

IN THE
Supreme Court of the United States

VICTOR EVERETTE SILVERS,
Applicant,

v.

UNITED STATES OF AMERICA,
Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

TO THE HONORABLE BRETT M. KAVANAUGH, ASSOCIATE JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Pursuant to Supreme Court Rule 13.5, Applicant Victor Silvers respectfully requests a 60-day extension of time, to and including August 22, 2025, to file a petition for a writ of certiorari in this case. A 60-day extension of time is warranted because Mr. Silvers is in the process of retaining Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) as new counsel to represent him in the preparation of a petition for a writ of certiorari on a pro bono basis, which has been delayed due to the circumstances of his current incarceration, and counsel from WilmerHale will require additional time to become familiar with the facts of this case, applicable law and caselaw, and to prepare a comprehensive petition. Mr. Silvers has not previously requested an extension. The United States Court of Appeals for the Sixth Circuit issued its decision on February 20, 2025, *see* App. A,

and denied Mr. Silvers’s timely rehearing petition on March 25, 2025, *see* App. B. Absent an extension, the petition for a writ of certiorari would be due on or before June 23, 2025. This application complies with Rules 13.5 and 30.2 because it is being filed more than ten days before the petition is due. This Court has jurisdiction over the case pursuant to 28 U.S.C. § 1254(1).

1. This case presents an important question regarding a criminal defendant’s right to a jury trial guaranteed by the Fifth and Sixth Amendments to the United States Constitution: whether a court may conclusively determine through judicial notice that the government has satisfied its burden to prove that the physical location where an alleged crime took place is within the “special maritime and territorial jurisdiction of the United States” when that is an essential jurisdictional element of the offense, or whether that question must instead be submitted to a jury and proven beyond a reasonable doubt.

2. In November 2018, Mr. Silvers was indicted on seven counts for alleged violations of federal law, four of which included as an element that the crime took place within the special maritime and territorial jurisdiction of the United States. *See* 18 U.S.C. §§ 1111(b) (first-degree murder); 1113 (attempted murder); 2261(a)(1) (domestic violence); 2262(a)(1) (violation of a protective order). Following an evidentiary hearing prior to trial, the district court took judicial notice of the fact that the location where the charged offenses allegedly took place—Fort Campbell, a military base located on the border of Kentucky and Tennessee—was within the special maritime and territorial jurisdiction of

the United States. At trial, the jury was instructed that the location where the charged offenses allegedly took place was within the special maritime and territorial jurisdiction of the United States, and that if they found beyond a reasonable doubt that the offenses occurred at the alleged location, that was sufficient to find that those offenses occurred within the special maritime and territorial jurisdiction of the United States. In December 2022, Mr. Silvers was convicted and subsequently sentenced to life in prison. Mr. Silvers appealed, arguing, in relevant part, that the district court erred in taking conclusive judicial notice of the fact that Fort Campbell was within the special maritime and territorial jurisdiction of the United States and thereby removing an essential jurisdictional element from the purview of the jury.

3. In February 2025, the Sixth Circuit affirmed, holding that the existence of special maritime or territorial jurisdiction was a question of law that turned on legislative facts that may be judicially noticed by the court rather than found by a jury. In so holding, the Sixth Circuit recognized that the jurisdictional requirement that a crime take place within the United States's special maritime and territorial jurisdiction is an essential element of four of the crimes with which Mr. Silvers was charged and so must be proven to a jury beyond a reasonable doubt. App. A at 12. Notwithstanding that determination, however, the Sixth Circuit went on to find that this jurisdictional element was actually made up of two separate inquiries: "first, whether the parcel of land falls within the United States' special maritime and territorial jurisdiction; and

second, whether the alleged offense occurred within that area.” *Id.* The court concluded that the second inquiry was a question of fact that must be submitted to the jury and proven beyond a reasonable doubt, but that the first inquiry was a legal question for the court to resolve that turned on legislative, rather than adjudicative, facts because it depended “on the immutable, universal fact of the jurisdictional character of a particular location.” *Id.* at 20. And, as a legislative fact, the Sixth Circuit concluded that the existence of special maritime or territorial jurisdiction was the proper subject of judicial notice and outside the scope of Rule 201 of the Federal Rules of Evidence. *See id.*; *see also* Fed. R. Evid. 201(f) (“In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.”).

