No. 21-1164

In the Supreme Court of the United States

LARRY STEVEN WILKINS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

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

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OPINIONS BELOW

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

JURISDICTION

The judgment of the court of appeals was entered on September 15, 2021. A petition for rehearing en banc was denied on November 23, 2021 (Pet. App. F1). The petition for a writ of certiorari was filed on February 18, 2022, and was granted on June 6, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 2409a(g) of Title 28, United States Code, provides:

> 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.

28 U.S.C. 2409a(g).

STATEMENT

Petitioners brought this action against the United States under the Quiet Title Act, 28 U.S.C. 2409a, alleging that the government was violating the terms of an easement for a roadway over their property by allowing the public to use the road and by failing to patrol and maintain the road to prevent public use. See J.A. 106-119. After discovery, the district court dismissed the complaint for lack of subject matter jurisdiction, holding that petitioners' claims were barred by the Quiet Title Act's 12-year statute of limitations in 28 U.S.C. 2409a(g). Pet. App. D1-D24. The court of appeals affirmed, *id.* at A1-A12, B1-B6, and subsequently denied petitioners' request for rehearing en banc, *id.* at F1.

1. In 1962, petitioners' predecessors-in-interest—owners of private land near Connor, Montana—granted to the United States a roadway easement across their property. Pet. App. A4, D21; J.A. 23-24. The roadway, known as Robbins Gulch Road, runs east from Highway 93 across private land for approximately one mile before entering the Bitterroot National Forest, which is administered by the United States Forest Service. See J.A. 120-121. Since at least 1972, Forest Service maps have apprised the public that Robbins Gulch Road is a National Forest System road that provides unrestricted access to the Bitterroot National Forest. *Ibid.*; J.A. 124-129. Moreover, under Forest Service regulations dating back to 1977, a road under the Forest Service's jurisdiction that provides access to National Forest System lands is restricted only when the restriction is provided by an order posted at the site. See, *e.g.*, 36 C.F.R. 261.50(b), 261.50(c)(2)-(5), 261.51, 261.54(b) (2005); see also 42 Fed. Reg. 2956, 2959-2960 (Jan. 14, 1977) (promulgating original regulations); J.A. 19 (Forest Service manual defining a "Public Road" as a road that is "[o]pen to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration") (emphasis omitted). Consistent with the maps and lack of restrictive notices, the recreating public has used the road for decades to access the National Forest. J.A. 34-54.

In 1990 and 2004, respectively, petitioners Jane Stanton and Larry Wilkins acquired separate lots along Robbins Gulch Road. Pet. App. A4, D2; J.A. 8, 107-108; D. Ct. Doc. 32-5 (Oct. 11, 2019). Petitioners acknowledged in their depositions that they were aware of the

public use of the road when they purchased their properties. See J.A. 55, 61-69, 76, 81-84; D. Ct. Doc. 31, at 15-17 (Oct. 11, 2019). And on May 3, 2006, well after petitioners had acquired their properties, the Forest Service temporarily closed the road to the public due to unsafe conditions—a temporary action that made clear that the agency ordinarily considered the road to be open to public use. J.A. 91-94, 98-99.

2. a. On August 23, 2018, petitioners commenced this action against the United States to challenge the scope of the United States' easement under the Quiet Title Act, 28 U.S.C. 2409a. Pet. App. B2, D21 n.4; J.A. 106-119. The Quiet Title Act permits the United States to be named as a defendant in a civil action "to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights." 28 U.S.C. 2409a(a). Federal district courts have exclusive jurisdiction over "civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States," 28 U.S.C. 1346(f), including suits "seeking a declaration as to the scope of an easement," *Robinson* v. *United States*, 586 F.3d 683, 686 (9th Cir. 2009); see *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 215 (2012).

Petitioners alleged in their complaint that the 1962 easement "may not be utilized by the general public and that it may only be used by agents of the United States and specific assignees such as timber contractors." J.A. 118 (¶ 34). The complaint additionally alleged that the easement imposes a duty on the United States "to patrol and maintain" the road, and that the United States had violated that alleged duty by permitting "ongoing unrestricted use by the general public." *Ibid.* (¶¶ 37-

38). Petitioners sought declaratory relief reflecting that view of the easement's scope. J.A. 119.

b. Following discovery, the government moved to dismiss the action for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Pet. App. E3-E4. The government contended (as relevant here) that the suit was barred by 28 U.S.C. 2409a(g), which provides that "[a]ny civil action under" the Quiet Title Act, "except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued." *Ibid.*; see Pet. App. E4. Section 2409a(g) specifies that an action "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. 2409a(g). The government contended that, under this Court's precedent, the 12-year bar contained in Section 2409a(g) is jurisdictional. D. Ct. Doc. 31, at 11 (citing, *inter alia*, *Block* v. *North Dakota*, 461 U.S. 273 (1983), and *United States* v. *Mottaz*, 476 U.S. 834 (1986)).

Petitioners argued that the time bar is not jurisdictional and that the government's Rule 12(b)(1) motion could be denied on that basis alone. D. Ct. Doc. 35, at 11 (Nov. 15, 2019). In the alternative, petitioners argued that, even if the government's motion (which relied on materials outside of the pleadings) were treated as a motion for summary judgment, the motion should be denied because there were genuine issues of material fact as to when the statute of limitations began to run. *Id.* at 14-27. Petitioners did not assert a need for additional time to gather and present any additional evidence on the timeliness issue, as to which they had already taken extensive discovery. See *ibid.*

A magistrate judge recommended denying the government's motion. Pet. App. E1-E18. The magistrate judge concluded that Section 2409a(g) does not establish a jurisdictional requirement and that the government's timeliness argument should therefore be analyzed under Rule 12(b)(6) rather than Rule 12(b)(1). *Id.* at E11-E15. The magistrate judge further concluded that various documents on which the government's motion relied to establish petitioners' notice of the scope of the government's interest were "inadmissible" in considering the motion under Rule 12(b)(6) because those documents were not attached to or incorporated by reference into the complaint. *Id.* at E15.

c. The district court rejected the magistrate judge's recommendation and granted the government's motion to dismiss petitioners' action as untimely under Section 2409a(g). Pet. App. D1-D24.

The district court observed that this Court in *North Dakota* and *Mottaz*, and the Ninth Circuit in subsequent decisions, had each concluded that compliance with the Quiet Title Act's 12-year time bar is a jurisdictional prerequisite. Pet. App. D6-D15. The district court rejected petitioners' contention that later decisions of this Court addressing other statutes called that conclusion into doubt. *Id.* at D9-D10. To the contrary, the district court noted that this Court's subsequent decision in *United States* v. *Beggerly*, 524 U.S. 38 (1998), had reinforced its conclusion in *North Dakota* and *Mottaz* by holding that Section 2409a(g) is not subject to equitable tolling. Pet. App. D9, D12-D13 (citing *Beggerly*, 524 U.S. at 48-49).

