No. 25-

IN THE

Supreme Court of the United States

VICTOR EVERETTE SILVERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Certain federal criminal offenses under Title 18 of the United States Code, including under § 1111(b) (murder), § 1113 (attempted murder or manslaughter), § 2261(a)(1) (domestic violence), and § 2262(a)(1) (violation of a protection order), require that the government prove—as a necessary element of the offense—that the alleged crime was committed within "the special maritime and territorial jurisdiction of the United States," which, as here, is frequently a fact-intensive evidentiary issue. The question presented, on which the courts of appeals are divided, is:

Whether taking judicial notice to conclusively determine that a location is within the "special maritime and territorial jurisdiction of the United States" violates the Fifth and Sixth Amendments' right to a trial by jury?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption. Petitioner Victor Everette Silvers was the appellant below. Respondent United States of America was the appellee below.

DIRECTLY RELATED PROCEEDINGS

United States v. *Silvers*, No. 23-5427 (6th Cir.) (opinion and judgment issued on February 20, 2025; rehearing en banc denied on March 25, 2025).

United States v. *Silvers*, No. 5:18-cr-50 (W.D. Ky.) (opinion and judgment issued on March 30, 2023).

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INTRODUCTION

The right to a jury trial is the "'great bulwark of [the people's] civil and political liberties,'" which "'guard[s] against the spirit of oppression and tyranny on the part of the rulers.'" *United States* v. *Gaudin*, 515 U.S. 506, 510-511 (1995). Thirty years ago, this Court reaffirmed the foundational principle that the Fifth Amendment's guarantee of "'due process of law'" and the Sixth Amendment's guarantee of a "'public trial, by an impartial jury,'" in "'all criminal prosecutions'" together require "criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a

reasonable doubt." *Id.* at 510. Thus, "a jury must find *all* of the facts necessary to authorize a judicial punishment." *United States* v. *Haymond*, 588 U.S. 634, 650 (2019); *see also Apprendi* v. *New Jersey*, 530 U.S. 466, 483-484, 490 (2000). The Court has not hesitated to strike down trial or sentencing practices that sidestep the jury's supervisory role. *See Haymond*, 588 U.S. at 644-645 (collecting cases).

These basic principles apply with equal force to the jurisdictional elements of federal criminal offenses, which provide the necessary link between substantive offense conduct and Congress's constitutionally enumerated powers. *See Torres* v. *Lynch*, 578 U.S. 452, 467 (2016) (jurisdictional elements "must be proved to a jury beyond a reasonable doubt").

Notwithstanding these constitutional guarantees, the courts below held that a judge, rather than a jury, may determine whether a location is within the "special maritime and territorial jurisdiction of the United States"—an essential element of dozens of federal criminal offenses under Title 18—and may take conclusive judicial notice of the facts necessary to establish such jurisdiction, even where those facts are contested, rather than require those facts to be proved to a jury beyond a reasonable doubt.

Victor Silvers was convicted on seven charges related to a shooting that resulted in the death of his estranged wife, Brittney Silvers, and injuries to her boyfriend at her apartment in Fort Campbell, Kentucky. Four of the charged offenses required, as an essential element, that the government prove to a jury beyond a reasonable doubt that the crime took place within the special maritime and territorial jurisdiction of the United States. *See* 18 U.S.C. §§ 1111(b); 1113; 2261(a)(1);

2262(a)(1). After holding a contested evidentiary hearing prior to trial, the district court took conclusive judicial notice that Ms. Silvers's apartment was within the "special maritime and territorial jurisdiction of the United States." At trial, the court instructed the jury that Ms. Silvers's apartment was within the "special maritime and territorial jurisdiction of the United States" and left to the jury only the question of whether the shooting in fact took place there. The Sixth Circuit agreed that the status of the property was a question for the judge—not the jury—and upheld Mr. Silvers's conviction.

The Sixth Circuit's decision is another entry on the wrong side of an entrenched conflict among the circuit courts of appeals. The Sixth Circuit has now joined the Second, Fourth, and Eighth Circuits in holding that judges may conclusively determine—through judicial notice—that the physical location where an alleged crime took place is within the "special maritime and territorial jurisdiction of the United States," leaving the jury no discretion to disregard the judge's conclusion as to that essential, offense-defining element. The Tenth Circuit, too, has noted that a court may determine the existence of federal jurisdiction over a location as a matter of law even where it is an element of a criminal offense. Several other circuits disagree: the First, Ninth, and D.C. Circuits have all determined that the special maritime and territorial jurisdiction of the United States is an essential element of an offense that the government must prove, and a jury must find, beyond a reasonable doubt. And both the Third and Fifth Circuits have indicated that they would likely reach this same conclusion if presented with the question. An August 2025 precedential decision by a deeply divided panel of the Fourth Circuit highlights

how intractable this split is: The court narrowly affirmed the use of judicial notice to determine the "special maritime and territorial jurisdiction of the United States," but only over a lengthy dissent and, for one of the two judges in the majority, only because the case involved a bench trial, not a jury trial.

In addition to deepening a circuit split, the Sixth Circuit's decision conflicts with this Court's decision in *Gaudin*, which held that "[t]he Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged," 515 U.S. at 522-523, and with *Apprendi*, which held that a jury must find beyond a reasonable doubt "all facts necessary to constitute a statutory offense," 530 U.S. at 483.

