

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**

REPLY BRIEF FOR PETITIONERS

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Introduction

“Jurisdiction ... 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). Until recently, “courts and litigants used the label ‘jurisdictional’” to describe both “claim-processing rules” and “prescriptions delineating the classes of cases (subject-matter jurisdiction) ... falling within a court’s adjudicatory authority.” *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004). As a result, “not 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).

Here, the government argues that, in the Court’s precedents, jurisdiction only has one meaning. See Brief for the Respondent (Resp.) at 22–23. It quotes cases that “predate this Court’s effort to ‘bring some discipline’ to the use of the term ‘jurisdictional,’” *Boechler, P.C. v. Comm’r of Internal Revenue*, 142 S. Ct. 1493, 1500 (2022) (quoting *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011)), and argues that the Court must have meant “subject-matter jurisdiction” *whenever* it used the term. Resp. 22–23. But as the Court has repeatedly observed, when it has previously stated that a rule was “jurisdictional,” it did not necessarily mean that the rule went to a court’s subject-matter jurisdiction. See, e.g., *Eberhart v. United States*, 546 U.S. 12, 16 (2005) (per curiam); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511–13 (2006).

Because jurisdiction has many meanings, the government must present more than passing use of the word “jurisdiction” to show that the Court’s previous Quiet Title Act cases held that the Act’s statute of limitations goes to a court’s authority to hear the case. But nothing in those cited decisions indicates that the Court was using “jurisdiction” to mean “subject-matter jurisdiction.” Subject-matter jurisdiction was not at issue, and the outcome of those cases did not turn on the question of whether the Quiet Title Act’s statute of limitations was jurisdictional in the proper sense of the term. Therefore, those decisions merely stand for the proposition that the Quiet Title Act’s time limit is mandatory, a proposition which this Court has reiterated for many similar nonjurisdictional statutory prescriptions. *See Eberhart*, 546 U.S. at 17–18.

This Court should reverse the judgment of the Ninth Circuit and hold that the Quiet Title Act’s statute of limitations is a nonjurisdictional claim-processing rule.

Argument

I.

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

A. *Block* and *Mottaz* did not hold that the Quiet Title Act’s statute of limitations is jurisdictional

The government emphasizes that Petitioners (landowners) do not ask this Court to overrule any precedents. Resp. 22 (citing *Block v. N.D. ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273 (1983), and *United*

States v. Mottaz, 476 U.S. 834 (1986)). But they do not need to. The Court need not overrule *Block* or *Mottaz* to hold that the Quiet Title Act’s statute of limitations is a claim-processing rule because those cases do not hold that the Quiet Title Act’s statute of limitations is jurisdictional. Cf. *Eberhart*, 546 U.S. at 16 (“We need not overrule *Robinson* or *Smith* to characterize Rules 33 and 45 as claim-processing rules.”). The government argues that *Eberhart* is inapplicable here. Resp. 25–26. That is incorrect.

In *Eberhart*, the lower courts looked to this Court’s cases, decided decades before, that referred to the Federal Rule of Criminal Procedure’s seven-day time limit for requesting a new trial “as jurisdictional,” to hold that the rule implicated a court’s subject-matter jurisdiction. 546 U.S. at 19. But this Court reiterated that it has “more than occasionally used the term ‘jurisdictional’ to describe emphatic time prescriptions in rules of court.” *Id.* at 18 (quoting *Kontrick*, 540 U.S. at 454). Without needing to overrule any previous cases, the Court held that rule at issue was nonjurisdictional. *Id.* at 16.

The government emphasizes that in *Eberhart* only “*other courts*” interpreted this Court’s precedents to mean that the time limit at issue was jurisdictional. Resp. 25–26. Yet the government itself only cites other courts for the proposition that *Block* and *Mottaz* held that the Quiet Title Act’s statute of limitations limits courts’ subject-matter jurisdiction. See Resp. 19, 26. Just like the other courts in *Eberhart*, which read too much into this Court’s previous references to “jurisdiction,” so too have other courts in this context.