The district court proceeded to consider the government's motion to dismiss under Rule 12(b)(1) and found that petitioners' suit was time-barred. Pet. App. D15-

D23. The court explained that under Section 2409a(g), a claim under the Quiet Title Act is "'deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States,'" *id.* at D16 (quoting 28 U.S.C. 2409a(g)), and that the key question in this case was "when a reasonable landowner would have known that the Forest Service believed its easement granted public access or opened the road to the public," *id.* at D18. The court found that a reasonable landowner would have possessed that knowledge prior to August 23, 2006, and thus more than 12 years before the complaint was filed. *Id.* at D20-D23.

The district court explained that since 1972, public Forest Service maps have identified Robbins Gulch Road as a National Forest System road that provides unrestricted access to National Forest lands. Pet. App. D21. The court observed that "[t]h[o]se maps tell a clear story—the Forest Service has been informing the public since, at least, 1972 that it may access the Bitterroot National Forest by using" Robbins Gulch Road. *Ibid.* The court additionally found that "the public heard th[at] message and has been using the road as a public access route since that time." *Id.* at D21-D22. The court concluded that "[a] reasonable landowner observing this public use would have known to check local maps to see whether the road was designated as public or restricted" and, "[u]pon doing so, * * * would have been aware of the Forest Service's adverse claim prior to August 23, 2006." *Id.* at D22.

Finally, the district court noted that the Forest Service had temporarily closed the road to the public in May 2006 due to unsafe conditions, "erecting a physical barrier and posting a sign," which "would have provided

a reasonable landowner with notice of the Forest Service's adverse claim." Pet. App. D22-D23.

The district court concluded that, "[a]lthough the record contains evidence that [petitioners'] claims likely accrued sometime in the 1970s, the record is abundantly clear that [the claims] accrued, at the latest, on May 3, 2006." Pet. App. D23. The court denied petitioners' subsequent motion to alter or amend the judgment. *Id.* at C1-C7.

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

a. In a published opinion, the court of appeals agreed with the district court that the Quiet Title Act's 12-year bar is jurisdictional under this Court's decision in *North Dakota* and subsequent circuit precedent. Pet. App. A6-A7. The court of appeals rejected petitioners' contention that *North Dakota* and circuit precedent had been abrogated by this Court's decision in *United States* v. *Kwai Fun Wong*, 575 U.S. 402 (2015), which held that the limitations periods applicable to claims under the Federal Tort Claims Act, 28 U.S.C. 2401(b), are not jurisdictional. 575 U.S. at 407-421; see Pet. App. A6-A10. The court of appeals explained that *Kwai Fun Wong* had not purported to overrule *North Dakota* and "should not be read as blanketly overturning all prior Court decisions treating a statute of limitations as jurisdictional." Pet. App. A9. To the contrary, the court noted that *Kwai Fun Wong* reaffirmed the continuing vitality of this Court's decision in *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130 (2008), which had held that the limitations provision in 28 U.S.C. 2501 applicable to claims under the Tucker Act, 28 U.S.C. 1491, is jurisdictional. Pet. App. A9 (citing *Kwai Fun Wong*, 575 U.S. at 416).

b. In a separate, unpublished memorandum disposition, the court of appeals affirmed the district court's determination that petitioners' claims in this case are untimely because they accrued more than 12 years before the complaint was filed. Pet. App. B1-B6. The court held that petitioners' claims accrued "when a reasonable landowner should have known of the government's position that its easement allowed for public use of the road." *Id.* at B4. And the court of appeals concluded that the district court did not clearly err in finding that the "historic maps," the "historic public use of the road," and the May 2006 closure "should have alerted a reasonable landowner of the government's view regarding public access of the easement more than twelve years before [petitioners] filed suit." *Id.* at B6. Because the court held that the time bar is jurisdictional, it did not reach the government's alternative argument that the lower court's judgment should be affirmed in any event because there were no genuine issues of material fact and petitioners' claims were time-barred as a matter of law. Gov't C.A. Reply Br. 15 n.5, 39 n.8.

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

SUMMARY OF ARGUMENT

A. The court of appeals correctly recognized that this Court's prior decisions resolve the jurisdictional question presented here. In *Block* v. *North Dakota*, 461 U.S. 273 (1983), and *United States* v. *Mottaz*, 476 U.S. 834 (1986), this Court expressly recognized the Quiet Title Act's 12-year time bar as a jurisdictional limit on the courts' ability to consider suits to quiet title against the United States. That treatment reflected the time

bar's status as a condition on Congress's waiver of sovereign immunity and the then-prevailing principle that "the terms of [the United States'] consent to be sued in any court define the court's jurisdiction to entertain the suit." *Lehman* v. *Nakshian*, 453 U.S. 156, 160 (1981) (citation and internal quotation marks omitted).

Congress implicitly ratified this Court's jurisdictional treatment in 1986, when it amended the Quiet Title Act to overturn a different aspect of the decision in *North Dakota* but left the jurisdictional determination untouched. See Act of Nov. 4, 1986, Pub. L. No. 99-598, 100 Stat. 3351. Congress's approval of the jurisdictional treatment is particularly clear, moreover, because at the time of the 1986 amendments, every court of appeals to have addressed the issue had also recognized that the 12-year bar had jurisdictional significance. If Congress had disapproved of the jurisdictional treatment uniformly endorsed by this Court and the courts of appeals, it would have revised Section 2409a(g) to make that clear (as it did through its amendments directed to the other aspect of the *North Dakota* decision).

B. Petitioners' contrary arguments lack merit. This Court's jurisdictional determinations in *North Dakota* and *Mottaz* were not extraneous and imprecise uses of jurisdictional terminology, but rather reflected a correct application of then-prevailing doctrine. The jurisdictional treatment had concrete significance in both cases, dictating the course of the remand in *North Dakota* and making it unnecessary to consider possible waiver arguments in *Mottaz*. And this Court has itself accorded precedential significance to those jurisdictional rulings. See *United States* v. *Dalm*, 494 U.S. 596, 608 (1990) (citing *Mottaz* and *North Dakota* in support

of the "settled principle[]" that "[a] statute of limitations requiring that a suit against the Government be brought within a certain time period is one of" the "terms of [the United States'] consent to be sued" that "define [a] court's jurisdiction to entertain the suit").

This Court later changed its approach to statutory time bars on suits against the United States in *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990), adopting a rebuttable presumption that Congress intends such bars to be subject to equitable tolling, and therefore non-jurisdictional. But the Court has already recognized that *Irwin* announced only a prospective rule. Petitioners' reliance on *Irwin* and cases following it to rewrite the Court's earlier decisions in *North Dakota* and *Mottaz* is accordingly misplaced. And so, too, is their reliance on the Court's decision in *United States* v. *Beggerly*, 524 U.S. 38 (1998). The Court's recognition in *Beggerly* that the Quiet Title Act's time bar cannot be equitably tolled by the courts supports, rather than undermines, the time bar's jurisdictional status.

Finally, petitioners argue that this Court would not find Section 2409a(g) to be jurisdictional if it were to evaluate that question anew using the clear-statement rule applied in more recent cases. Whether or not that is so, however, it is an insufficient basis for revisiting the Court's earlier treatment of the 12-year bar. See *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 133-139 (2008). Overruling or artificially narrowing the Court's jurisdictional determinations in *North Dakota* and *Mottaz* would offer little or no practical benefit for Quiet Title Act plaintiffs (including petitioners), but would undermine legal stability and cause confusion and uncertainty in the lower courts about which of this

Court's precedents merit continued *stare decisis* respect. The Court has rejected similar invitations before and should do so again here.

