No. 23-1270

In the Supreme Court of the United States

PIERRE YASSUE NASHUN RILEY,

Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

BRIEF FOR CENTER FOR LITIGATION & COURTS AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICUS CURIAE

The Center for Litigation and Courts ("Center") is a nonpartisan, academic research center at the University of California Law, San Francisco. Its mission includes sharing knowledge of civil litigation with courts. In furtherance of that mission, the Center has filed briefs in this Court and others on issues relevant to its expertise in civil litigation.

The Center has a particular expertise in the matters of federal jurisdiction at issue in this case. Because neither the parties nor the courts below have offered the position articulated in this amicus brief, the Center believes the brief will aid the Court's adjudication.

The Center is interested in the informed development and application of jurisdictional law. The Center has no interest in the ultimate outcome of this litigation. Rather, the Center's interest is that of a true friend of the court.[1]

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[1] No person or entity other than the Center and its counsel authored this brief in whole or in part or contributed money intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Jurisdictional rules should be clear and easy to apply. Yet despite this Court's admonitions, the lower courts repeatedly have failed to correctly characterize filing deadlines as nonjurisdictional. Those errors have wasted party and court resources, including resources of this Court.

To stave off future waste and uncertainty, this Court should adopt a magic-words rule for filing deadlines: a filing deadline is nonjurisdictional unless Congress has used the term "jurisdiction" to clearly characterize it as such.

Such a rule will save time and resources for litigants and courts alike. It reflects an appropriate understanding of Congress's likely intent. And it requires no overruling of any precedent. The Court should adopt it.

ARGUMENT

The Court Should Adopt A Magic-Words Rule For Determining The Jurisdictional Character Of Filing Deadlines.

1. Jurisdictional rules should be clear and simple. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("[A]dministrative simplicity is a major virtue in a jurisdictional statute."); *Grupo Dataflux v. Atlas Global Grp.*, 541 U.S. 567, 582 (2004) ("Uncertainty regarding the question of jurisdiction is particularly undesirable."); *Holmes Grp. v. Vornado Air Circulation Sys.*, 535 U.S. 826, 829–32 (2002) (valuing "the clarity and ease of administration of the well-pleaded-complaint doctrine"); *Lapides v. Bd. of*

Regents, 535 U.S. 613, 621 (2002) ("[J]urisdictional rules should be clear.").

Jurisdictional clarity and simplicity are virtues because uncertain jurisdiction can divert time and resources away from the merits of the case. *Hertz*, 559 U.S. at 94 ("Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims."). And because subject-matter defects cannot be waived or consented to, all parties and the court must spend time and effort on every unclear issue of subject-matter jurisdiction. Scott Dodson, *The Complexity of Jurisdictional Clarity*, 97 VA. L. REV. 1, 8 (2011). Worse, unclear jurisdictional rules "produce appeals and reversals," burdening a second court and doubly burdening the parties. *Hertz*, 559 U.S. at 94.

For these reasons, this Court has purported to establish a clear-statement test for determining when a statutory limit is jurisdictional:

> If the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. But when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character.

Arbaugh v. Y & H Corp., 546 U.S. 500, 515–16 (2006) (internal citations omitted). The Court has asserted that this test establishes a "readily administrable bright line." *Id.* at 516. It does not.

2. "[A] clear-statement rule is supposed to make things easy: if the provision does not 'speak in jurisdictional terms or refer in any way to the jurisdiction of the . . . courts,' the provision should be nonjurisdictional, end of inquiry." Scott Dodson, *A Critique of Jurisdictionality*, 39 REV. LITIG. 353, 366–67 (2020) (quoting *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982)). But *Arbaugh*'s clear-statement rule, as filtered through subsequent decisions, has become something else entirely.

This Court has declared repeatedly that Congress need not use "magic words" to establish the necessary clear statement. *E.g.*, *Harrow v. Dep't of Defense*, 601 U.S. 480, 484 (2024); *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Instead, courts must consider "traditional tools of statutory construction," *United States v. Wong*, 575 U.S. 402, 410 (2015), including text, statutory context, historical treatment, and statutory purpose, *see Harrow*, 601 U.S. at 485–86 (text); *id.* at 488–89 (statutory context); *Sebelius*, 568 U.S. at 153–54 (historical treatment); *Henderson v. Shinseki*, 562 U.S. 428, 440–41 (2011) (statutory purpose). The result is something that looks much like ordinary statutory interpretation, not a clear-statement rule. *See* Dodson, *Critique*, at 367 ("The result is clearly *not* a clear-statement rule, at least not one that has recognizable analogues in other areas.").

These overlays have transformed a "readily administrable bright line" into a complex and uncertain test. *See* Erin Morrow Hawley, *The Supreme Court's Quiet Revolution: Defining the Meaning of Jurisdiction*, 56 WM. & MARY L. REV. 2027, 2049 (2015) ("[T]he current clear statement rule does not serve clarity's clarion call."). Is language that "an action . . .

shall not be filed or maintained" clearly jurisdictional or not? *Compare Patchak v. Zinke*, 583 U.S. 244, 251–52 (2018) (Thomas, J., plurality) (yes), *with id.* at 273–74 (Roberts, C.J., dissenting) (no). How about a filing deadline that, if missed, "forever bar[s]" the claim? *Compare Wong*, 575 U.S. at 413 (no), *with id.* at 423 (Alito, J., dissenting) (yes).