Arbaugh is also instructive. There the Court held that Title VII’s definition of “employer” was

nonjurisdictional, despite having referred to Title VII's definitions as "jurisdictional" in a previous case. 546 U.S. at 511–13. The Court noted that in the previous case, "*En passant*, we copied the petitioners' characterizations of terms included in Title VII's 'Definitions' section ... as 'jurisdictional.'" *Id.* at 512. But that characterization did not bind the Court in *Arbaugh*, because "our decision did not turn on that characterization, and the parties did not cross swords over it." *Id.* (citing *Steel Co.*, 523 U.S. at 91).

Thus, to understand whether the Court meant that a prescription was jurisdictional in the proper sense of the word, one must look beyond the use of the word "jurisdiction." *Arbaugh*, 546 U.S. at 512. If a previous case did not require the Court "to home in on whether the dismissal had been properly based on the absence of subject-matter jurisdiction," then that previous case did not answer whether the rule is jurisdictional. *Id.* at 512–13.

In *Block* and *Mottaz*, whether the statute of limitations is jurisdictional was not at issue, the parties did not brief the issue, and the Court did not have to address the issue to resolve the case. Brief for Petitioners (Pet. Br.) 31–38. Instead, the Court's and parties' use of the word "jurisdictional" merely conveyed that the statute of limitations was mandatory, Pet. Br. 33, which was a common but inexact use of "jurisdiction" at the time, see *Eberhart*, 546 U.S. at 19.

The government argues that the Eighth Circuit's holding on remand from *Block* shows that the statute of limitations is jurisdictional. Resp. 26. But the court of appeals simply repeated this Court's use of the term "jurisdictional" and proceeded to analyze whether the

limitations period had passed. *State of N.D. ex rel. Bd. of Univ. & Sch. Lands v. Block*, 789 F.2d 1308, 1312–13 (8th Cir. 1986) (*Block II*). Even the court of appeals’ discussion on “law of the case,” *id.* at 1314, merely reflects the principle that “district courts must observe the clear limits of [a statute of limitations] when they are properly invoked.” *Eberhart*, 546 U.S. at 17.¹

Even if the Eighth Circuit’s holding were clear in treating the statute of limitations as jurisdictional, the opinion would be of little value in interpreting this Court’s decision in *Block*. The Court has stated that, while lower courts’ “historical treatment [of a time limit] as ‘jurisdictional’ is a factor in the analysis, it is not dispositive.” *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 169 (2010). Instead, the Court must look at “other factors” to determine whether a prescription is “analogous to the nonjurisdictional conditions” in other cases. *Id.* Here, other factors, such as the language, context, and history of the Quiet Title Act, demonstrate that the statute of limitations is nonjurisdictional. Pet. Br. 14–23.

In sum, the case here is unlike *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008), where the Court examined previous cases that turned on whether the statute of limitations could be waived—that is, in which the jurisdictional tag was outcome-determinative. Pet. Br. 28–29. In contrast, the case here is like *Eberhart* and *Arbaugh*, where the

¹ Indeed, the Eighth Circuit cited this Court’s footnote in *Block* that recognized that the government had preserved all its objections, *Block II*, 789 F.2d at 1314 (citing *Block*, 461 U.S. at 292 n.29), which is also why the court of appeals was not bound by the district court’s previous findings.

Court recognized that its past use of the “jurisdiction” label was not dispositive. The Court has never held that the Quiet Title Act’s statute of limitations is jurisdictional and it is not bound by any cases on the question.

B. *Beggerly* addressed whether the Quiet Title Act’s statute of limitations could be equitably tolled, a distinct question from whether the statute of limitations is jurisdictional

United States v. Beggerly, 524 U.S. 38 (1998), confirms that the Court has never held that the Quiet Title Act’s statute of limitations is jurisdictional. Pet. Br. 39–42. When discussing *Beggerly*, the government conflates a jurisdictional prescription with one that can be equitably tolled. *See, e.g.*, Resp. 33. But whether a statute of limitations allows for equitable tolling is a separate question from whether a statute of limitations is jurisdictional. *See Boechler*, 142 S. Ct. at 1500. And the Court often first answers whether a statute of limitations is jurisdictional before it determines whether a nonjurisdictional statute of limitations allows for equitable tolling. *See id.*; *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145, 156 (2013); *Holland v. Fla.*, 560 U.S. 631, 645–46 (2010).