ARGUMENT

THE LOWER COURTS CORRECTLY DETERMINED THAT THEY LACKED JURISDICTION TO CONSIDER PETITIONERS' UNTIMELY CLAIMS

A. Section 2409a(g)'s 12-year Time Bar Warrants Jurisdictional Treatment

To determine whether a statutory deadline is jurisdictional under this Court's most recent precedents, courts ask whether "traditional tools of statutory construction * * * plainly show that Congress imbued [the] procedural bar with jurisdictional consequences." *Boechler, P.C.* v. *Commissioner*, 142 S. Ct. 1493, 1497 (2022) (quoting *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015)). Although this Court has said that Congress must "speak clearly" to give a deadline jurisdictional significance, Congress need not "incant magic words." *Sebelius* v. *Auburn Regional Medical Center*, 568 U.S. 145, 153 (2013). Instead, in ascertaining whether "Congress has made the necessary clear statement," courts "examine the 'text, context, and relevant historical treatment' of the provision at issue." *Musacchio* v. *United States*, 577 U.S. 237, 246 (2016) (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 166 (2010)). Accordingly, even where the statutory text itself does not provide a clear indication that a time limit is jurisdictional by "expressly refer[ring] to subject-matter jurisdiction or speak[ing] in jurisdictional terms," *ibid.*, "'precedent and practice in American courts'" may also demonstrate that Congress chose to "rank a time limit as jurisdictional." *Auburn Regional*

Medical Center, 568 U.S. at 155 (quoting *Bowles* v. *Russell*, 551 U.S. 205, 209 n.2 (2007)). In particular, when this Court has definitively treated a statutory time bar as jurisdictional in the past, Congress has acquiesced in that interpretation, and the Court's earlier interpretation does not produce unworkable law, the time bar will continue to be treated as jurisdictional unless and until Congress directs otherwise. *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 133-139 (2008); *Bowles*, 551 U.S. at 209-211.

Applying those principles here, the court of appeals correctly accorded jurisdictional treatment to the Quiet Title Act's 12-year time bar. See Pet. App. A4-A10. In *Block* v. *North Dakota*, 461 U.S. 273 (1983), and *United States* v. *Mottaz*, 476 U.S. 834 (1986), this Court recognized that the running of the 12-year limitations period deprives the federal courts of jurisdiction to adjudicate the merits of a claim brought under the Quiet Title Act. That recognition reflected proper application of jurisdictional and sovereign-immunity principles prevailing at the time, and Congress acquiesced in the Court's interpretation when it amended the time bar in 1986 to overturn a different aspect of the *North Dakota* decision but left its jurisdictional determination in place. And even if this Court would not reach the same determination if it were to revisit the question afresh today, petitioners do not suggest that the rule adopted in *North Dakota* and *Mottaz* is so unworkable as to warrant overruling by this Court.

1. This Court has previously held that Section 2409a(g)'s time bar is jurisdictional

This "Court has twice concluded that * * * compliance with the limitations period" in the Quiet Title Act "is jurisdictional." *F.E.B. Corp.* v. *United States*, 818

F.3d 681, 685 (11th Cir. 2016) (citing *North Dakota*, *supra*, and *Mottaz*, *supra*).

a. On the first occasion, the Court concluded in *North Dakota* that where a "suit is barred by [Section] 2409a[(g)]," a court "ha[s] no jurisdiction to inquire into the merits." 461 U.S. at 292.[1]

That case arose when North Dakota sued federal officials to resolve a dispute over ownership of certain portions of the bed of the Little Missouri River. *North Dakota*, 461 U.S. at 277. The United States argued that an action against the United States under the Quiet Title Act was the exclusive avenue for resolving the dispute, and that the suit was barred because North Dakota had notice of the government's assertion of ownership more than 12 years before North Dakota sued. *Id.* at 278-279. The district court and Eighth Circuit sided with North Dakota, holding that the Quiet Title Act's 12-year bar was inapplicable to suits brought by States. *Id.* at 279.

This Court reversed, finding no basis for exempting North Dakota from the limitation that Congress had imposed on claims to quiet title asserted against the United States. *North Dakota*, 461 U.S. at 287-290. Pointing to *Lehman* v. *Nakshian*, 453 U.S. 156 (1981), and *United States* v. *Sherwood*, 312 U.S. 584 (1941), among other decisions, the Court explained that "[t]he basic rule of federal sovereign immunity is that the United States cannot be sued without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed." *North Dakota*,

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[1] At the time, the Quiet Title Act's 12-year bar was codified in subsection (f) of Section 2409a. See 28 U.S.C. 2409a(f) (1982).

461 U.S. at 287; see *Lehman*, 453 U.S. at 160 ("[T]he Court has recognized the general principle that 'the United States, as sovereign, is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.") (citation and internal quotation marks omitted); *Sherwood*, 312 U.S. at 591 ("The matter is not one of procedure but of jurisdiction whose limits are marked by the Government's consent to be sued.").

The Court held that that principle was applicable to the Quiet Title Act's 12-year bar because the "limitations provision constitutes a condition on the waiver of sovereign immunity." *North Dakota*, 461 U.S. at 287. And because there was no evidence "suggesting that Congress intended to exempt the States from the condition attached to the immunity waiver," the Court held that the lower courts had erred in reaching the merits of North Dakota's claim without first determining whether North Dakota had filed suit within the 12-year period. *Id.* at 288.[2]

Because "the lower courts made no findings as to the date on which North Dakota's suit accrued," this Court explained that the suit "must be remanded for further proceedings consistent with this opinion." *North Dakota*, 461 U.S. at 293. And the Court spelled out the consequences of its decision for those remand proceedings: "If North Dakota's suit is barred by [Section 2409a(g)], the courts below had no jurisdiction to inquire into the merits" and the case could not proceed. *Id.* at 292.

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[2] The Court also rejected North Dakota's argument that "it c[ould] avoid the [Act's] statute of limitations and other restrictions" by invoking other causes of action independent of the Quiet Title Act. *North Dakota*, 461 U.S. at 284; see *id.* at 280-285.

On remand, the court of appeals carried out this Court's direction. See *North Dakota* v. *Block*, 789 F.2d 1308 (8th Cir. 1986). Although the district court concluded that only some of North Dakota's claims were barred, the Eighth Circuit determined "that the facts as found by the district court lead ineluctably to the conclusion" that North Dakota had adequate notice of all of the United States' claims more than 12 years before it sued. *Id.* at 1312; see *id.* at 1310. The court of appeals accordingly explained that neither it nor the district court had "jurisdiction to inquire into the merits," *id.* at 1310 (quoting *North Dakota*, 461 U.S. at 292), because "[t]his statute of limitations is jurisdictional," *ibid.* North Dakota was therefore not entitled to retain the preclusive effect of factual findings entered following the earlier trial in the case that might be pertinent to future litigation. See *id.* at 1314 (describing North Dakota's contention that it was entitled to the benefit of those findings because the United States had not asked this Court to review them). The court of appeals explained that "the entire judgment must be reversed" because it was "[e]ntered in the absence of jurisdiction." *Ibid.* The court accordingly "remanded to the district court with directions to dismiss the complaint." *Ibid.*

b. Three years after its decision in *North Dakota*, this Court reaffirmed the jurisdictional nature of the Quiet Title Act's time bar in *Mottaz*, *supra*.