This petition presents an important question of constitutional law that has broad implications for criminal defendants' right to a jury trial in virtually all federal criminal prosecutions. With the majority of the circuit courts of appeals having weighed in, the entrenched split on this question is fully developed. Notwithstanding this Court's decisions in *Gaudin* and *Apprendi*, the circuit courts remain evenly split and intractably divided, causing the uneven protection and overall erosion of criminal defendants' Fifth and Sixth Amendment rights. This case presents an ideal vehicle to address and resolve this issue, where it was cleanly presented and preserved. The Court should grant certiorari.

OPINIONS BELOW

The Sixth Circuit's opinion affirming the district court's decision to take conclusive judicial notice that the location of the alleged crime was within the special

maritime and territorial jurisdiction of the United States is reported at 129 F.4th 332 and reproduced at App. 1a-54a.

The district court's post-trial opinion explaining its decision to grant the government's pre-trial motion for judicial notice is reported at 2023 WL 2714003 and reproduced at App. 55a-74a.

JURISDICTION

The Sixth Circuit issued its opinion and judgment on February 20, 2025. App. 1a-54a. The Sixth Circuit issued its order denying rehearing en banc on March 25, 2025. App. 91a. On June 12, 2025, this Court granted an extension of the time to file any petition for certiorari to August 22, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution guarantees due process, stating that "No Person shall … be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution guarantees a right to trial by jury: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI.

The statutes at issue—18 U.S.C. §§ 1111(b); 1113; 2261(a); 2262(a)(1)—each contain as one element of the crime that the conduct took place in the special maritime and territorial jurisdiction of the United States. *See, e.g.*,

18 U.S.C. § 1111(b) ("Within the special maritime and territorial jurisdiction of the United States, [w]hoever is guilty of murder in the first degree ….").

Under 18 U.S.C. § 7(3), the "special maritime and territorial jurisdiction of the United States" includes many areas such as: "Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

Under 40 U.S.C. § 3112(b), "When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated."

Under 40 U.S.C. § 3112(c), "It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section."

Under Section 3.010 of the Kentucky Revised Statutes (KRS), "The Commonwealth of Kentucky consents to the acquisition by the United States of all lands and appurtenances in this state, by condemnation,

gift or purchase, which are needful to their constitutional purposes, but said acquisition shall not be deemed to result in a cession of jurisdiction by this Commonwealth." Before its amendment in 1954, KRS § 3.010 provided: "Commonwealth of Kentucky consents to the acquisition by the United States of all lands and appurtenances in this state heretofore legally acquired, or that may be hereafter legally acquired by purchase, or by condemnation, for the erection of forts, magazines, arsenals, dock yards, post offices, custom houses, courthouses and other needful buildings, and for locks, dams and canals in improving the navigation of the rivers and waters within and on the borders of Kentucky." KRS § 3.010 (1944).

STATEMENT OF THE CASE

A. Statutory Background

Mr. Silvers was convicted under 18 U.S.C. §§ 1111(b); 1113; 2261(a); 2262(a)(1). Each of those statutes requires as one element that the crime took place in the special maritime and territorial jurisdiction of the United States. *See, e.g.*, 18 U.S.C. § 1111(b) ("Within the special maritime and territorial jurisdiction of the United States, [w]hoever is guilty of murder in the first degree …."). This "jurisdictional element" connects substantive conduct prohibited by the statutes to one of Congress's "constitutionally enumerated powers." *Torres* v. *Lynch*, 578 U.S. 452, 457 (2016).

By statute, the special maritime and territorial jurisdiction of the United States includes numerous specific locations listed in nine enumerated statutory subsections, including, as relevant here, "Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction

thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building." 18 U.S.C. § 7(3).

In order to prove that a location within a State—like a federal military fort[1]—is within the special maritime and territorial jurisdiction of the United States, federal law requires the government to prove *both* that (1) the State where the land is located consented to the transfer of the land to the jurisdiction of the United States and (2) the United States accepted that transfer. 40 U.S.C. § 3112(b). In fact, "[i]t is conclusively presumed that jurisdiction has *not* been accepted until the [Federal] Government accepts jurisdiction over land as provided in [§ 3112]." *Id.* § 3112(c) (emphasis added).

B. Factual Background And Proceedings Below

In November 2018, a grand jury indicted Mr. Silvers on seven counts related to the shooting of Brittney Silvers, his estranged wife and a logistics specialist with the United States Army, and Ms. Silvers's boyfriend, James Keating, at her apartment in Fort Campbell, Kentucky, a military installation in Kentucky on the border of Tennessee. App. 2a-4a. Four of those seven counts—first-degree murder, attempted murder, domestic violence, and violation of a

[1] "Although some may assume that a military installation automatically comes within Federal jurisdiction, that assumption is incorrect. Instead, under Art. I, § 8, cl. 17 of the United States Constitution, the existence of exclusive or concurrent Federal jurisdiction requires the consent of the State where the installation is located, and without that consent, the possession by the United States is 'simply that of an ordinary proprietor.'" *United States* v. *Williams*, 17 M.J. 207, 211-212 (C.M.A. 1984) (quoting *Paul* v. *United States*, 371 U.S. 245, 264 (1963)).