4. The Sixth Circuit’s decision conflicts with the precedent of this Court and the decisions of at least two other Circuits. Courts cannot take judicial notice of the jurisdictional element of an offense because, as this Court has held, *every* element of an offense must be proved to a jury beyond reasonable doubt. *See United States v. Gaudin*, 515 U.S. 506, 511 (1995) (“The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged.”); *Apprendi v. New Jersey*, 530 U.S. 466, 477 n.3 (2000) (criminal defendants are entitled to “a trial by jury” and to “have every element of the offense proved beyond a reasonable doubt”). Jurisdictional elements of an offense are no different. *Torres v. Lynch*, 578 U.S. 452, 467 (2016) (jurisdictional elements “must be proved to a jury beyond a

reasonable doubt”). The Sixth Circuit acknowledged that the existence of special maritime or territorial jurisdiction was an essential element of four of the offenses with which Mr. Silvers was charged and that at least some part of that inquiry involved questions of fact that a jury must answer beyond a reasonable doubt. *Id.* Yet the Sixth Circuit nonetheless concluded that the existence of federal jurisdiction was a legal question for the court to answer and that the facts needed to make that determination were “legislative facts” of which the court could take conclusive judicial notice. App. A at 13. But, as this Court explained in *Gaudin*, even mixed questions of law and fact that make up an element of the offense must still be proven to a jury beyond a reasonable doubt. *See Gaudin*, 515 U.S. at 512-514.

5. The Circuit Courts of Appeal are divided on this question. The Sixth Circuit decision largely aligns with decisions from the Second, Fourth, and Eighth Circuits, each of which have concluded that one subcomponent of the jurisdictional element—whether the land in question is within the “special maritime and territorial jurisdiction of the United States”—is a legal question, determinable by legislative fact, of which the court may take conclusive judicial notice (i.e., leaving the jury no discretion to disregard the judge’s conclusion). *See United States v. Davis*, 726 F.3d 357, 368 (2d Cir. 2013); *United States v. Johnson*, 738 F. App’x. 798, 799 (4th Cir. 2018) (per curium); *United States v. Love*, 20 F.4th 407, 411–412 (8th Cir. 2021). On the other hand, the First and D.C. Circuits have stated the jury must find beyond a reasonable doubt that the

alleged crime took place within that special jurisdiction. *See United States v. Bello*, 194 F.3d 18, 22 (1st Cir. 1999); *United States v. Khataallah*, 41 F.4th 608, 628 (D.C. Cir. 2022).

6. The question presented in this case is exceptionally important and merits this Court’s review. The Sixth Circuit’s treatment of an essential jurisdictional element broadly affects the jury’s role in the prosecution of a wide range of federal offenses. For example, the term “special maritime and territorial jurisdiction of the United States” appears as a jurisdictional element in dozens of federal criminal offenses under Title 18. *See, e.g.*, 18 U.S.C. §§ 113 (assault); § 114 (maiming); § 1112(b) (manslaughter); § 1201(a)(b) (kidnapping); § 2111 (robbery); § 2242 (sexual abuse). The Sixth Circuit’s decision also affects the right to have a jury find beyond a reasonable doubt other kinds of jurisdictional elements in federal criminal offenses. *See, e.g., Mentz*, 840 F.2d at 318 (discussing jurisdictional element requiring that a bank be “federally insured” at the time of the crime); *United States v. Farrish*, 122 F.3d 146, 148–149 (2d Cir. 1997) (discussing jurisdictional element requiring an “effect on interstate commerce”). This Court’s intervention is necessary to ensure that criminal defendants are not deprived of their rights to due process and a trial by jury, and that juries are not divested of their constitutionally prescribed responsibility to find each element of an offense beyond a reasonable doubt.

7. Mr. Silvers requests a 60-day extension of time to file a petition for certiorari, to and including August 22, 2025. There is good cause for this

extension because Mr. Silvers is in the process of retaining WilmerHale to represent him before this Court in the preparation of a petition for a writ of certiorari on a pro bono basis. Mr. Silvers's retention of WilmerHale has been delayed because of his current incarceration, which has substantially limited his ability to communicate and coordinate with counsel. Specifically, these limitations have delayed his ability to find and retain new counsel in WilmerHale, and to communicate with undersigned counsel regarding the petition and WilmerHale's retention.

8. Good cause for an extension also exists in order to allow counsel from WilmerHale, once retained, sufficient time to fully assess the facts of the case, the relevant law, including federal statutes, this Court's precedents, and the relevant decisions of the Courts of Appeal, and develop a comprehensive petition. Such additional time is necessary given the complexity of the issues presented by this case and counsel from WilmerHale's need to balance the significant obligations and deadlines on behalf of other clients in the time leading up to and following the current deadline.

For the foregoing reasons, Mr. Silvers respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended by 60 days, to and including August 22, 2025.

Respectfully submitted,

/s/ Sarah S. Gannett

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JUNE 10, 2025

CERTIFICATE OF SERVICE

I, Sarah S. Gannett, a member of the bar of this Court, hereby certify that, on this 10th day of June 2025, all parties required to be served have been served copies of the foregoing in this matter by overnight courier and electronic mail to the address below.

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/s/ Sarah S. Gannett
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