Mottaz involved a dispute over property on an Indian reservation in Minnesota that had been held in trust by the United States. 476 U.S. at 836-837. In 1954, the United States sold the property to the United States Forest Service for inclusion in a National Forest, without obtaining the express consent of all of the property's beneficial owners. *Ibid.* More than two decades

later, one of those owners brought suit against the United States, alleging that the sale was void and that she was entitled either to retain her property interest or to receive money damages in the amount of the property's contemporary fair-market value. *Id.* at 838. Treating the suit as one for money damages, the district court held that it was barred by the general six-year statute of limitations for civil actions against the United States. *Id.* at 838-839; see 28 U.S.C. 2401(a). But on appeal, the Eighth Circuit held that if the underlying sale was void, the plaintiff's claim would not be barred by that general six-year limitations period. See *Mottaz*, 476 U.S. at 839-840.

This Court reversed. *Mottaz*, 476 U.S. at 841-851. Although the Court stated that the government had raised the Quiet Title Act's 12-year time bar "apparently for the first time" in its petition for rehearing en banc in the court of appeals, the Court determined that the Act's time bar largely resolved the case. *Id.* at 840.[3] The Court explained that "[w]hen the United States consents to be sued, *the terms of its waiver of sovereign immunity define the extent of the court's jurisdiction.* In particular, '[w]hen waiver legislation contains a statute of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity.'" *Id.* at 841 (quoting *North Dakota*, 462 U.S. at 287) (emphasis added; second set of brackets in original; citation omitted). Indeed, the Court observed that the Quiet Title Act's 12-year bar "is a central condition of the consent given by the Act" and "reflects a clear congressional

[3] The government's brief in this Court observed that the government had also cited the Quiet Title Act's 12-year bar in a footnote in its panel-stage brief. See U.S. Br. at 22 n.11, *Mottaz*, *supra* (No. 85-546).

judgment that the national public interest requires barring stale challenges to the United States' claim to real property, whatever the merits of those challenges." *Id.* at 843, 851. Because the plaintiff was on notice of the title dispute more than 12 years before she sued, the suit could not proceed under the Quiet Title Act. See *id.* at 844. And the Court further determined that no other statute "conferred jurisdiction" on the lower courts to adjudicate her claim. *Id.* at 841; see *id.* at 844-851.

2. Congress acquiesced in this Court's jurisdictional understanding of the Quiet Title Act's 12-year bar when it amended that provision in 1986

The precedential effect of *North Dakota* and *Mottaz* is sufficient by itself to warrant treatment of Section 2409a(g) as jurisdictional. See *John R. Sand & Gravel Co.*, 552 U.S. at 133-139; Pet. App. A6-A10. But Congress's implicit ratification of the 12-year bar's jurisdictional status when it amended the Quiet Title Act in November 1986 further justifies that treatment. See Act of Nov. 4, 1986, Pub. L. No. 99-598, 100 Stat. 3351.

Congress's 1986 amendment responded to this Court's holding in *North Dakota* that the 12-year bar applied to States just as it did to any other parties. See H.R. Rep. No. 924, 99th Cong., 2d Sess., 2 (1986). Following that decision, States had "requested that the Act be amended so the twelve year statute of limitation would not apply to their claims." *Id.* at 3. Congress obliged in part, exempting "an action brought by a State" from the scope of Section 2409a(g) and enacting new subsections (h)-(m) to establish special timeliness rules for suits by States. See Pub. L. No. 99-598, 100 Stat. 3351-3352.

Congress took no action, however, to alter this Court's determination in *North Dakota* (and again in

Mottaz) that when the 12-year bar applies, it deprives the courts of jurisdiction to hear Quiet Title Act claims. See Pub. L. No. 99-598, 100 Stat. 3351. And under "[t]he traditional rule that re-enactment of a statute creates a presumption of legislative adoption of previous judicial construction," *Shapiro* v. *United States*, 335 U.S. 1, 20 (1948), the 1986 amendment thus "implicitly adopted [this Court's] construction of the statute" as jurisdictional, *Forest Grove School District* v. *T. A.*, 557 U.S. 230, 244 n.11 (2009).

Moreover, every court of appeals to have addressed the question at the time of the 1986 amendments had held that the 12-year bar imposed a jurisdictional limitation. See *Economic Development & Industrial Corp.* v. *United States*, 720 F.2d 1, 2, 4 (1st Cir. 1983) (raising the question of a Quiet Title Act suit's timeliness on the circuit court's own initiative and, having determined that the suit was untimely, "remand[ing] with directions to dismiss the complaint" because "the district court was without jurisdiction to consider the merits of the plaintiffs' claim"); *Deakyne* v. *Department of Army Corps of Engineers*, 701 F.2d 271, 274-275 & n.4 (3d Cir.) (holding that the Quiet Title Act's time bar is jurisdictional and that the court of appeals therefore was required to consider a timeliness argument on appeal even though it had not been raised in the district court), cert. denied, 464 U.S. 818 (1983); *Fulcher* v. *United States*, 696 F.2d 1073, 1078 (4th Cir. 1982) (holding that "[c]ompliance with the 12-year limitations period * * * is a jurisdictional prerequisite for bringing an action under the Quiet Title Act"); *North Dakota*, 789 F.2d at 1310, 1314 (acknowledging, on remand from this Court, that the Quiet Title Act's "statute of limitations is jurisdictional," and holding that because "the trial court was

without jurisdiction to inquire into the merits of North Dakota's complaint, * * * the entire judgment must be reversed"); *Nevada* v. *United States*, 731 F.2d 633, 636 (9th Cir. 1984) (observing that "[t]he Supreme Court ha[d] recently explained that failure to file a quiet title suit within the applicable limitations period is jurisdictional" in *North Dakota* and that "the district court was therefore without power to decide the merits of the quiet title action" after determining that the suit was untimely) (citation omitted); *Vincent Murphy Chevrolet Co.* v. *United States*, 766 F.2d 449, 452 (10th Cir. 1985) (holding that "[a]s '[t]imeliness * * * is a jurisdictional prerequisite to suit under section 2409a,' the district court lacked subject matter jurisdiction and properly dismissed the action on the grounds that it was [time-barred]") (citation omitted; second set of brackets in original).

The consistent practice in the courts of appeals of treating the 12-year bar as jurisdictional prior to the 1986 amendments reinforces the conclusion that Congress ratified that jurisdictional rule. When Congress "perpetuat[es] the wording" of a provision without relevant change in the face of a "uniform interpretation by inferior courts," the provision can be appropriately "presumed to carry forward that interpretation" even if this Court has not previously offered an authoritative construction (as it did here). *Texas Department of Housing & Community Affairs* v. *Inclusive Communities Project, Inc.*, 576 U.S. 519, 536–537 (2015) (quoting Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (2012)).[4]

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[4] In *Reed Elsevier, Inc.*, the Court considered the historical treatment of a provision by the lower courts to be a relevant "factor in the analysis" but "not dispositive." 559 U.S. at 169; cf. *Boechler*, 142

If Congress had disagreed with the jurisdictional status that this Court and the courts of appeals had uniformly attributed to the Quiet Title Act's 12-year bar, it would have made that plain at the same time that it made modifications to overturn other aspects of this Court's decision in *North Dakota*. Yet as petitioners do not dispute (Br. 23-24), neither the text nor the legislative history of the 1986 amendments gives any indication that Congress intended to displace the uniformly jurisdictional treatment of the time bar.