That the Court in *Beggerly* answered the second step of the inquiry implies that the Quiet Title Act’s statute of limitations is nonjurisdictional. The Court cited *Irwin v. Dep’t of Veterans Affairs*, and held that the statute of limitations “has already effectively allowed for equitable tolling,” and thus Congress did not intend for courts to allow “additional equitable tolling” beyond the statutory language. *Beggerly*, 524 U.S. at 48–49 (citing *Irwin v. Dep’t of Veterans Affairs*,

498 U.S. 89, 96 (1990)). The Court did not rely on its previous Quiet Title Act cases to reach its holding. It only cited *Block* for the proposition that the Quiet Title Act allows a plaintiff to sue the United States over real property disputes. *Id.* at 47–48 (quoting *Block*, 461 U.S. at 275–76). It would be unusual for the Court to go through the work to examine the text and legislative history of the Quiet Title Act if it could have simply relied on previous cases to hold that the statute of limitations is jurisdictional.

Moreover, in arguing *Beggerly*, the government did not cite *Block* for the proposition that the Quiet Title Act’s statute of limitations is jurisdictional and it did not cite *Mottaz* at all. Petitioner’s Brief, *United States v. Beggerly*, 524 U.S. 38 (1998) (No. 97-731). Instead, the government argued that (1) *Irwin* only applied when there was equal treatment of government and private remedies in the statute and, (2) even if *Irwin* applied, the presumption was rebutted. *Id.* at 26–28.

The government attempts to address the inconsistency between its arguments in *Beggerly* and its arguments here by saying that it was only after *Beggerly*, in *John R. Sand*, that this Court announced that *Irwin* had a prospective effect. Resp. 33–34 n.6. But *John R. Sand* did not announce a new interpretation of *Irwin*; it merely restated that “*Irwin* recognized that it was announcing a general prospective rule ... which does not imply revisiting past precedents.” 552 U.S. at 137. The meaning of *Irwin* was known at the time the government briefed *Beggerly*, yet the government did not argue that *Block* and *Mottaz* held that the Quiet Title Act’s statute of

limitations goes to a court's subject-matter jurisdiction.²

Further, not only did the government in *Beggerly* fail to argue that *Block* and *Mottaz* held that the statute of limitations is jurisdictional, its arguments were at odds with a belief that the statute of limitations is jurisdictional. The government noted 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). When the discovery rule applies to a statute of limitations, a plaintiff does not bear the burden of pleading the issue. *See Bistline v. Parker*, 918 F.3d 849, 876 n.12 (10th Cir. 2019) (“But the application of tolling through the discovery rule is relevant only to a statute-of-limitations *defense*; accordingly, plaintiffs did not have the burden to plead on this issue ... Case law in the Third and Seventh Circuits supports our analysis.” (emphasis added)).

The Court in its opinion also noted the equitable discovery rule. *Beggerly*, 524 U.S. at 48–49. And the opinion itself—not just the concurrence—left open the possibility of equitable estoppel. *See id.* at 48 (favorably 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”). Both are inconsistent with a belief that the statute of

² Indeed, the government here cites Justice White’s *Irwin* concurrence to support its argument. Resp. 28. But the government could have relied on the same concurrence in *Beggerly*.

limitations is jurisdictional. *Felter v. Norton*, 412 F. Supp. 2d 118, 122 (D.D.C. 2006) (“Traditionally, when a statute of limitations has been deemed jurisdictional, it has acted as an absolute bar and could not be overcome by the application of judicially recognized exceptions ... such as waiver, estoppel, ... [or] the discovery rule[.]), *remanded on other grounds*, *Felter v. Kempthorne*, 473 F.3d 1255 (D.C. Cir. 2007).

The government in *Beggerly* never argued that the Quiet Title Act’s statute of limitations was jurisdictional, and the Court did not hold in *Beggerly* that the statute of limitations was jurisdictional. Instead, the governments’ arguments in *Beggerly* and the Court’s holding support the conclusion that the Quiet Title Act’s statute of limitations is nonjurisdictional—or at a minimum that the question remains open.

