court issued no ruling on that question. It would be inconsistent for the Court to look to the House and Senate Reports to answer the questions presented in *Block*, and then contradict those same reports to implicitly decide an unnecessary question that adopts a position that no party advocated.

*Block*'s imprecise statement that the district court would lack jurisdiction if the complaint were untimely

does not mean that the Quiet Title Act's statute of limitations is jurisdictional.

### 2. *United States v. Mottaz* held that the Quiet Title Act is the exclusive means for challenging the federal government's interest in property but did not determine whether the statute of limitations is jurisdictional

*United States v. Mottaz*, 476 U.S. 834 (1986), decided only three years after *Block*, also did not hold that the Quiet Title Act's statute of limitations is jurisdictional. There, the plaintiff sued the United States and argued that the Department of Interior illegally sold her interests in tribal lands to the Forest Service. *Id.* at 836. In granting summary judgment to the government, the district court "expressly found that respondent knew of the sale in 1954 …." *Id.* at 843. The government also supported its summary judgment motion with evidence that, in 1967, the Bureau of Indian Affairs gave the plaintiff a list of interests she owned, which did not include the interests she claimed to own in the case. *Id.* at 837 (citing Joint Appendix at 17, *United States v. Mottaz*, 476 U.S. 834 (No. 85-546)). The plaintiff filed suit in 1981, twenty-seven years after the sale of the land and fourteen years after the BIA notified the plaintiff of what interests she owned. 476 U.S. at 838.

Following *Block*, *Mottaz* reiterated that the Quiet Title Act is the exclusive means for challenging the federal government's interest in property. 476 U.S. at 838. Specifically, 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. Relying on *Block* to characterize the plaintiff's suit as one challenging the Forest Service's title to the land in question, the Court concluded that such a challenge could only be brought under the Quiet Title Act. *Id.* at 846–48. Because the plaintiff knew of the sale in 1954, the challenge was barred by the Quiet Title Act's statute of limitations. *Id.* at 843–44.[3]

Much of the discussion in *Mottaz* about the Quiet Title Act's statute of limitations was dicta. The plaintiff invoked "federal jurisdiction only under the General Allocation Act and its jurisdictional counterpart." *Id.* at 850. Thus, it was sufficient for the Court to determine that the plaintiff's claims fell exclusively within the scope of the Quiet Title Act and that the plaintiff could not bring her claims under any other statute. *Id.* at 847–48. The Court did not need to determine whether the action was untimely under the Quiet Title Act because the plaintiff explicitly stated that she did not bring her claim under the Quiet Title Act. *Id.* at 848 (citing Transcript of Oral Argument at 23, 26, *United States v. Mottaz* (No. 85-546)); Respondent's Brief at 22, *United States v. Mottaz*, 476 U.S. 834 (No. 85-546).

Even treating *Mottaz*'s Quiet Title Act analysis as a holding of the case, the Court did not determine—and did not need to determine—whether the Quiet Title Act's statute of limitations is jurisdictional. 476 U.S. at 841. The district court decided the case on summary judgment and had entered undisputed findings of fact about when the plaintiff knew of the

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[3] The Court also considered whether the plaintiff could have brought the suit under the Tucker Act but held that the relief she sought did not fit within the scope of the Tucker Act. *Id.* at 850–51.

government's competing interests in the property. *Id.* at 844. The jurisdictional question was not before the Court and would have made no difference in determining whether any claim under the Quiet Title Act was untimely.

Like *Block*, in one sentence *Mottaz* used the word "jurisdiction" in a less-than-meticulous manner. *See Mottaz*, 476 U.S. at 841. *Mottaz* stated that "the terms of [a] waiver of sovereign immunity define the extent of the court's jurisdiction." *Id.* But this sentence cannot mean that the statute of limitations goes to a court's subject-matter jurisdiction because whether "a time bar conditions a waiver of sovereign immunity" does not determine whether the statute of limitations is jurisdictional. *Wong*, 575 U.S. at 420 (citing *Irwin*, 498 U.S. at 95–96; *Scarborough v. Principi*, 541 U.S. 401, 420–22 (2004); *Franconia Assoc. v. United States*, 536 U.S. 129, 145 (2002)). Instead, to the extent that the statement reflects any holding about the Quiet Title Act's statute of limitations, it holds that the Quiet Title Act's statute of limitations, if invoked, is mandatory.