B. Petitioners' Contrary Arguments Lack Merit

Notwithstanding this Court's prior precedents holding the 12-year bar to be jurisdictional, the uniform treatment of the bar as jurisdictional by the courts of appeals as of 1986, and Congress's ratification of that jurisdictional treatment when it enacted the 1986 amendments, petitioners now urge the Court to hold that Section 2409a(g) does not impose limits on the courts' jurisdiction. They contend (Br. 24-39) that *North Dakota* and *Mottaz* do not merit *stare decisis* respect, and urge (Br. 14-24, 39-43) the Court to demand that Congress speak to Section 2409a(g)'s jurisdictional status with greater clarity than this Court required at the time those cases were decided. The court of appeals correctly rejected that approach. This Court's earlier decisions "directly control[]" on the question of Section

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S. Ct. at 1500 (declining to rely on lower court decisions that had used the "jurisdictional" label to describe an analogous earlier provision that Congress may have intended to emulate). Here, however, the lower courts' numerous decisions treating the Quiet Title Act's time bar as jurisdictional reinforce this Court's own decisions reaching that same conclusion, which this Court has recognized can by themselves be "sufficient" to support jurisdictional treatment. *John R. Sand & Gravel Co.*, 552 U.S. at 138.

2409a(g)'s jurisdictional effect, Pet. App. A10 (citation omitted), and petitioners have not even attempted to satisfy the high threshold necessary to overrule statutory interpretation precedents of this Court. Congress is of course free to amend Section 2409a(g) at any time to modify its jurisdictional status, but unless and until Congress does so, this Court should adhere to its earlier decisions.

1. **North Dakota** ***and*** **Mottaz** ***were not mere drive-by jurisdictional decisions, but instead merit respect as considered precedents of this Court***

Petitioners dismiss this Court's determinations that the Quiet Title Act's time bar is jurisdictional in *North Dakota* and *Mottaz*, contending that both cases involved merely "casual," "drive-by jurisdictional rulings" that were not "definitive" and therefore lack precedential force. Br. 24-27 (citations and internal quotation marks omitted); see Br. 24-39. That contention lacks merit. This Court's conclusion that a failure to comply with the 12-year bar deprived the federal courts of jurisdiction was a definitive interpretation flowing directly from the then-prevailing principles of sovereign immunity that were central to the Court's analysis in both cases.

a. At the time this Court decided *North Dakota* and *Mottaz*, it was well-accepted that the United States, "as sovereign, is immune from suit save as it consents to be sued, * * * and [that] the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *Sherwood*, 312 U.S. at 586; see *Lehman*, 453 U.S. at 160-161; *United States* v. *Mitchell*, 463 U.S. 206, 212 (1983) (describing that principle as "axiomatic"). In both cases, therefore, the government contended that the plaintiffs' failure to sue within the 12-year period specified by Congress meant that "the district court[s]

lacked jurisdiction" to consider the plaintiffs' claims. U.S. Br. at 5, *North Dakota*, *supra* (No. 81-2337). See, *e.g.*, U.S. Br. at 14, *Mottaz*, *supra* (No. 85-546) ("'When waiver legislation contains a statute of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity' and '"defines th[e] court's jurisdiction to entertain the suit."'") (citations omitted; brackets in original); Tr. of Oral Arg. at 9-10, *North Dakota*, *supra* (No. 81-2337) (describing "the limitations question" as a "jurisdictional question" and explaining that "the courts should not have reached the issue of navigability because they had no jurisdiction, the action having been barred by limitations"); Tr. of Oral Arg. at 9, *Mottaz*, *supra* (No. 85-546) (observing that the "statute of limitations in a suit against the United States * * * is a condition on the waiver of sovereign immunity and therefore goes to the jurisdiction of the court even to entertain the suit").

This Court expressly stated in *North Dakota* that "the federal defendants [we]re correct: If North Dakota's suit is barred by [Section] 2409a[(g)], the courts below had no jurisdiction to inquire into the merits." 461 U.S. at 292. And the Court in *North Dakota* cited the discussions of the jurisdictional nature of limits on waivers of sovereign immunity in *Sherwood* and *Lehman* to explain why the limitations period must be "strictly observed." *Id.* at 287. Similarly, the Court in *Mottaz* identified the principle that "'[w]hen waiver legislation contains a statute of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity,'" as the "particular" application relevant there of the broader principle that "the terms of [the United States'] waiver of sovereign immunity define the extent of the court's jurisdiction." 476 U.S. at

841 (quoting *North Dakota*, 461 U.S. at 287) (first set of brackets in original). And the jurisdictional nature of the Quiet Title Act's limitations provision made it unnecessary for the Court to determine whether the government had waived reliance on the 12-year bar by raising it for what the Court believed was "apparently * * * the first time" in a petition for rehearing en banc. *Id.* at 840.[5]

b. The Court's jurisdictional determinations in *North Dakota* and *Mottaz* are not comparable to the prior passing statements that the Court declined to give precedential significance in *Fort Bend County* v. *Davis*, 139 S. Ct. 1843 (2019), and *Eberhart* v. *United States*, 546 U.S. 12 (2005) (per curiam). See Pet. Br. 29-30.

In *Fort Bend County*, this Court held that the requirement that a plaintiff file charges with the Equal Employment Opportunity Commission before bringing suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, is not a jurisdictional requirement. See 139 S. Ct. at 1848-1852. The Court acknowledged

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[5] Petitioners contend (Br. 36) that "[m]uch of the discussion in *Mottaz* about the Quiet Title Act's statute of limitations was dicta" because the plaintiff there asserted that her claims were properly considered under the Indian General Allocation Act, 25 U.S.C. 331 *et seq.* (1982 & Supp. III 1983). At oral argument in the case, however, the plaintiff made clear that, while she had invoked the General Allocation Act as the appropriate source of jurisdiction, she would "take anything we can get" in terms of a jurisdictional basis for her claim. Tr. of Oral Arg. at 26-27, *Mottaz*, *supra* (No. 85-546). And the Court specifically concluded that the plaintiff's claim that the United States did not acquire title to the allotments in 1954 "falls within the scope of the Quiet Title Act." 476 U.S. at 841. The Court's lengthy explanation that the suit was barred under the Quiet Title Act because of the plaintiff's failure to comply with the Act's 12-year limitations period was accordingly necessary to resolution of the case.

that it had previously referred to the charge-filing requirement as "jurisdictional" in its decision in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973). See *Fort Bend County*, 139 S. Ct. at 1848 n.4. But that reference to the "jurisdictional prerequisites" of a Title VII suit had come in passing as part of a background description of the respondent's case in *McDonnell Douglas Corp.*; the charge-filing requirement was not at issue there and had no material relevance to the question that the Court actually decided. *McDonnell Douglas Corp.*, 411 U.S. at 798; see *id.* at 798-800. Accordingly, the Court in *Fort Bend County* declined to give precedential significance to that imprecise use of jurisdictional "terminology" in the earlier decision. 139 S. Ct. at 1848 n.4.