C. As *Beggerly* confirms, *Block* and *Mottaz* did not apply a different, pre-*Irwin* governing law about how to interpret statutes of limitations

The government argues that, in interpreting its past Quiet Title Act cases, the Court must consider whether those cases were decided pre-*Irwin* because there was a different “governing law” about jurisdiction prior to *Irwin*. Resp. 27–28. Specifically, the government argues that the Court treated waiver of sovereign immunity as jurisdictional prior to *Irwin*. *Id.*

The Court’s statements in the cases cited by the government merely reflect that jurisdiction is a word of many meanings and that the Court was less than meticulous in its use of the term at the time. This

Court has repeatedly held, in many different contexts, that previous statements that a rule defines the scope of a court's jurisdiction merely mean that that rule is mandatory. *See, e.g., Eberhart*, 546 U.S. at 16; *Arbaugh*, 546 U.S. at 511–13. The difference between previous cases and more recent cases is that courts have been more exact in using the word “jurisdiction.” There is not a difference in governing law.

The government cites *John R. Sand* in support of its contention about a pre-*Irwin* governing law. Resp. 34. But *John R. Sand*'s statement that *Irwin* announced a “a general prospective rule ... which does not imply revisiting past precedents,” 552 U.S. at 137, says nothing about a different governing law. As the Court said in *Wong*, *John R. Sand* stands for the straightforward proposition that this Court recognizes “*stare decisis*.” *United States v. Wong*, 575 U.S. 402, 416 (2015). Here, in effect, the government argues that *stare decisis* requires the Court to defer to a *post hoc* understanding that the Court's previous inexact use of “jurisdiction” means only “subject-matter jurisdiction.” *See* Resp. 34–35.

Stare decisis, however, only requires that the Court respect holdings on issues before the Court. *Wong*, 575 U.S. at 416. It does not require the Court to defer to an inflexible understanding of a word that the Court itself has said has a flexible meaning. *See, e.g., Eberhart*, 546 U.S. at 16; *Arbaugh*, 546 U.S. at 511–13. When the Court has “not previously considered” the issue “*stare decisis* plays no role.” *Wong*, 575 U.S. at 416. Here, the Court has not previously decided a case that turned on whether the Quiet Title Act's statute of limitations is jurisdictional. *See* Pet. Br. 30–42; Section I-A, *supra*.

The government also cites *United States v. Dalm*, 494 U.S. 596 (1990), in support of its different-governing-law argument. Resp. 26–27. The reliance on *Dalm* is misplaced because the Court’s later, post-*Irwin* treatment of *Dalm* further demonstrates that the use of the word “jurisdiction” in decades-old cases does not necessarily mean “subject-matter jurisdiction.” See *United States v. Brockamp*, 519 U.S. 347 (1997).

In *Dalm*, the Court quoted *Block* and *Mottaz*—along with several other cases—for the proposition that a waiver of sovereign immunity “define[s] that court’s jurisdiction to entertain the suit.” *Dalm*, 494 U.S. at 608 (quoting *United States v. Testan*, 424 U.S. 392, 399 (1976) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941))). Like in many other instances, *Dalm* and the cases it quotes predate this Court’s effort to bring discipline to the use of the term “jurisdictional.” To understand what the Court meant by “jurisdiction” in *Dalm*, one must look to later cases that interpreted the same provision. See *Brockamp*, 519 U.S. at 351.

The government here, however, ignores the later case of *Brockamp*, which addressed the same section of the Internal Revenue Code at issue in *Dalm*, and which refutes the government’s contention that there was a different “governing law” before *Irwin*. In *Brockamp*, the Court held that the statute of limitations for income tax refund claims is not subject to equitable tolling. 519 U.S. at 352. Like in *Beggerly*, 524 U.S. at 48–49, the Court in *Brockamp* did not rely on past uses of the word “jurisdiction” to reach its holding. 519 U.S. at 352. Instead *Brockamp* held that the nature of the subject matter, coupled with the

statute’s already included exceptions to the time limit, rebutted *Irwin*’s presumption that equitable tolling is available. *Id.* at 351–53.³

Indeed, the government in *Brockamp* made the same *Irwin* arguments it made in *Beggerly*: that (1) *Irwin* only applied when there was equal treatment of government and private remedies in the statute and, (2) even if *Irwin* applied, the presumption was rebutted. Brief for the United States at 27–39, *United States v. Brockamp*, 519 U.S. 347 (1997) (No. 95-1225). In a footnote, the government argued that “[c]ompliance with the prompt filing requirement is a condition of the government’s waiver of its sovereign immunity and is a jurisdictional prerequisite to a refund suit in district court.” *Id.* at 22 n.13. But the government did not cite *Dalm* to support that argument, *id.*, and the Court’s opinion did not adopt it. *Dalm* does not reflect a pre-*Irwin* governing law about the waiver of sovereign immunity.