protection order—required, as an element of each offense, that the crime took place within the special maritime and territorial jurisdiction of the United States. App. 5a (citing 18 U.S.C. §§ 1111(b); 1113; 2261(a)(1); 2262(a)(1)).[2]

Before trial, the government moved the district court to take judicial notice of the fact that Ms. Silvers's apartment was within the "special maritime and territorial jurisdiction of the United States." App. 5a. Mr. Silvers opposed the motion. To resolve it, the district court held a contested evidentiary hearing, at which the government presented three witnesses and introduced historical documents, including the deed to the land and a series of letters between the Secretary of War and Kentucky's then-governors, and Mr. Silvers introduced other historical documents that challenged the authenticity of the government's evidence. After considering the evidence, the court granted the government's motion. App. 6a. In a supplemental opinion and order issued after Mr. Silvers's trial, the court reasoned that judicial notice was proper because the issue of special territorial jurisdiction involved two distinct inquiries in which "lay jurors determine where acts occurred as a matter of fact while the judge decides the legal status (state or federal)

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[2] An additional two of those seven counts—Carry, Use, and Discharge of a Firearm During and in Relation to a Crime of Violence Resulting in Death (18 U.S.C. § 924(j)), and Carry, Use, and Discharge of a Firearm During and in Relation to a Crime of Violence (*id.* § 924(c))—depended on Mr. Silvers's conviction for murder and attempted murder. Together, these six counts, which required proof that a crime was committed within the special maritime and territorial jurisdiction of the United States as an element of the offense or of a predicate offense, include all of the counts for which Mr. Silvers was sentenced to life in prison. With respect to the final count, possession of a firearm by a prohibited person, Mr. Silvers was sentenced to 10 years imprisonment.

of that location." App. 59a-63a. The court further explained that the latter inquiry turned on legislative facts the court could determine conclusively and without a corresponding instruction to the jury—under Federal Rule of Evidence 201(f)—that it may reject that determination. App. 63a-67a.[3]

At trial, the court instructed the jury that Ms. Silvers's apartment was located within the special maritime and territorial jurisdiction of the United States, and that if the jury found beyond a reasonable doubt that the crimes occurred at that physical location, that finding was sufficient to establish the jurisdictional element of the offenses:

> The fourth element refers to the special maritime and territorial jurisdiction of the United States. 4217 Contreras Court is located within the special maritime and territorial jurisdiction of the United States. If you find beyond a reasonable doubt that the crime occurred at 4217 Contreras Court, that is sufficient to find that it occurred within the special maritime and territorial jurisdiction of the United States.

App. 6a.

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[3] Federal Rule of Evidence 201 governs judicial notice of adjudicative facts. It provides that a "court may judicially notice a fact that is not subject to a reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). However, "[i]n a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive." *Id.* 201(f). This restriction does not apply to legislative facts.

On appeal, the Sixth Circuit affirmed the district court's decision to bifurcate this single essential element of each of the four offenses into two separate inquiries and to take conclusive judicial notice that Ms. Silvers's apartment was within the special maritime and territorial jurisdiction of the United States as a "legislative fact." App. 14a-29a. The Sixth Circuit acknowledged that the existence of special maritime and territorial jurisdiction was an essential element of four of the offenses. App. 5a, 15a-16a. It also acknowledged that this Court's decisions in *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), and *United States* v. *Gaudin*, 515 U.S. 506 (1995), "stand for the important proposition that each essential element of a crime with which a criminal defendant is charged must be proven to a jury beyond a reasonable doubt." App. 16a. Nonetheless, relying principally on a line of circuit court decisions that predate both *Gaudin* and *Apprendi*, the Sixth Circuit held that a "location's jurisdictional character" was a legal question dependent upon legislative facts to be found by the judge, rather than adjudicative facts to be found by the jury, and so was beyond the purview of *Gaudin* and *Apprendi*. App. 16a, 27a-28a.

The Sixth Circuit's decision allowing a court to conclusively determine an essential element of an offense through judicial notice amounted to a partial directed verdict and deprived Mr. Silvers of his Fifth and Sixth Amendment right to have a jury determine each essential element of the offenses with which he was charged, beyond a reasonable doubt.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE THE SPLIT OVER THIS IMPORTANT AND WIDESPREAD ISSUE OF CONSTITUTIONAL LAW

The question splitting the courts of appeals—whether a court may conclusively determine through judicial notice that a location is within the special maritime and territorial jurisdiction of the United States where it is an element of a criminal offense—is both critically important and extremely commonplace in federal criminal prosecutions, justifying this Court's review.