This Court encountered similarly unconsidered statements in *Eberhart*. There, the Court determined that the seven-day deadline for a new trial motion under Federal Rule of Criminal Procedure 33 is not jurisdictional. *Eberhart*, 546 U.S. at 19-20. The Court recognized (*id.* at 16) that the court of appeals had decided otherwise based on "confusion" caused by earlier statements in *United States* v. *Robinson*, 361 U.S. 220 (1960), and *United States* v. *Smith*, 331 U.S. 469 (1947). But the Court explained that neither *Robinson* nor *Smith* had "h[e]ld the limits of the Rules to be jurisdictional in the proper sense." *Eberhart*, 546 U.S. at 16. In *Robinson*, the Court had simply observed that *other courts* had determined that certain requirements in the Federal Rules of Criminal Procedure and a parallel provision in the Federal Rules of Civil Procedure were "mandatory and jurisdictional." 361 U.S. at 224 & n.4, 226-227 & n.8, 229 & n.13. And in *Smith*, the Court did not refer to the pertinent time bar as jurisdictional at

all, observing only that "[t]he policy of the [Federal] Rules [of Criminal Procedure] was not to extend power [of the trial court] indefinitely but to confine it within constant time periods." 331 U.S. at 473-474 n.2. Accordingly, it was unnecessary for either this Court or the lower courts to treat those decisions as "settled precedents" on the jurisdictional issue. *Eberhart*, 546 U.S. at 19.

As discussed above, pp. 22-24, *supra*, the Court's jurisdictional treatment of the Quiet Title Act's 12-year bar in *North Dakota* and *Mottaz* was materially different. Far from mere "imprecise" afterthoughts (Br. 30), the jurisdictional determinations reflected a definitive application of then-prevailing doctrine and had tangible implications in both cases. On remand in *North Dakota*, for example, the Eighth Circuit would not have been free to retain jurisdiction after concluding that the State's claims were untimely; doing so plainly would have defied this Court's direction that "[i]f North Dakota's suit is barred by [the limitations provision], the courts below had no jurisdiction to inquire into the merits." 461 U.S. at 292; see pp. 15-16, *supra*. And the court of appeals in this case was likewise not free to disregard that statement as a non-precedential "casual use of the word 'jurisdiction.'" Pet. Br. 24; see Pet. App. A6-A8.

Indeed, this Court has itself treated *North Dakota* and *Mottaz* as authoritative decisions on the question relevant here. In *United States* v. *Dalm*, 494 U.S. 596 (1990), a taxpayer contended that in certain circumstances, district courts had jurisdiction to consider gift-tax refund suits filed against the United States even though the statutory limitations period had already run. See *id.* at 608-610. Rejecting that contention, the Court reiterated the "settled principles" that "'the United

States, as sovereign, is immune from suit, save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.'" *Id.* at 608 (quoting *United States* v. *Testan*, 424 U.S. 392, 399 (1976)). The Court then explained that "[a] statute of limitations requiring that a suit against the Government be brought within a certain time period is one of those terms"—*i.e.*, one of the terms that defines the court's jurisdiction. *Ibid.* And the sole support the Court cited for that principle was its then-recent decisions in *Mottaz* and *North Dakota*. See *ibid.* (citing *Mottaz*, 476 U.S. at 841; and *North Dakota*, 461 U.S. at 287). That treatment demonstrates that this Court has previously understood *Mottaz* and *North Dakota* as precedential decisions on the jurisdictional issue. Cf. *Henderson* v. *United States*, 517 U.S. 654, 677 (1996) (Thomas, J., dissenting) ("[W]e have long held that a statute of limitations attached to a waiver of sovereign immunity functions as a condition on the waiver and defines the limits of the district court's jurisdiction to hear a claim against the United States.") (citing, *inter alia*, *North Dakota*, 461 U.S. at 287).

c. Petitioners argue that this Court "cannot" have attached genuine jurisdictional significance to the fact that the Quiet Title Act's 12-year bar conditions a waiver of sovereign immunity, because "whether 'a time bar conditions a waiver of sovereign immunity' does not determine whether the statute of limitations is jurisdictional." Br. 37 (quoting *Kwai Fun Wong*, 575 U.S. at 420, in turn quoting *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89, 95-96 (1990)). But that argument ignores the governing law at the time *North Dakota* and *Mottaz* were decided, and relies instead on subsequent decisions that this Court has already confirmed had

only "prospective" effect. *John R. Sand & Gravel Co.*, 552 U.S. at 137.

This Court's decision in *Irwin* announced a new "general rule" under which the Court would apply the same "rebuttable presumption" of equitable tolling that is available in suits against private defendants to suits "against the United States." 498 U.S. at 95-96. That approach represented a significant change from the Court's earlier practice in cases like *North Dakota* and *Mottaz*, which had treated time bars on suits against the United States as jurisdictional and non-extendable precisely because they were conditions on Congress's waiver of sovereign immunity. See pp. 22-23, *supra*; *Kwai Fun Wong*, 575 U.S. at 419 (observing that "in an earlier era" prior to *Irwin*, "this Court often attached jurisdictional consequence to conditions on waivers of sovereign immunity"). Indeed, Justice White—the author of the Court's opinion in *North Dakota*—wrote separately in *Irwin* to explain that the Court's new presumption was "inconsistent with [the Court's] traditional approach to cases involving sovereign immunity." 498 U.S. at 98 (White, J., concurring in part and concurring in the judgment); see *id.* at 97 (citing *North Dakota* and *Mottaz*).

Contrary to petitioners' suggestion (Br. 37), *Irwin* provides no basis for rewriting or artificially narrowing this Court's decisions in *North Dakota* and *Mottaz* retroactively. It is true that the Court has consistently applied *Irwin*'s presumption when deciding whether limitations periods not previously considered by the Court are jurisdictional and non-extendable. See, *e.g.*, *Scarborough* v. *Principi*, 541 U.S. 401, 420-422 (2004); *Franconia Associates* v. *United States*, 536 U.S. 129, 145 (2002); see also Pet. Br. 37. But in *John R. Sand &*

Gravel Co., the Court held that *Irwin* had announced only a "general *prospective* rule" that should not be used to "revisit[] past precedents" decided under the Court's earlier approach to sovereign immunity. 552 U.S. at 137 (emphasis added). Petitioners' reliance on *Irwin* and other cases applying its prospective rule to new contexts is accordingly misplaced here, where the key determinant is this Court's earlier decisions treating the Quiet Title Act's time bar as a jurisdictional limit.

d. Petitioners are similarly wrong to argue (Br. 34) that the jurisdictional determinations in *North Dakota* and *Mottaz* "contradict[ed] the reasoning" in other parts of those opinions themselves. See Br. 37. In making that argument, petitioners ignore the Court's central reliance on the then-accepted principle that "[w]hen the United States consents to be sued, the terms of its waiver of sovereign immunity define the extent of the court's jurisdiction." *Mottaz*, 476 U.S. at 841 (citing *Sherwood*, 312 U.S. at 586); see *North Dakota*, 461 U.S. at 287; pp. 22-24, *supra*. Instead, petitioners emphasize that the Court discussed portions of the Quiet Title Act's legislative history in both *North Dakota* and *Mottaz*, and insist that the Court would therefore have deferred to another (undiscussed) portion of the legislative history that in petitioners' view suggests that the 12-year bar is not jurisdictional. See Br. 21-24, 34, 37. That argument lacks merit.