The uncertainty of the *Arbaugh* rule is evident from the multitude of recent decisions this Court has had to review to resolve the jurisdictional character of filing deadlines, including this one. *See* Pet. 15–19 (detailing a deep circuit split); *Harrow*, 601 U.S. 480; *Wilkins v. United States*, 598 U.S. 152 (2023); *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199 (2022); *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17 (2017); *Mussachio v. United States*, 577 U.S. 237 (2016); *Wong*, 575 U.S. 402; *Sebelius*, 568 U.S. 145; *Henderson*, 562 U.S. 428.

Perhaps the lower courts' repeated struggles in these cases were what prompted Justice Kavanaugh, in oral argument in *Harrow*, to ask "what would provide the most clarity, do you think, for the government and the courts of appeals and district courts, the affected courts, on these kinds of matters? Maybe . . . a magic words requirement would be better, because it seems silly to keep having this debate. . . . Maybe [that the deadline] just speaks directly to jurisdiction." Oral Arg. Transcr., *Harrow v. Dep't of Defense*, 2024 WL 1311129, at *31–32 (May 25, 2024).

3. The time has come to answer Justice Kavanaugh's query. This Court should adopt a magic-words clear-statement rule for filing deadlines: a filing deadline is nonjurisdictional unless Congress has used the term "jurisdiction" to clearly characterize it as

such. Such a rule would send the clearest possible message to the lower courts and to litigants, thereby staving off additional uncertainty and litigation in both this Court and in the lower courts.

This true clear-statement rule also approximates congressional intent. The Court has repeatedly admonished that filing deadlines are quintessentially nonjurisdictional. *Harrow*, 601 U.S. at 484; *Wilkins*, 598 U.S. at 158–59; *Wong*, 575 U.S. at 410; *Sebelius*, 568 U.S. at 154–55; *Henderson*, 562 U.S. at 435. And the Court has long held filing deadlines presumptively subject to equitable exceptions—anathema to jurisdictional character. *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95 (1990). *E.g.*, *Zipes*, 455 U.S. at 393 (holding a Title VII deadline nonjurisdictional and subject to waiver and tolling).

When legislating against the backdrop of those judicial decisions, Congress "typically expects those doctrines to apply." *Harrow*, 601 U.S. at 483. *See also Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023) ("When faced with a type of statutory requirement that ordinarily is not jurisdictional, we naturally expect the ordinary case, not an exceptional one."); *Boechler*, 596 U.S. at 208–09 ("Equitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitation periods.").

Confronting such a strong background presumption that filing deadlines are nonjurisdictional, Congress would know to use clear jurisdictional language to override it, as Congress occasionally has done. *E.g.*, 26 U.S.C. § 6330(e)(1) ("The Tax Court shall have no jurisdiction . . . unless a timely appeal has been filed.").

Because of this, the Court's opinions already have come close to establishing a magic-words rule for preconditions—like filing deadlines—that ordinarily are not jurisdictional. To be confident Congress has made such presumptively nonjurisdictional provisions jurisdictional, the Court has demanded "unmistakable evidence, on par with express language addressing the court's jurisdiction." *Santos-Zacaria*, 598 U.S. at 418. It is hard to fathom what daylight exists between express jurisdictional language and unmistakable evidence on par with express jurisdictional language. But because jurisdiction is at stake, litigants and courts must continue to spend time and resources striving to find any inkling of daylight.

This Court's previous disavowal of a magic-words rule served the useful purpose of enabling courts to test, in a variety of cases and contexts, whether any such daylight exists. In the nearly two decades since *Arbaugh*, that experiment has achieved its result. There is no meaningful daylight. Congress uses express jurisdictional terms to make a filing deadline jurisdictional. Accordingly, going forward, the test for filing deadlines should turn on an express jurisdictional characterization.

4. Adoption of a magic-words rule for filing deadlines need not alter this Court's commitment to adhere to a "definitive earlier interpretation" of a provision as jurisdictional. *Wilkins*, 598 U.S. at 159. The Court has relied on such definitive early interpretations twice to hold filing deadlines to be jurisdictional, in *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130 (2008), and *Bowles v. Russell*, 551 U.S. 205 (2007). In both instances, the Court followed a line of Supreme Court decisions left undisturbed by

Congress that had attached a jurisdictional label to the deadline. *Fort Bend Cnty. v. Davis*, 587 U.S. 541, 548 (2019) (citing *Bowles* and *John R. Sand*); *Wong*, 575 U.S. at 416–17 (discussing *John R. Sand*). And the Court has made clear that only a ruling that actually turns on the precise provision at issue will suffice. *Santos-Zacaria*, 598 U.S. at 421–22; *Wilkins*, 598 U.S. at 160. Those requirements for a "definitive earlier interpretation" both limit the likely number of such cases and stake out clear markers for identifying them. A magic-words rule can yield to such an exception without substantially undermining the clarity and predictability of the rule itself.

CONCLUSION

This Court should adopt a magic-words test for determining the jurisdictional character of filing deadlines.

January 10, 2025

Respectfully submitted,

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