A. This Petition Presents An Important Question Of Federal Constitutional Law

The Fifth and Sixth Amendments guarantee a criminal defendant the right to a trial by jury. *See, e.g.*, *United States* v. *Gaudin*, 515 U.S. 506, 510 (1995); *Apprendi* v. *New Jersey*, 530 U.S. 466, 477 (2000); *United States* v. *Haymond*, 588 U.S. 634, 641 (2019); *Erlinger* v. *United States*, 602 U.S. 821, 834-835 (2024). "[T]he right to a jury trial 'has always been' an important part of what keeps this Nation 'free,'" *Erlinger*, 602 U.S. at 849, and this Court "has not hesitated to strike down" practices "that fail to respect the jury's supervisory function," *Haymond*, 588 U.S. at 644-645 (collecting cases). This right encompasses two interrelated concepts. First, the Fifth and Sixth Amendments "require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *Gaudin*, 515 U.S. at 510; *see also Apprendi*, 530 U.S. at 477 (same). Second, the Fifth and Sixth Amendments require "a unanimous jury to find

every fact essential to an offender's punishment." *Erlinger*, 602 U.S. at 832; *see also Apprendi*, 530 U.S. at 490; *Haymond*, 588 U.S. at 642, 647. "The prosecution," in other words, "bears the burden of proving all elements of the offense charged … and must persuade the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements." *Sullivan* v. *Louisiana*, 508 U.S. 275, 277-278 (1993).

This right applies to *all* elements of a federal criminal offense. Most federal criminal laws include both "substantive" and "jurisdictional elements": "[T]he substantive elements of a federal statute describe the evil Congress seeks to prevent; the jurisdictional element connects the law to one of Congress's enumerated powers, thus establishing legislative authority." *Torres* v. *Lynch*, 578 U.S. 452, 467 (2016). That is because "Congress cannot punish felonies generally," *Cohens* v. *Virginia*¸ 19 U.S. (6 Wheat.) 264, 428 (1821), but rather "may enact only those criminal laws that are connected to one of its constitutionally enumerated powers," *Torres*, 578 U.S. at 457.

These jurisdictional elements have real force. For one, they bring criminal prosecutions from state court to federal court. The difference between a state and federal crime is "more than a technical consideration about which authority chooses to prosecute"; rather, "[i]t is a difference that goes to the magnitude and nature of the 'evil' itself." *Torres*, 578 U.S. at 486-487 (Sotomayor, J., dissenting) (internal citation omitted). And jurisdictional elements also do "more than provide a hook for prosecuting a crime in federal court." *Rehaif* v. *United States*, 588 U.S. 225, 258 (2019) (Alito, J., dissenting). For instance, they "sometimes transform lawful conduct into criminal conduct: In a State that

chooses to legalize marijuana, possession is wrongful only if the defendant is on federal property." *Id.* "Jurisdictional elements may also drastically increase the punishment for a wrongful act." *Id.* For example, in a State that has abolished the death penalty, the difference between a federal crime and a state crime for the same conduct may mean the difference between life and death for a defendant. Put simply, "a jurisdictional element can make the difference between some penalty and no penalty, or between significantly greater and lesser penalties." *Id.*

Neither the Constitution nor this Court's decisions provide a basis for treating essential jurisdictional elements of criminal offenses, or the facts needed to prove them, any differently from substantive elements with respect to the right to a jury trial. Indeed, this Court has stated just the opposite: "Both kinds of elements must be proved to a jury beyond a reasonable doubt; and because that is so, both may play a real role in a criminal case." *Torres*, 578 U.S. at 467; *see also United States* v. *Leslie*, 103 F.3d 1093, 1103 (2d Cir. 1997) ("There is nothing more crucial, yet so strikingly obvious, as the need to prove the jurisdictional element of a crime."). Without proving the existence of federal jurisdiction, there can be no federal crime and no punishment.

Permitting judges to conclusively judicially notice the facts necessary to establish the jurisdictional element contravenes these principles. "The Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of *every element* of the crime with which he is charged." *Gaudin*, 515 U.S. at 522-523 (emphasis added); *see also Haymond*, 588 U.S. at 650 ("[A] jury must find *all* of the

facts necessary to authorize a judicial punishment."). Here, four of Mr. Silvers's charged crimes require, as a statutory element, that the conduct took place within the special maritime and territorial jurisdiction of the United States. App. 5a, 15a-16a; *see also United States* v. *Cervenak*, 135 F.4th 311, 327 (6th Cir. 2025) (en banc) ("[T]he statute itself defines the elements."). None of those statutes relegates the jury to finding only "where acts occurred as a matter of fact." App. 60a. Instead, the government must try "to a jury all facts necessary to constitute a statutory offense, and prov[e] those facts beyond reasonable doubt." *Apprendi*, 530 U.S. at 483-484.[4] That does not happen when the jurisdictional element is only judicially noticed, in any part, by the court.

What transpired below proves the point. The jurisdictional status of Ms. Silvers's apartment depended on the government's ability to prove "that (1) the state in which the at-issue land is located has consented to transfer the land to the jurisdiction of the United States and (2) that the federal government has accepted that transfer of jurisdiction." App. 13a. The district court had to hold a full-blown evidentiary hearing with documents and multiple witnesses testifying to answer these questions, presumably by a mere preponderance of the evidence. *See* App. 5a-7a; App. 56a-57a, 67a-73a. To deem these essential but

[4] *See also Apprendi*, 530 U.S. at 499 (Scalia, J., concurring) ("[T]he guarantee that '[i]n all criminal prosecutions, the accused shall enjoy the right to … trial, by an impartial jury,' has no intelligible content unless it means that all the facts which must exist in order to subject the defendant to a legally prescribed punishment *must* be found by the jury."); *id.* at 501 (Thomas, J., concurring) ("[A] 'crime' includes every fact that is by law a basis for imposing or increasing punishment.").