Further demonstrating the fallacy of a different “governing law” pre-*Irwin* is how the Court in *Boechler* treated *Brockamp*. In *Boechler*, the Court analyzed *Brockamp* not in the first part of its opinion—which discussed whether the time limit at issue was jurisdictional—but only in the second part of the opinion, which discussed whether the time limit was subject to equitable tolling. *Boechler*, 142 S. Ct. at

³ The Court in *Brockamp* assumed, without deciding, that *Irwin*’s presumption applied. 519 U.S. at 350. That further contradicts the government’s interpretation of *Dalm* because, if *Dalm* held that the time limits were jurisdictional, then that would have resolved the question presented in *Brockamp*, with or without *Irwin*’s presumption.

1500–01. *Brockamp* did not confirm the jurisdictional treatment of the time limit at issue in *Dalm*, because *Dalm* did not hold that the time limit was jurisdictional. Similarly, *Beggerly* did not confirm any jurisdictional treatment of the Quiet Title Act’s statute of limitations in *Block* or *Mottaz*, because *Block* and *Mottaz* did not hold that the Quiet Title Act’s statute of limitations is jurisdictional.

II.

In Amending the Quiet Title Act, Congress Did Not Acquiesce in an Understanding That the Statute of Limitations Is Jurisdictional

A. The 1986 Amendments addressed only whether states had to comply with the statute of limitations

The government argues that, in amending the Quiet Title Act, Congress acquiesced in an understanding that the statute of limitations is jurisdictional. Resp. 18–21. But in amending the Quiet Title Act, Congress only addressed *Block*’s holding that the statute of limitations applied to states. Congress did not acquiesce in something that was not at issue, and was not addressed, in *Block*.

The first problem with the government’s acquiescence argument is that it rests on the same faulty premise that its other arguments rest on: that the Court has only ever used the word “jurisdiction” to mean “subject-matter jurisdiction.” Congress cannot acquiesce in something that the Court never held. See *Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) (“One problem with this [acquiescence] argument is that, as explained above, none of our decisions establishes” what the government says they establish.). At the

time *Block* and *Mottaz* were decided, courts and litigants used “jurisdiction” in a variety of ways. See *Kontrick*, 540 U.S. at 455 (“Clarity would be facilitated if courts and litigants used the label ‘jurisdictional’ not for claim-processing rules[.]”). Congress could not be expected to interpret the Court’s use of the word “jurisdiction” to mean “subject-matter jurisdiction” at a time when the Court and litigants themselves did not even use “jurisdiction” consistently.

The second problem is that the acquiescence argument fails on its own terms. This Court has only “relied on congressional acquiescence when there is evidence that Congress considered and rejected the ‘precise issue’ presented before the Court[.]” *Rapanos v. United States*, 547 U.S. 715, 750 (2006) (plurality opinion) (quoting *Bob Jones Univ. v. United States*, 461 U.S. 574, 600 (1983) (emphasis added)). And absent “*overwhelming evidence* of acquiescence, we are loath to replace the plain text and original understanding of a statute with an amended agency interpretation.” *Id.* (quotation omitted).

Here, there is no evidence that Congress addressed anything other than *Block*’s holding that the Quiet Title Act’s statute of limitations applies to states. Pub. L. No. 99-598, 100 Stat. 3351 (Nov. 4, 1986). Congress’s changes were limited to exempting states from the statute of limitations in most situations and defining the few situations when the statute of limitations still applies. *Id.* Otherwise, Congress kept the rest of the Quiet Title Act intact. *Id.* When “Congress has not comprehensively revised a statutory scheme but has made only isolated amendments ... [i]t is impossible to assert with any degree of assurance that congressional failure to act

represents affirmative congressional approval of the Court’s statutory interpretation.” *Alexander*, 532 U.S. at 292 (quotations omitted); *see also AMG Cap. Mgmt., LLC v. Fed. Trade Comm’n*, 141 S. Ct. 1341, 1351 (2021) (quoting the same). To the extent that lower courts treated the Quiet Title Act’s statute of limitations as jurisdictional in 1986, Congress’s failure to address those incorrect holdings does not amount to acquiescence. *See AMG Cap. Mgmt.*, 141 S. Ct. at 1351 (holding that minor amendments to a statute “do not convince us that Congress acquiesced in the lower courts’ interpretation”).