Also like *Block*, *Mottaz* extensively cited the Quiet Title Act's legislative history, especially the House Report. 476 U.S. at 850 (citing H.R. Rep. No. 92-1559, at 7, 9, 12–13). Again, it would be inconsistent for the Court to use the legislative history for one purpose, and then contradict that same piece of legislative history to implicitly decide a question not before the Court. It would be especially unusual for the Court to contradict the Quiet Title Act's legislative history in a case where the plaintiff rejected the Quiet Title Act as the source of her claims.

The procedural posture of *Mottaz* also makes it difficult to conclude that this Court provided a "definitive earlier interpretation" on whether the Quiet Title Act's statute of limitations is jurisdictional. The complaint in *Mottaz* was "somewhat opaque" and "[n]either the District Court nor the Court of Appeals discussed the precise source of its jurisdiction …." 476 U.S. at 839, 841. The parties at "various times" argued that the cause of action arose out of different acts, including the Quiet Title Act, the General Allotment Act, and Tucker Act. *Id.* at 841. But the plaintiff disclaimed the Quiet Title Act as a source of her claims. *Id.* at 848. The district court, on summary judgment, issued undisputed findings of fact that the plaintiff knew of the sale twenty-seven years before the suit was filed, even though it applied that fact only to the general statute of limitations against the federal government. Petition for a Writ of Certiorari at 10a, *United States v. Mottaz*, 476 U.S. 834 (No. 85-546).

Among this confusing procedural posture, this Court believed that it had to "decide which, if any, of these statutes conferred jurisdiction on the District Court and the Court of Appeals, and then determine whether respondent's suit was brought within the relevant limitations period." 476 U.S. at 841. Neither of these questions required the Court to determine whether the Quiet Title Act's statute of limitations is jurisdictional. Indeed, this Court's framing of the issues treated the jurisdictional question ("which, if any, of these statutes conferred jurisdiction") as separate from the question of whether the complaint was timely ("*then* determine whether respondent's suit was brought within the relevant limitations period"). *Id.* (emphasis added).

*Mottaz* does not hold, and could not hold, that the Quiet Title Act's statute of limitations is jurisdictional.

### 3. *United States v. Beggerly* supports the position that the Quiet Title Act's statute of limitations is nonjurisdictional

Finally, *United States v. Beggerly*, 524 U.S. 38 (1998), the most recent of the Court's cases on the Quiet Title Act's statute of limitations, indicates that it is nonjurisdictional. In *Beggerly*, the Court considered whether a family could set aside a settlement agreement that resolved a title dispute (1) through an "independent action" in equity within the meaning of Federal Rule of Civil Procedure 60 or (2) under the Quiet Title Act. *See id.* at 47–48. It was undisputed that the family knew of the government's adverse claims in 1979, more than 12 years before they filed the action in 1994. *Id.* at 48. In deciding the questions presented, the Court considered whether the Quiet Title Act allows for equitable tolling. *Id.* at 48–49.

*Beggerly* held that the Quiet Title Act's standard for claim accrual—when the plaintiff or his predecessor "'knew or should have known of the claim of the United States"—"has already effectively allowed for equitable tolling," and thus Congress did not intend for courts to allow "*additional* equitable tolling" beyond the statutory language. 524 U.S. at 48–49 (emphasis added). Therefore, determining when a claim accrues under the Quiet Title Act requires a court to determine factual matters and allows for equitable considerations. *See id.* (favorably quoting *Irwin*, 498 U.S.at 96, for the proposition that

the Court has allowed "'equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading … or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass"); *see also id.* at 49 (Stevens, J, concurring) ("As the Court correctly observes, the text of the Quiet Title Act, 28 U.S.C. § 2409a(g), expressly allows equitable tolling[.]"). But if *Beggerly* had held that the Quiet Title Act's statute of limitations were jurisdictional, then courts would be foreclosed from applying *any* equitable considerations to the statute of limitations question. *See Wong*, 575 U.S. at 409 (a jurisdictional statute of limitations prevents courts from applying equitable considerations).