disputed jurisdictional facts to be mere "legislative facts" subject to conclusive judicial notice "stretches the concept of 'legislative fact' well beyond the common understanding." 21B Wright & Miller, *Federal Practice & Procedure* § 5103.1 (2d ed.); *see also* Proctor, *Rethinking Legislative Facts*, 99 Notre Dame L. Rev. 955, 1004 (2024) ("But standard conventions would give such questions to the jury because they involve fact identification and law application, not law declaration.").[5] The jury never saw this evidence or heard this testimony, and it was not advised that it could reject the court's conclusion from it. If the jury had, no one knows whether it would have reached the same conclusion that the court did—let alone beyond a reasonable doubt. *See Erlinger*, 602 U.S. at 834 ("Judges may not assume the jury's factfinding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard.").

Judges may not take this element of conviction from the jury because they think themselves more suited for it. *See* App. 62a-63a. Federal judges themselves

[5] As noted, contrary to legislative facts, where a court takes judicial notice of an adjudicative fact in a criminal case, "the court *must* instruct the jury that it may or may not accept the noticed fact as conclusive." Fed. R. Evid. 201(f) (emphasis added); *see also id.* 201 Advisory Committee's Note to 1974 Enactment ("[M]andatory instruction to a jury in a criminal case to accept as conclusive any fact judicially noticed is inappropriate because [it is] contrary to the spirit of the Sixth Amendment right to a jury trial."); *see also, e.g.*, *United States* v. *Mentz*, 840 F.2d 315, 322 (6th Cir. 1988) ("A trial court commits constitutional error when it takes judicial notice of facts constituting an essential element of the crime charged, but fails to instruct the jury according to Rule 201[(f)]."); *United States* v. *Bello*, 194 F.3d 18, 25-26 (1st Cir. 1999) (similar); *United States* v. *Perez*, --- F.4th ---, 2025 WL 2313245, at *22-24 (4th Cir. Aug. 12, 2025) (Harris, J., dissenting) (similar).

sometimes disagree whether a specific location falls within the special maritime and territorial jurisdiction of the United States. *See, e.g.*, *United States* v. *Redmond*, 748 F. App'x 760, 761-762 (9th Cir. 2018) (Judges Wardlaw and Bybee agreed the government proved USP Victorville was within the special maritime and territorial jurisdiction of the United States, but Judge Ikuta did not). Sometimes a panel of federal judges agrees—but they are all wrong. *United States* v. *Banks*, 2022 WL 3278942, at *4 (9th Cir. Aug. 11, 2022) (Koh, J., concurring) ("[F]ederal courts can get the jurisdictional analysis wrong."). For example, in one Second Circuit case, the district court had taken judicial notice that a federal correctional facility was within the special maritime and territorial jurisdiction of the United States based on an FBI agent's testimony and "the commonplace knowledge that a federal prison is likely to be a location where federal jurisdiction is at least concurrently exercised." *United States* v. *Davis*, 726 F.3d 357, 365 (2d Cir. 2013) (discussing *United States* v. *Hernandez-Fundora*, 58 F.3d 802 (2d Cir. 1995)). On appeal, the Second Circuit affirmed that the agent's "uncontradicted testimony was sufficient to satisfy the jurisdictional element." *Id.* But both courts turned out to be wrong. On remand for resentencing, "the district court vacated the defendant's conviction and dismissed the indictment after the Government discovered that—contrary to the agent's testimony at trial—the federal government did not in fact have jurisdiction, concurrent or otherwise," over the federal correctional facility. *Id.* at 366; *see also, e.g.*, *United States* v. *Greene*, 2022 WL 621108, at *1-2 (11th Cir. Mar. 3, 2022) (vacating conviction after government conceded on appeal that "judicial notice was improper" because federal

correctional facility was not within the special maritime and territorial jurisdiction of the United States).

That is why the Constitution and this Court's precedent put facts necessary for conviction to a jury's finding beyond a reasonable doubt. It is "the men and women who make up a jury of a defendant's peers"—not federal judges—that have the "constitutional authority to set the metes and bounds of judicially administered criminal punishments." *Haymond*, 588 U.S. at 646. Juries are capable of determining these jurisdictional elements, even if the facts can be complex. "[T]he Constitution does not take such a dim view about the capacity of jurors or the rigors of trial"—"Day in and day out, using everyday trial procedures, juries decide … complex questions." *Erlinger*, 602 U.S. at 835 n.1.

Nor may courts pull apart discrete elements of federal criminal offenses to conclusively judicially notice parts of them. The Sixth Circuit held that "the jurisdictional element of crimes … includes two separate inquiries": a legal question "whether the parcel of land falls within the United States' special maritime and territorial jurisdiction" and a jury question "whether the alleged offense occurred within that area." App. 16a. But *Gaudin* squarely rejected that kind of analysis of essential elements of criminal offenses. There, this Court rejected the government's argument that the element at issue—the materiality of alleged false statements—could be divided into separate parts for the judge and the jury. *See* 515 U.S. at 512, 514 ("[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence."). There is no reason to treat the "special maritime and territorial jurisdiction" element any differently.

