SUPREME COURT OF THE UNITED STATES

No. 06–1164

JOHN R. SAND & GRAVEL COMPANY, PETITIONER *v.* UNITED STATES

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

[January 8, 2008]

JUSTICE GINSBURG, dissenting.

I agree that adhering to *Kendall*, *Finn*, and *Soriano* is irreconcilable with the reasoning and result in *Irwin*, and therefore join JUSTICE STEVENS' dissent. I write separately to explain why I would regard this case as an appropriate occasion to revisit those precedents even if we had not already "directly overrule[d]" them. Cf. *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 98 (1990) (White, J., concurring in part and concurring in judgment).

Stare decisis is an important, but not an inflexible, doctrine in our law. See *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 405 (1932) (Brandeis, J., dissenting) ("*Stare decisis* is not . . . a universal, inexorable command."). The policies underlying the doctrine—stability and predictability—are at their strongest when the Court is asked to change its mind, though nothing else of significance has changed. See Powell, Stare Decisis and Judicial Restraint, 47 Wash. & Lee L. Rev. 281, 286–287 (1990). As to the matter before us, our perception of the office of a time limit on suits against the Government has changed significantly since the decisions relied upon by the Court. We have recognized that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United

States," *Irwin*, 498 U. S., at 95–96, and that "limitations principles should generally apply to the Government in the same way that they apply to private parties," *Franconia Associates* v. *United States*, 536 U. S. 129, 145 (2002) (internal quotation marks omitted). See also *Scarborough* v. *Principi*, 541 U. S. 401, 420–422 (2004). It damages the coherence of the law if we cling to outworn precedent at odds with later, more enlightened decisions.

I surely do not suggest that overruling is routinely in order whenever a majority disagrees with a past decision, and I acknowledge that "[c]onsiderations of *stare decisis* have special force in the area of statutory interpretation," *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172 (1989). But concerns we have previously found sufficiently weighty to justify revisiting a statutory precedent counsel strongly in favor of doing so here. First, overruling *Kendall* v. *United States*, 107 U. S. 123 (1883), *Finn* v. *United States*, 123 U. S. 227 (1887), and *Soriano* v. *United States*, 352 U. S. 270 (1957), would, as the Court concedes, see *ante*, at 8, "achieve a uniform interpretation of similar statutory language," *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989). Second, we have recognized the propriety of revisiting a decision when "intervening development of the law" has "removed or weakened [its] conceptual underpinnings." *Patterson*, 491 U. S., at 173. *Irwin* and *Franconia*—not to mention our recent efforts to apply the term "jurisdictional" with greater precision, see, *e.g., Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 515–516 (2006)—have left no tenable basis for *Kendall* and its progeny.

Third, it is altogether appropriate to overrule a precedent that has become "a positive detriment to coherence and consistency in the law." *Patterson*, 491 U. S., at 173. The inconsistency between the *Kendall* line and *Irwin* is a source of both theoretical incoherence and practical confusion. For example, 28 U. S. C. §2401(a) contains a time

limit materially identical to the one in §2501. Courts of Appeals have divided on the question whether §2401(a)'s limit is "jurisdictional." Compare *Center for Biological Diversity* v. *Hamilton*, 453 F. 3d 1331, 1334 (CA11 2006) *(per curiam)*, with *Cedars-Sinai Medical Center* v. *Shalala*, 125 F. 3d 765, 770 (CA9 1997). See also *Harris* v. *Federal Aviation Admin.*, 353 F. 3d 1006, 1013, n. 7 (CADC 2004) (recognizing that *Irwin* may have undermined Circuit precedent holding that §2401(a) is "jurisdictional"). Today's decision hardly assists lower courts endeavoring to answer this question. While holding that the language in §2501 is "jurisdictional," the Court also implies that *Irwin* governs the interpretation of all statutes we have not yet construed—including, presumably, the identically worded §2401. See *ante*, at 7.

Moreover, as the Court implicitly concedes, see *ante*, at 8, the strongest reason to adhere to precedent provides no support for the *Kendall-Finn-Soriano* line. "*Stare decisis* has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response." *Hilton* v. *South Carolina Public Railways Comm'n*, 502 U. S. 197, 202 (1991). The Government, however, makes no claim that either private citizens or Congress have relied upon the "jurisdictional" status of §2501. There are thus strong reasons to abandon—and notably slim reasons to adhere to—the anachronistic interpretation of §2501 adopted in *Kendall*.

Several times, in recent Terms, the Court has discarded statutory decisions rendered infirm by what a majority considered to be better informed opinion. See, *e.g., Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. ___, ___ (2007) (slip op., at 28) (overruling *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373 (1911));

Bowles v. *Russell*, 551 U. S. ___, ___ (2007) (slip op., at 9) (overruling *Thompson* v. *INS*, 375 U. S. 384 (1964) *(per curiam)*, and *Harris Truck Lines, Inc.* v. *Cherry Meat Packers, Inc.*, 371 U. S. 215 (1962) *(per curiam)*); *Illinois Tool Works Inc.* v. *Independent Ink, Inc.*, 547 U. S. 28, 42–43 (2006) (overruling, *inter alia*, *Morton Salt Co.* v. *G. S. Suppiger Co.*, 314 U. S. 488 (1942)); *Hohn* v. *United States*, 524 U. S. 236, 253 (1998) (overruling *House* v. *Mayo*, 324 U. S. 42 (1945) *(per curiam)*). In light of these overrulings, the Court's decision to adhere to *Kendall*, *Finn*, and *Soriano*—while offering nothing to justify their reasoning or results—is, to say the least, perplexing. After today's decision, one will need a crystal ball to predict when this Court will reject, and when it will cling to, its prior decisions interpreting legislative texts.

I would reverse the judgment rendered by the Federal Circuit majority. In accord with dissenting Judge Newman, I would hold that the Court of Appeals had no warrant to declare the petitioner's action time barred.