B. The 1986 Amendments did not change the statute of limitations from a waivable affirmative defense to a jurisdictional bar

The 1986 amendments thus did not change how the statute of limitations is supposed to work in litigation; they merely exempted states from the time limit in most cases. Pub. L. No. 99-598, 100 Stat 3351 (Nov. 4, 1986). As the Department of Justice said itself when proposing the statute of limitations for the original bill, the government can waive the statute of limitations and the government has the burden of proving that a claim is untimely. H.R. Rep. No. 92-1559, at 8 (1972). Congress never acquiesced in a different understanding of the nature of the statute of limitations because it amended the statute to exempt states from the time limit in direct response to *Block’s* holding.

That the Department of Justice told Congress that a 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, does not indicate that the statute of limitations is jurisdictional. Even if the Department of Justice was proposing a pleading requirement (rather than making a statement that the argument would arise in the course of litigation), many nonjurisdictional claim-processing rules require plaintiffs to allege compliance with the rule. *Gonzalez v. Thaler*, 565 U.S. 134, 137 (2012) (provision of Antiterrorism and Effective Death Penalty Act of 1996, requiring the certificate of appealability to indicate which specific issue or issues satisfy the Act’s requirements, is nonjurisdictional); *Scarborough v. Principi*, 541 U.S. 401, 411–12 (2004) (Equal Access to Justice Act’s 30-day deadline for attorney fee applications and its application-content specifications are non-jurisdictional).

Regardless, while the government may now argue that the Quiet Title Act requires plaintiffs to plead when their claims accrued, Resp. 30, the Act’s text contains no such requirement. *See* 28 U.S.C. § 2409a; *see also Jones v. Bock*, 549 U.S. 199, 211–17 (2007) (A statute must be explicit if it is to depart from usual practice and require a complaint to plead what is normally an affirmative defense).⁴ This is because the statute of limitations contains a discovery rule. *See* Petitioner’s Brief at 28, *United States v. Beggerly*, 524 U.S. 38 (No. 97-731). And “the application of tolling

⁴ The Quiet Title Act requires a plaintiff to plead “with particularity the nature of the right, title, or interest which the plaintiff claims in the real property” and “the circumstances under which it was acquired,” but only requires the plaintiff to allege with particularity “the right, title, or interest claimed by the United States,” not when or how the plaintiff discovered the adverse interest. 28 U.S.C. § 2409a(d).

through the discovery rule is relevant only to a statute-of-limitations *defense*” and, thus, a plaintiff need not plead it. *Bistline*, 918 F.3d at 876 n.12 (emphasis added). That the government argued in *Beggerly* that the Quiet Title Act’s statute of limitations contains a discovery rule further demonstrates that it understood that the Quiet Title Act’s statute of limitations is an affirmative defense, even after the 1986 amendments.

III.

The Distinction Between a Jurisdictional and Nonjurisdictional Statute of Limitation Matters

The government argues that the Court’s decision in this case will have no practical benefits on Quiet Title Act cases, including this one. Resp. 37. But, as *amici* point out, the jurisdictional label affects how property owners can protect their rights and whether disputes can be resolved without litigation. *See* Brief of the National Federation of Independent Business Small Business Legal Center, *et al.*, at 15–19; Brief of Local Government Organizations at 5–10.

As for this case, the District Court’s holding that the statute of limitations is jurisdictional is essentially outcome-determinative. One only needs to compare the magistrate judge’s opinion with the District Court opinion to determine that the jurisdictional nature of the statute of limitations affects how the case will be litigated on remand. Both the magistrate judge and the District Court recognized that, if the Quiet Title Act’s statute of limitations is nonjurisdictional, then the court could not grant a motion to dismiss for lack of subject-

matter jurisdiction. Appendix to Petition for Writ of Certiorari (Cert. App.) E-15, D-3.

The District Court placed the burden on Petitioners to prove that their case was timely. Cert. App. 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.” Cert. App. D-4. Yet if the statute of limitations is nonjurisdictional, then all disputed facts must be construed in favor of Petitioners at the motion to dismiss stage. *See Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir. 1982).