Indeed, in analyzing analogous essential jurisdictional elements in other federal statutes, the Sixth Circuit itself has held that a court's conclusive determination that the government satisfied its burden to prove jurisdiction amounted to an impermissible directed verdict for the government in violation of the Sixth Amendment. *See United States* v. *Mentz*, 840 F.2d 315, 318, 320 (6th Cir. 1988) (district court improperly "invaded the jury's province by instructing that body, in clear and unequivocal language, that the banks were FDIC insured at the time the robberies occurred" under 18 U.S.C. § 2113, which "had the effect of relieving the government of its burden of proving, beyond the *jury's* reasonable doubt, that the accused committed the crimes charged"). Yet in its decision below, the Sixth Circuit neither cited *Mentz* nor explained why the special-maritime-and-territorial-jurisdiction element at issue here is subject to different treatment.

B. The Courts Of Appeals Are Divided On The Issue, Requiring This Court's Intervention

Whether courts can conclusively determine through judicial notice that a location is within the special maritime and territorial jurisdiction of the United States where it is an element of a federal criminal offense has divided the courts of appeals.

Below, the Sixth Circuit held that the jurisdictional status of a given location is a question of law to be decided by a judge, who determines it by reference to "legislative facts" not presented to a jury and not found beyond a reasonable doubt. App. 15a-28a. And the judge makes that determination *conclusively*, without advising the jury that it can reject it under Federal Rule of Evidence 201(f). By its holding, the Sixth Circuit endorsed the view that the jurisdictional question is

actually made up of "two separate inquiries: first, whether the location is within the United States' special maritime and territorial jurisdiction; and second, whether the alleged offense occurred within that area." App. 16a. As the Sixth Circuit acknowledged, adopting that view placed the court opposite several other courts of appeals, including the First, Ninth, and D.C. Circuits, as well as likely the Third and Fifth Circuits, in an entrenched circuit split. *See* App. 21a-27a.

In *United States* v. *Khatallah*, the D.C. Circuit held that the district court erred by omitting a necessary component of the "diplomatic premises" definition of special maritime and territorial jurisdiction under 18 U.S.C. § 7(9) in its jury instructions. 41 F.4th 608, 628 (D.C. Cir. 2022) (per curiam). Citing *Gaudin*, the D.C. Circuit explained that "the government had to prove, and the jury had to find beyond a reasonable doubt, that the [offense] occurred within that special jurisdiction." *Id.* The court determined that by failing to instruct the jury that it needed to find the "crime in question [had been] committed 'by or against a national of the United States,'" the district court had erroneously "omitted a factual element" necessary for the jury to find the crime had occurred within the special maritime and territorial jurisdiction of the Unites States, an element "that the jury had to find in order to convict." *Id.*

Similarly, in *United States* v. *Read*, the Ninth Circuit explained that "[t]he existence of federal jurisdiction over the place in which the offense occurred is an element of the offenses [at issue], which must be proved to a jury beyond a reasonable doubt." 918 F.3d 712, 718 (9th Cir. 2019) (citing *Gaudin*, 515 U.S. at 510). In holding that sufficient evidence at trial had demonstrated that the conduct occurred in the special

maritime and territorial jurisdiction of the United States, and so upholding the conviction, the court made clear that the jurisdictional element needed to be proved to the jury beyond a reasonable doubt during trial. *See id.* ("A reasonable juror could conclude from these statements that FCI-Phoenix was under federal jurisdiction at the time [the defendant] allegedly committed [the offense].").

In *United States* v. *Bello*, the district court had taken judicial notice that the offense occurred "within the special maritime and territorial jurisdiction of the United States"—but unlike the district court below in this case, the court in *Bello* did so as an adjudicative fact and instructed the jury that it could accept or reject the noticed fact per Federal Rule of Evidence 201(f). 194 F.3d 18, 25 (1st Cir. 1999) ("[T]he final decision whether or not to accept it is for you to make and you are not required to agree with me."). The First Circuit affirmed the conviction because of this instruction, but explained that when a jurisdictional fact—there, "[w]here the prison sits"—is an essential element of the crime, to judicially notice it *conclusively* would be "constitutional error." *Id.* at 23, 26.

With the First, Ninth, and D.C. Circuits, the Third and Fifth Circuits have also indicated that jurisdictional elements must be found by the jury beyond a reasonable doubt. *See United States* v. *Perrien*, 274 F.3d 936, 939 n.1 (5th Cir. 2001) (per curiam) ("[T]he requirement that [an offense] be committed 'within the special maritime and territorial jurisdiction of the United States' is unambiguously included in the offense-defining part of the statute. We therefore doubt that a mere preponderance of the evidence on this element could suffice to support a guilty verdict."); *see also United*

States v. *Thomas*, 610 F.2d 1166, 1171 n.10 (3d Cir. 1979) (per curiam) ("In our view, the provision of Rule 201[(f)] allowing a jury to disregard a judicially noticed 'fact' was designed to protect the … right of criminal defendants to have all issues of fact, whether jurisdictional or substantive, decided by a jury.").[6]