As an initial matter, the fact that this Court discussed some portions of the Quiet Title Act's legislative history does not indicate that the Court would have treated every other portion of the legislative history as a reliable indicator of the statute's meaning and import.

But even assuming that flawed premise, petitioners' reading of the legislative history is incorrect.

Petitioners point (Br. 21-22) to a statement from the Department of Justice indicating that under the 12-year bar, "[t]he 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. 1559, 92d Cong., 2d Sess. 8 (1972) (House Report). The Department explained that "[i]f the United States wished to assert that the statute of limitations had run, it would then have the burden of establishing this fact." *Ibid.* In petitioners' view, that statement indicates that the 12-year bar was intended to operate as a non-jurisdictional affirmative defense.

In fact, the statement supports the opposite understanding. This Court has recognized that there is "no basis for imposing on the plaintiff an obligation to anticipate [an affirmative] defense." *Gomez* v. *Toledo*, 446 U.S. 635, 640 (1980); see Fed. R. Civ. P. 8(c) (defendant bears the burden to "affirmatively state any avoidance or affirmative defense"). The Department's statement 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," House Report 8, thus supports an understanding that in the context of the Quiet Title Act's sovereign-immunity waiver, timeliness was a jurisdictional requirement that the plaintiff had an obligation to plead, rather than an affirmative defense that could be raised (or not) by the defendant. And the further statement that the government would have the burden of disproving the plaintiff's assertion if it believed the claim was in fact untimely just reflects the

practical reality that, once the plaintiff had made a representation about his lack of knowledge, the government would need to offer evidence to contradict that representation.

2. *The Court's decision in* United States *v.* Beggerly *confirms the jurisdictional treatment in* North Dakota *and* Mottaz

Contrary to petitioners' suggestion (Br. 39-42), this Court's decision in *United States* v. *Beggerly*, 524 U.S. 38 (1998), is fully consistent with the Court's earlier determinations in *North Dakota* and *Mottaz* that the 12-year bar is jurisdictional.

In *Beggerly*, the United States had previously brought a quiet-title action against the respondents concerning certain property. 524 U.S. at 39. The parties settled that action, resulting in entry of a judgment quieting title in favor of the United States in return for a monetary payment. *Ibid.* More than 12 years after the government commenced the original suit, however, the respondents brought their own action seeking to set aside the earlier settlement and recover additional compensation. *Id.* at 39-40. The district court dismissed the suit for lack of jurisdiction, but the Fifth Circuit held that jurisdiction was available both as an independent action under Federal Rule of Civil Procedure 60(b) and under the Quiet Title Act. *Beggerly*, 524 U.S. at 41. The Fifth Circuit then "vacated the settlement agreement" and directed the district court to enter judgment quieting title in favor of the respondents. *Id.* at 42.

This Court reversed. *Beggerly*, 524 U.S. at 42-49. The Court held that in the circumstances of that case, Rule 60(b) did not authorize an independent action to reopen the earlier judgment. *Id.* at 47. The Court further rejected the Fifth Circuit's conclusion that the

Quiet Title Act "provided jurisdiction" to the district court "to quiet title to the property in respondents' favor." *Ibid.* The Court explained that the Act's authorization of suits against the United States is subject to "an express 12-year statute of limitations" that could not be extended by the courts. *Id.* at 48; see *id.* at 48-49. The Court acknowledged that the Act "already *effectively* allowed for equitable tolling" of a kind "by providing that the statute of limitations will not begin to run until the plaintiff 'knew or should have known of the claim of the United States.'" *Id.* at 48 (emphasis added). But the Court concluded that "extension of the statutory period by additional equitable tolling would be unwarranted," "particularly" because the Quiet Title Act "deals with ownership of land." *Id.* at 49; see *ibid.* (observing that "[e]quitable tolling of the already generous statute of limitations * * * would throw a cloud of uncertainty over these rights," which would be "incompatible with the Act").

Petitioners suggest that this Court's statement that the statutory accrual standard "effectively allowed" equitable tolling, *Beggerly*, 524 U.S. at 48, means that Section 2409a(g) cannot be jurisdictional. See Br. 40. In their view, "[a] statute of limitations that includes equitable doctrines is not a jurisdictional statute of limitations." *Ibid.* Petitioners' argument is flawed in several respects.

To begin, the language in Section 2409a(g) that the Court quoted is not an "equitable tolling" provision. The quoted language instead describes when a claim "accrue[s]." 28 U.S.C. 2409a(g). The first sentence of Section 2409a(g) provides that an action under the Quiet Title Act is barred "unless it is commenced within twelve years of the date upon which it accrued." *Ibid.*

And the second sentence provides that such an action "shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." *Ibid.* While the Court in *Beggerly* described the possibility of delayed accrual as "effectively" a form of tolling, the Court did not hold that the time bar is actually subject to equitable tolling; indeed, it held just the opposite. 524 U.S. at 48. In any event, Congress is free to establish the jurisdictional prerequisites it believes appropriate, including ones that depend on what might be viewed as equitable considerations; the jurisdictional character of a limitations provision like Section 2409a(g) means that *the courts* may not toll the limitations period based on factors that "go beyond the authority Congress has given [them] in permitting suits against the Government." *Dalm*, 494 U.S. at 610.

Rather than undermining Section 2409a(g)'s jurisdictional character, *Beggerly* thus reinforces the Court's earlier jurisdictional treatment by confirming that the provision is not subject to extra-statutory tolling. 524 U.S. at 48-49. And contrary to petitioners' claim (Br. 13), the Court did not "suggest[] that other equitable doctrines may apply" to create exceptions from the time bar. The Court itself said nothing about such additional doctrines, and the concurrence on which petitioners rely merely observed that the Court was "not confronted with the question whether" to permit them. *Beggerly*, 524 U.S. at 49 (Stevens, J., concurring).[6]

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[6] Although the government argued in *Beggerly* that the court of appeals was "in error" when it "held that the district court had jurisdiction to adjudicate respondents' claim to title under the Quiet Title Act," the government did not specifically rely on this Court's

3. *Petitioners cannot show that other intervening decisions of this Court warrant overruling* North Dakota *and* Mottaz

Finally, petitioners argue (Br. 14-24) that if this Court were to reconsider Section 2409a(g)'s jurisdictional status using the clear-statement rule it has applied in more recent cases, the Court would conclude that the provision is not jurisdictional. Whether or not that is so, the Court has already recognized that "[b]asic principles of *stare decisis*" make it inappropriate to overrule earlier jurisdictional determinations merely because they might be resolved differently under contemporary standards. *John R. Sand & Gravel Co.*, 552 U.S. at 139.