The government argues that the Ninth Circuit, on remand, would still apply the standards for a 12(b)(1) motion to dismiss because of sovereign immunity. Resp. 36 n.7 (citing *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015)). But *Pistor* and other cases that apply the “quasi-jurisdictional” standard deal with waiver of tribal sovereign immunity, foreign sovereign immunity, or Eleventh Amendment immunity. *See Pistor*, 791 F.3d at 1110; *Maxwell v. Cnty. of San Diego*, 708 F.3d 1075, 1087 (9th Cir. 2013); *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1139 (9th Cir. 2012); *Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 934 (9th Cir. 2017).

To the point, in cases where the federal government has waived its sovereign immunity contingent on complying with a nonjurisdictional statute of limitations—like in the Federal Tort Claims Act—the Ninth Circuit applies the usual 12(b)(6) standards for resolving a motion to dismiss under the

statute of limitations. *See Redlin v. United States*, 921 F.3d 1133, 1138 (9th Cir. 2019).⁵ Indeed, when two other district courts in the Ninth Circuit held, before this case, that the Quiet Title Act’s statute of limitations is nonjurisdictional, they concluded that the limitations issue could not be resolved through a 12(b)(1) motion. *Payne v. U.S. Bureau of Reclamation*, No. CV 17-00490-AB (MRWx), 2017 WL 6819927 (C.D. Cal. Aug. 15, 2017); *Bar K Ranch, LLC v. United States*, No. CV-19-6-BU-BMM, 2019 WL 5328782 (D. Mont. Oct. 21, 2019).

Contrary to the government’s contention, Resp. 37 n.8, if the District Court applies the proper standard of review on remand—and places the burden on the government to prove that the landowners’ complaint is untimely—Petitioners may well prevail. There are disputed facts that the District Court did not consider because of the standard of review. *See Reply in Support of Petition for Writ of Certiorari* at 9–10. The District Court looked to maps and a 2006 closure order, but the landowners presented evidence that contradicted the government’s characterization of that evidence. *See id.*

For example, the maps do not reliably convey what roads are public. *See Joint Appendix (JA) 19; id.* at 21. Similarly, the Forest Service regulations say

⁵ In *Brownback v. King*, 141 S. Ct. 740, 749 (2021), this Court analyzed 28 U.S.C. § 1346(b), which contains the jurisdictional grant for the Federal Tort Claims Act, and noted that, “in the unique context of the FTCA, all elements of a meritorious claim are also jurisdictional[.]” That is not true of the Quiet Title Act’s jurisdictional grant. *See* 28 U.S.C. § 1346. Notably, *Brownback* did not discuss the Federal Tort Claims Act’s nonjurisdictional statute of limitations, which is separated from the Act’s jurisdictional grant. *See Wong*, 575 U.S. at 411–12.

nothing about what the agency believes it owns because those regulations merely state that the Forest Service can close roads. See 36 C.F.R. §§ 261.50, 261.51, 261.54 (2005). And the Forest Service Manual says that public roads are a subset of Forest Service Roads, JA 19, which supports the landowners' contention that one would not know the Forest Service's view of the scope of the easement simply because one knew that the easement was a Forest Service Road. See *Michel v. United States*, 65 F.3d 130, 132 (9th Cir. 1995) (“[W]hen the plaintiff claims a non-possessory interest such as an easement, knowledge of a government claim of ownership may be entirely consistent with a plaintiff's claim.”). In a word, the maps, regulations, and manual do not necessarily determine the Forest Service's position on what roads are open or reflect the full scope of every Forest Service easement.⁶

Under the standards for resolving a 12(b)(1) motion to dismiss, however, the District Court did not need to consider this competing evidence, and instead accepted the government's characterization of the

⁶ Indeed, the Forest Service itself recognized that its maps and regulations did not accurately reflect what roads were open to the public. See 70 Fed. Reg. 68,264, 68,264 (Nov. 9, 2005) (adopting Travel Management Rule to ensure “clear identification of roads, trails, and areas for motor vehicle use on each National Forest”); USDA, *Draft Environmental Impact Statement Bitterroot National Forest Travel Management Planning Project* ch. 1 at 3 (July 2009), <https://babel.hathitrust.org/cgi/pt?id=ien.35556039651724&view=1up&seq=2&skin=2021> (Bitterroot National Forest stating that “it is difficult for both the public and Forest Service personnel to easily determine where and when motorized use can legally occur ...”).