The Sixth Circuit joined the Second and Eighth Circuits, as well as the Fourth and Tenth Circuits, on the other side of the split. In *United States* v. *Hernandez-Fundora*, decided four months before *Gaudin*, the Second Circuit held that the district court properly took judicial notice that a federal correctional institute was within the special maritime and territorial jurisdiction of the United States. 58 F.3d at 809-812 (approving that the district court "removed from the jury's consideration the issue whether Raybrook was within the special maritime and territorial jurisdiction of the United States, but reserved for the jury the question whether the assault occurred at Raybrook"). Following *Gaudin* and *Apprendi*, the Second Circuit reaffirmed this approach in *United States* v. *Davis*, holding that "whether a particular plot of land falls within the special maritime and territorial jurisdiction of the United States is a 'legislative fact' that may be judicially noticed without being subject to the strictures of Rule 201." 726 F.3d at 367. The court acknowledged that a split in authority had developed on this question. *Id.* at 367 n.6 (citing *Bello*, 194 F.3d at 23-25).

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[6] A later, unpublished and nonprecedential Fifth Circuit decision took the opposite approach. *United States* v. *Styles*, 75 F. App'x 934, 935 (5th Cir. 2003) (per curiam) ("A district court may take judicial notice of the legislative fact that a federal installation is under federal jurisdiction.").

The rule is the same in the Eighth Circuit. In *United States* v. *Love*, the court affirmed the district court's decision to instruct the jury conclusively that a medical center for federal prisoners was "a place that falls within the special maritime and territorial jurisdiction of the United States," and that "if you find beyond a reasonable doubt that the act alleged occurred at the [medical center], the third element of the offense has been met." 20 F.4th 407, 410 (8th Cir. 2021). The court held: "A district court may take judicial notice that a place is within the special maritime and territorial jurisdiction of the United States and not submit that issue to the jury, without violating a defendant's Sixth Amendment rights." *Id.* at 412. Indeed, in upholding the sufficiency of the evidence, the Eighth Circuit itself took judicial notice of "special maritime and territorial jurisdiction over the Center." *Id.*

The Tenth Circuit, meanwhile, has broadly held that the existence of federal jurisdiction as an element of a criminal offense is a question of law for the court to determine. *United States* v. *Prentiss*, 206 F.3d 960, 967 (10th Cir. 2000) ("While the court may determine, as a matter of law, the existence of federal jurisdiction over a geographic area, whether the locus of the offense is within that area is an essential element that must be resolved by the trier of fact.").

An August 2025 precedential decision of the Fourth Circuit is emblematic of how deeply divided federal appellate judges are on the question presented. In *United States* v. *Perez*, a divided panel of the Fourth Circuit held that a court may conclusively determine whether a location is within the special maritime and territorial jurisdiction of the United States through judicial notice. --- F.4th ---, 2025 WL 2313245, at *4 (4th

Cir. Aug. 12, 2025). Following a bench trial, the district court in *Perez* rejected the defendant's arguments that the government had failed to prove that FCI Petersburg was within the special maritime and territorial jurisdiction of the United States and instead took judicial notice that the prison fell under federal jurisdiction. Like the Second and Eighth Circuits, and the Sixth Circuit below, the *Perez* majority held that a "location's jurisdictional status is a legal question for the court" and that the "facts underlying that determination are legislative [facts]" that may be conclusively judicially noticed. *Id.* In his concurring opinion, however, Judge Wynn explained that his concurrence "hinge[d] on the fact that th[e] matter was tried as a bench trial, not before a jury" and that it would only be permissible for the court to determine the "legal component of a jurisdictional element in a criminal statute when a defendant has elected to forgo trial by jury." *Id.* at *14 (Wynn, J., concurring). And Judge Harris dissented because she would have held that the court's judicial notice of those facts violated the defendant's Fifth and Sixth Amendment rights and that the government's failure to prove the facts needed to establish jurisdiction during trial entitled the defendant to a judgment of acquittal. *Id.* at **18-19, 25 (Harris, J., dissenting). All three members of the panel acknowledged either the split among the circuits on this issue, the tension with this Court's precedents, or the fact that this issue has been both difficult and recurring in the circuit courts. *See id.* at **5-6, 10, 22; *id.* at *14-15 (Wynn, J., concurring); *id.* at **17-19, 24-25 (Harris, J., dissenting).

Altogether, as the Fourth Circuit's divided opinion in *Perez* demonstrates, the courts of appeals are effectively split down the middle on this issue. They

have recognized the split but have been unable to resolve it. *See*, *e.g.*, *Davis*, 726 F.3d at 367 & n.6 (acknowledging circuit split); App. 20a-28a (same). Commentators have acknowledged it too. *See*, *e.g.*, Carter, Jr., "*Trust Me, I'm a Judge": Why Binding Judicial Notice of Jurisdictional Facts Violates the Right to Jury Trial*, 68 Mo. L. Rev. 649, 667 (2003). The split predated *Gaudin* and *Apprendi*, and it has only worsened since those decisions. This issue has fully percolated, but that percolation has only entrenched the split and complicated its analytical underpinnings by casting doubt on a court's ability to pull apart essential elements of criminal offenses into discrete "legal" and "factual" components, or to conclusively determine that these elements are satisfied by taking judicial notice of so-called "legislative" facts. This Court's intervention is now necessary.