In *John R. Sand & Gravel Co.*, the Court acknowledged that its prior decisions treating the limitations period for suits in the Court of Federal Claims as jurisdictional were "anomalous" when compared to *Irwin* and other more recent decisions. 552 U.S. at 138; see 28 U.S.C. 2501. The Court concluded that the "anomaly * * * is not critical," however, because "at most, it reflects a different judicial assumption about the comparative weight Congress would likely have attached to

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prior determinations in *North Dakota* and *Mottaz* that the 12-year time bar is jurisdictional to argue that equitable tolling was unavailable. U.S. Br. at 16, *Beggerly*, *supra* (No. 97-731) (*Beggerly* Br.). At the time *Beggerly* was decided, the Court had not yet clarified that *Irwin*'s "general rule" that time limits on suits against the government are presumptively subject to equitable tolling, *Irwin*, 498 U.S. at 95-96, is a "prospective rule" that "does not imply revisiting past precedents," *John R. Sand & Gravel Co.*, 552 U.S. at 137. The government therefore focused on showing that even under the standard articulated in *Irwin*, equitable tolling was unavailable. See *Beggerly* Br. at 25-29; U.S. Reply Br. at 6-9, *Beggerly*, *supra* (No. 97-731).

competing legitimate interests." 552 U.S. at 139. Adhering to "different interpretations of different, but similarly worded, statutes" would not "produce 'unworkable' law." *Ibid.* Overruling the earlier decisions, in contrast, could "threaten * * * necessary legal stability" by creating "confusion" and "uncertainty" in the lower courts about which of this Court's precedents merit continued *stare decisis* respect. *Ibid.* The Court thus adhered to its earlier jurisdictional precedents, even though doing so meant reviving a time bar that the government had waived prior to trial. See *id.* at 132; see also *Bowles*, 551 U.S. at 210 (declining to revisit "longstanding treatment of statutory time limits for taking an appeal as jurisdictional" in light of recent decisions "clarify[ing] the distinction between claims-processing rules and jurisdictional rules").

The practical arguments for revisiting the jurisdictional treatment of the Quiet Title Act's 12-year bar are, if anything, even weaker. Petitioners point to nothing about Section 2409a(g) that would make its continued jurisdictional treatment especially disruptive. Instead, they simply rely (Br. 25-26) on standard distinctions between jurisdictional and non-jurisdictional provisions. Those distinctions were insufficient to warrant overturning past decisions in *John R. Sand & Gravel Co.*, and have even less significance here given that the Quiet Title Act's limitations provision is already generous in both its duration and its accrual rule and is not subject to equitable tolling. See *Beggerly*, 524 U.S. at 48.

Petitioners emphasize (Br. 26-27) that jurisdictional limitations can be raised under Rule 12(b)(1), whereas an affirmative defense based on an ordinary statute of

limitations cannot.[7] Ordinarily, that difference would affect which factfinder would resolve factual disputes necessary to the timeliness question: While a jury usually resolves factual disputes bearing on an affirmative defense, "[t]he district court, not a jury, must weigh the merits of what is presented on a Rule 12(b)(1) motion to dismiss, including resolving any issues of fact." Charles Alan Wright & Arthur B. Miller, *Federal Practice and Procedure* § 1350, at 243-244 (3d ed. 2004) (footnote omitted) (Wright & Miller); see *id.* at 243 n.67 (collecting authorities).

Suits under the Quiet Title Act, however, are "tried by the court without a jury." 28 U.S.C. 2409a(f). Whether the 12-year bar is treated as jurisdictional or not, therefore, the same decisionmaker will resolve any disputed questions and can rely on all of the same evidence in doing so. See Pet. App. D4 (observing that in resolving

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[7] The Ninth Circuit has held that "Rule 12(b)(1) is * * * a proper vehicle for invoking sovereign immunity from suit," even where that defense is characterized only as "quasi-jurisdictional in nature." *Pistor* v. *Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015). See *Brownback* v. *King*, 141 S. Ct. 740, 749 & n.8 (2021) (appearing to approve of the use of Rule 12(b)(1) to assert a defense of sovereign immunity). If this Court were to revisit its prior determinations that the 12-year bar is jurisdictional, it would accordingly be necessary for the court of appeals on remand to determine whether proceeding under Rule 12(b)(1) was nevertheless appropriate because of Section 2409a(g)'s status as a condition on the waiver of sovereign immunity and, if so, whether the district court's decision could be affirmed on that alternative basis. Even if the court of appeals determined that the timeliness issue could not be raised under Rule 12(b)(1), moreover, it would need to decide whether the district court's judgment may be affirmed as a grant of summary judgment to the United States because there are no genuine issues of disputed fact on the timeliness question. See Br. in Opp. 21-25; Gov't C.A. Br. 15 n.5, 39 n.8.

factual disputes under Rule 12(b)(1), "no presumption of truthfulness attaches to [the] plaintiff's allegations, a court may freely consider extrinsic evidence, and it may resolve factual disputes with or without a hearing") (citing, *inter alia*, *Kingman Reef Atoll Investments, L.L.C.* v. *United States*, 541 F.3d 1189, 1195 (9th Cir. 2008)); Pet. Br. 26; see also Wright & Miller § 1350, at 244 n.68 (collecting authorities on district courts' broad flexibility under Rule 12(b)(1) to consider relevant evidence). And while petitioners assert (Br. 26-27) that the jurisdictional status could affect which party bears the burden of proof, any such shift would make a difference only in the rare case where the evidence is in equipoise. In terms of practical benefits for Quiet Title Act plaintiffs like petitioners, therefore, revisiting the Court's prior characterization of the 12-year bar as jurisdictional would likely have little effect.[8]

In contrast, overruling the Court's earlier jurisdictional determinations (or declaring that they no longer hold precedential weight, notwithstanding the Court's past reliance on them) could have substantial detrimental effects for the judicial system. As discussed above, pp. 22-24, *supra*, the Court's treatment of the 12-year bar as jurisdictional in *North Dakota* and *Mottaz* reflected a considered application of then-prevailing doctrine and had concrete significance in both cases. A decision by the Court rejecting that past treatment

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[8] The record does not bear out petitioners' assumption (Br. 26) that the jurisdictional label had a practical impact in this case. See p. 36 n.7, *supra*; see also Pet. App. D23 (district court opinion concluding, after considering all of the evidence cited in petitioners' brief, that it was "abundantly clear" that a reasonable person would have known of the government's adverse claim more than 12 years before the complaint was filed).

would "inevitably reflect a willingness to reconsider" other jurisdictional decisions that had previously been considered well-settled. *John R. Sand & Gravel Co.*, 552 U.S. at 139. Lower courts would then be faced with the difficult task of determining which of this Court's jurisdictional precedents they are bound to follow and which they are free to ignore.

Rather than invite such substantial jurisprudential disruption for such minimal practical benefit, the Court should accord precedential respect to its interpretation of the Quiet Title Act's 12-year bar in *North Dakota* and *Mottaz* again here, just as it has done before. See *Kimble* v. *Marvel Entertainment, LLC*, 576 U.S. 446, 457 (2015) (observing that "considerations favoring *stare decisis* are 'at their acme'" in "'cases involving property and contract rights'") (citations omitted).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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