maps. *See* Cert. App. D-4 (citations omitted). But even under the government’s characterization, the District Court was equivocal about whether the maps alone demonstrated when the landowners’ claim accrued. Cert. App. D-23. Instead, the court stressed a 2006 order as the key triggering event. *Id.* But the landowners presented evidence that they and their neighbors never saw that order and that the only sign they saw was one that said “road closed ahead.” *See* JA 8 ¶¶ 5–6; *id.* at 14 ¶ 23; *id.* at 73–74; *id.* at 87. But, again, the District Court did not credit the landowners’ evidence in dismissing, as it would have had to if the statute of limitations is nonjurisdictional.

In answering the question presented here, however, this Court does not need to search through the record to determine whether Petitioners’ claims are timely. *Cf. Boechler*, 142 S. Ct. at 1501–02 (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. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (this Court is a court of review, not of first view).

Simply put, “[t]he distinction [between a jurisdictional and nonjurisdictional prescription] matters.” *Boechler*, 142 S. Ct. at 1497. Whether the Quiet Title Act’s statute of limitations is jurisdictional will matter to cases across the country, including this one.

IV.

**This Case Allows the Court to
Further Clarify the Standard for
Resolving Questions About Whether
a Prescription Is Jurisdictional**

Finally, the government argues that reversing the Ninth Circuit would confuse lower courts about how to interpret this Court's cases. Resp. 35. But, as the circuit split on this issue demonstrates, the lower courts are already confused. *Compare Wisconsin Valley Imp. Co.*, 569 F.3d at 334, *with* Cert. App. A-9. This befuddlement is the reason why this Court has "tried in recent cases to bring some discipline to the use of the term 'jurisdiction.'" *Sebelius*, 568 U.S. at 153 (quotations omitted); *see also Kontrick*, 540 U.S. at 455.

The Court's efforts have been successful, producing a standard for lower courts to apply; a standard the Court can further clarify here by explaining the difference between jurisdictional holdings and mere "*en passant*" use of the term. Courts are only bound by a previous case if it provided "a definitive earlier interpretation" on the jurisdictional status of a rule, *Wong*, 575 U.S. at 416 (quoting *John R. Sand*, 552 U.S. at 138), *i.e.*, where the decision turned on the jurisdictional characterization. *Arbaugh*, 546 U.S. at 513. But when "*stare decisis* plays no role," *Wong*, 575 U.S. at 416, then courts apply a "readily administrable bright line" rule to identify if a prescription is jurisdictional. *Arbaugh*, 546 U.S. at 515–16.

Here, this Court's previous Quiet Title Act cases did not turn on whether the statute of limitations is

jurisdictional. This Court did not have to “home in” on the issue of subject-matter jurisdiction and the jurisdictional status of the rule was not outcome-determinative. *See Arbaugh*, 546 U.S. at 513. As a result, in this case, the Court must determine whether, in passing the Quiet Title Act, Congress clearly stated that the statute of limitations is jurisdictional. Neither the statutory text, nor context, nor history provides a clear statement that the statute of limitations is jurisdictional. Instead, it is a nonjurisdictional affirmative defense.

Conclusion

The judgment of the Ninth Circuit should be reversed.

DATED: October 2022.

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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

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the REPLY BRIEF FOR PETITIONERS contains 5,995 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 19, 2022.



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No. 21-1164

LARRY STEVEN WILKINS; JANE B. STANTON,
Petitioners,
v.
UNITED STATES OF AMERICA,
Respondent.

AFFIDAVIT OF SERVICE

I, Andrew Cockle, of lawful age, being duly sworn, upon my oath state that I did, on the 20th day of October, 2022, send out from Omaha, NE 1 package(s) containing 3 copies of the REPLY BRIEF FOR PETITIONERS in the above entitled case. All parties required to be served have been served by Priority Mail. Packages were plainly addressed to the following:

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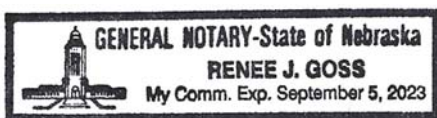
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I am duly authorized under the laws of the State of Nebraska to administer oaths.



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