C. This Issue Regularly Arises In Federal Criminal Prosecutions, Justifying This Court's Review

The question presented has broad implications. Because Congress may only enact "those criminal laws that are connected to one of its constitutionally enumerated powers," "most federal offenses include, in addition to substantive elements, a jurisdictional one." *Torres*, 578 U.S. at 457. How the government must prove jurisdictional elements is therefore at issue in virtually all federal criminal prosecutions.[7]

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[7] Importantly, while a decision from this Court upholding a criminal defendant's right to have each element, and each fact establishing that element, proved to a jury beyond a reasonable doubt would broadly protect the constitutional right to a jury trial in all federal criminal prosecutions, it would not result in unworkable administrability problems. The proceedings below

"Special maritime and territorial jurisdiction" itself is an essential element of dozens of federal offenses. *See, e.g.*, 15 U.S.C. §§ 1175(a) (manufacture, repair, sale, possession of gambling devices), 1243 (manufacture, sale, possession of switchblade knife); 16 U.S.C. § 3372(a)(3) (possession of fish or wildlife prohibited by state, foreign, Indian law); 18 U.S.C. §§ 81 (arson), 113(a) (assault), 114 (maiming), 116(d)(6) (female genital mutilation), 117(a) (domestic assault by habitual offender), 118 (interference with federal law enforcement engaged in protective functions), 661 (theft), 662 (receiving stolen property), 831(c)(1) (transactions involving nuclear materials), 1111(b) (murder), 1112(b) (manslaughter), 1113 (attempted murder or manslaughter), 1201(a)(2) (kidnapping), 1363 (destruction of property), 1460(a)(1) (possession with intent to sell obscene material), 1466A(d)(5) (produce, distribute, receive, possess obscene visual representation of sexual abuse of children), 1591(a)(1) (child sex trafficking), 1801(a) (video voyeurism), 2111 (robbery), 2241 (aggravated sexual abuse), 2242 (sexual abuse), 2261(a)(1) (domestic violence), 2261A(1) (stalking), 2262(a)(1) (violation of protective order).

Apart from "special maritime and territorial jurisdiction," federal criminal offenses are replete with a variety of other essential jurisdictional elements. *See, e.g.*, *Torres*, 578 U.S. at 457 (interstate or foreign commerce is element of arson offense); *United States* v.

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demonstrate the point: all of the evidence on the jurisdictional element was presented through the testimony of three short witnesses. *See* App. 5a-6a. The government may find that to be inconvenient or inefficient. The right to a jury trial, however, "has never been efficient; but it has always been free." *Apprendi*, 530 U.S. at 498 (Scalia, J., concurring).

Williams, 836 F.3d 1, 6-7 (D.C. Cir. 2016) (military extraterritorial jurisdiction is element of offenses committed by civilians accompanying armed forces abroad); *United States* v. *Parkes*, 497 F.3d 220, 227 (2d Cir. 2007) ("effect on interstate commerce" is element of Hobbs Act offense); *United States* v. *Evans*, 272 F.3d 1069, 1081 (8th Cir. 2001) (affecting interstate or foreign commerce is element of money laundering offense); *United States* v. *Allen*, 129 F.3d 1159, 1163 (10th Cir. 1997) (same); *Mentz*, 840 F.2d at 318 (FDIC-insured bank is element of bank robbery offense). Courts have held that many of these jurisdictional elements "must be proved to a jury beyond a reasonable doubt." *Torres*, 578 U.S. at 467. The decision below, however, creates an arbitrary, uneven, and unpredictable treatment of jurisdictional elements under federal law in future cases, and calls into question the rights of criminal defendants under all of these other statutes to have the government prove every element of an offense to a jury beyond a reasonable doubt.

II. THIS CASE PRESENTS AN IDEAL VEHICLE TO RESOLVE THIS IMPORTANT QUESTION OF CONSTITUTIONAL LAW

This is an ideal case through which to resolve the important question presented in this petition, for two reasons. First, Mr. Silvers preserved this issue at each stage of the case. Mr. Silvers opposed the government's motion for judicial notice before the district court. *See* App. 5a, 56a. And at the evidentiary hearing, Mr. Silvers continued to oppose the government's motion, presented argument against the court taking judicial notice, cross-examined the government's witnesses, and presented contrary evidence. *See generally* App. 93a-164a. After the trial, the district court issued a detailed supplemental opinion explaining

its decision to take judicial notice. App. 5a-7a; App. 56a-74a. Mr. Silvers appealed this issue to the Sixth Circuit, which squarely addressed and rejected his arguments against the district court's decision. *See generally* App.1a-38a.

Second, this petition presents a narrow, but important, issue that is squarely presented by facts that are not subject to reasonable dispute: The district court held a contested evidentiary hearing outside the presence of the jury and then determined conclusively, through judicial notice of "legislative facts," that a specific location was within the special maritime and territorial jurisdiction of the United States as a matter of law, outside of Federal Rule of Evidence 201, and without any instruction to the jury that it could reject the court's determination. In other words, there is no procedural or factual defect or complexity that would preclude this Court from conclusively deciding the question presented in a way that would fully resolve Mr. Silvers's appeal, or that would prevent the Court's decision from providing meaningful guidance in future cases.

CONCLUSION

For these reasons, this Court should grant the Petition.

Respectfully submitted.

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