In *Beggerly*, the government itself recognized that the Quiet Title Act's statute of limitations is equitable in nature. Although it argued against equitable tolling, it stated that the statute of limitations "has an express 'discovery rule' that already incorporates equitable considerations." Petitioner's Brief at 28, *United States v. Beggerly*, 524 U.S. 38 (No. 97-731) (citing *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946), for the proposition that "discovery rule is an equitable doctrine"); *see also id.* at 28 n.16 (noting that the statute of limitations "already incorporates equitable considerations."). A statute of limitations that includes equitable doctrines is not a jurisdictional statute of limitations. *See Wong*, 575 U.S. at 409.[4]

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[4] At points in its brief, the government distinguished a "jurisdictional" statute of limitations with one that can be equitably tolled. Petitioner's Brief at 27, *United States v.*

*Beggerly* also leaves open the question of whether the doctrines of equitable estoppel or fraudulent concealment apply in Quiet Title Act cases. 524 U.S. at 49–50 (Stevens, J., concurring); *id.* at 48 (citing *Irwin*, 498 U.S. at 96). These doctrines are "distinct from equitable tolling," *id.* at 49 (Stevens, J., concurring), and they bar a defendant from asserting the statute of limitations as a defense. 51 Am. Jur. 2d Limitation of Actions § 359. But equitable estoppel is only available if the statute of limitations is an affirmative defense and, thus, not jurisdictional. *See Boechler*, 142 S. Ct. at 1497 ("jurisdictional requirements … do not allow for equitable exceptions"). Accordingly, that the Court left open the possibility of equitable estoppel further indicates that the Quiet Title Act's statute of limitations is nonjurisdictional.

While *Beggerly* noted that "[t]he District Court concluded that it was without jurisdiction to hear respondents' suit and dismissed the complaint," 524 U.S. at 41, this statement says nothing about the jurisdictional nature of the Quiet Title Act. The district court denied the plaintiffs' motion to amend their complaint to add a Quiet Title Act claim and, thus, the district court did not dismiss the case under the Quiet Title Act's statute of limitations. Petition for a Writ of Certiorari at 49a–50a n.1, *United States v. Beggerly*, 524 U.S. 38 (No. 97-731). Rather the district

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*Beggerly*, 524 U.S. 38 (No. 97-731). But again, jurisdiction is a word of many meanings. *Steel Co.*, 523 U.S. at 90. Especially prior to the Court's recent cases, litigants used the word "jurisdiction" in a haphazard manner. *See Kontrick*, 540 U.S. at 455. As in other Quiet Title Act cases, there is no indication that the government in *Beggerly* was diligently using the term to mean subject-matter jurisdiction.

court dismissed the case because the Beggerlys had untimely sought to set aside a previous settlement agreement and judgment over the same property. *Id.* at 43a.[5]

In *Beggerly*, all the parties and the Court agreed that the Quiet Title Act's statute of limitations requires a court to apply some equitable considerations in determining whether a complaint is timely. The Court also left open the question of whether other doctrines like equitable estoppel are available under the Quiet Title Act. *Beggerly* thus could not hold that the Quiet Title Act's statute of limitations is jurisdictional. Instead, the Court's analysis indicates that the statute of limitations is a nonjurisdictional affirmative defense.

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The Court has never been asked to determine whether the Quiet Title Act's statute of limitations is jurisdictional. It has never heard a case where it was necessary to answer that question. And the Court has never held that it was so, or even that a court must raise *sua sponte* the Quiet Title Act's statute of limitations. In short, "[t]his case is scarcely the exceptional one in which a 'century's worth of precedent and practice in American courts' rank a time limit as jurisdictional." *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155 (quoting *Bowles v. Russell*, 551 U.S.

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[5] Furthermore, the district court dismissed the case with prejudice, Petition for a Writ of Certiorari at 46a, *United States v. Beggerly*, 524 U.S. 38 (No. 97-731), which is inconsistent with a dismissal for lack of subject matter jurisdiction. *See Wisconsin Valley Imp. Co.,* 569 F.3d at 334.

205, 209 n.2 (2007)) (discussing provision of Medicare statute setting 180-day limit for filing appeals).

In passing the Quiet Title Act, Congress did not clearly state that the statute of limitations is jurisdictional. And none of the Court's previous cases hold that the Quiet Title Act's statute of limitations is jurisdictional.

## Conclusion

The judgment of the Ninth Circuit should be reversed.

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Respectfully submitted,

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