No. 25-222

In the Supreme Court of the United States

VICTOR EVERETTE SILVERS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court erred in taking judicial notice that the army base at Fort Campbell, Kentucky is within the "special maritime and territorial jurisdiction of the United States." 18 U.S.C. 7.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-54a) is reported at 129 F.4th 332. The order of the district court (Pet. App. 55a-74a) is unreported but is available at 2023 WL 2714003.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 2025. A petition for rehearing was denied on March 25, 2025 (Pet. App. 91a). On June 12, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including August 22, 2025, and the petition was filed on August 21, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Kentucky, petitioner

was convicted on one count of first-degree murder within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 1111(b); one count of attempted murder within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 1113; one count of domestic violence resulting in death within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 2261(a)(1) and (b)(1); one count of violating a protection order resulting in death within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 2262(a)(1) and (b)(1); one count of possessing a firearm while subject to a domestic-violence restraining order, in violation of 18 U.S.C. 922(g)(8); one count of murder by discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii) and (j)(1); and one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). Judgment 20. The district court imposed a term of imprisonment of life plus ten years, to be followed by three years of supervised release. Judgment 3-4. The court of appeals affirmed. Pet. App. 1a-54a.

1. In 2011, petitioner and Brittney Silvers married and moved to Fort Campbell, Kentucky, where Brittney worked as a logistics specialist for the U.S. Army. Pet. App. 3a. They later separated and began to see other individuals romantically. *Ibid.* Brittney continued to live at Fort Campbell while petitioner moved to a nearby town in Tennessee. *Ibid.*

In September 2018, petitioner called Brittney and her mother and threatened the lives of both Brittney and her new boyfriend. Pet. App. 3a. Brittney secured a domestic violence protection order barring petitioner

from having physical contact with Brittney and from possessing firearms. *Id.* at 3a-4a. Petitioner was ordered to turn over his firearms, but did not do so. C.A. ROA 2628-2629, 2742-2744, 3160.

On October 14, 2018, petitioner arrived at Brittney's home at Fort Campbell, shot her three times in the head and chest, and shot her boyfriend once in the leg. Pet. App. 4a. Neighbors and medical professionals attempted to save Brittney. *Id.* at 2a-3a. They were unsuccessful. *Id.* at 3a.

2. A grand jury in the Western District of Kentucky indicted petitioner on one count of first-degree murder within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 1111(b); one count of attempted murder within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 1113; one count of domestic violence resulting in death within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 2261(a)(1) and (b)(1); one count of violating a protection order resulting in death within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. 2262(a)(1) and (b)(1); one count of possessing a firearm while subject to a domestic-violence restraining order, in violation of 18 U.S.C. 922(g)(8); one count of murder by discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii) and (j)(1); and one count of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(iii). Pet. App. 4a.

Before trial, the government moved the district court to take judicial notice that Brittney's home at Fort Campbell lay in the United States' special maritime and

territorial jurisdiction. Pet. App. 5a. In particular, it asked the court to notice that Fort Campbell, and thus Brittney's home, lay on "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). Petitioner opposed, arguing that Fort Campbell's jurisdictional status was a question of fact for a jury to decide. Pet. App. 5a. At a hearing, the court heard from government witnesses and reviewed documents concerning the government's acquisition of the land underlying Fort Campbell from Kentucky and its acceptance of jurisdiction over that land. *Id.* at 5a-6a; see 40 U.S.C. 3112(b); *Paul* v. *United States*, 371 U.S. 245, 264-266 (1963) (discussing the process by which the federal government may acquire and gain jurisdiction over lands held by a State). The court then granted the government's motion for judicial notice. Pet. App. 6a.

At trial, the district court instructed the jury that the offenses requiring commission within the special maritime and territorial jurisdiction of the United States needed to be supported by a finding beyond a reasonable doubt of where the offenses occurred. Pet. App. 6a Having taken judicial notice that Fort Campbell and Brittney's home, which the court identified by its address, fell within the special maritime and territorial jurisdiction of the United States, the court instructed the jury that the address "is located within the special maritime and territorial jurisdiction of the United States." *Ibid.* The court then explained to the jury that, if it found "beyond a reasonable doubt that" petitioner's

crimes "occurred at" that address, "that [was] sufficient to find that [the crimes] occurred within the special maritime and territorial jurisdiction of the United States." *Ibid.*; see *id.* at 7a (noting that the court specified that this instruction applied to the murder, attempted murder, domestic violence, and protection order charges).

The jury found petitioner guilty on all seven counts. Pet. App. 10a. The district court sentenced petitioner to a term of life imprisonment for murdering Brittney, to be followed by a ten-year term of imprisonment for discharging a firearm during the attempted murder of Brittney's boyfriend. *Id.* at 11a.

3. The court of appeals affirmed, finding (*inter alia*) that the district court had permissibly taken judicial notice that Fort Campbell lies within the special maritime and territorial jurisdiction of the United States, while requiring a jury finding beyond a reasonable doubt that the offense occurred there. Pet. App. 1a-38a. The court of appeals explained that a court decides as a matter of law if a particular location lies in the United States' special territorial jurisdiction, *id.* at 27a-28a, while a jury then decides if a defendant's crime occurred at that location and thus if the defendant committed his crime within the United States' special territorial jurisdiction, see *id.* at 25a-26a.

The court of appeals noted that its decision was consistent with other circuits' that had recognized that a location's jurisdictional status is a legal question that turns on legislative facts, Pet. App. 18a-21a—*i.e.*, "universally established facts that do not change from case to case" and are "'decided uniformly'" by a court. *id.* at 17a (citation omitted). And it observed that judicial resolution of such an issue is consistent with this Court's

decisions in *Apprendi* v. *New Jersey*, 530 U.S. 466 (2000), and *United States* v. *Gaudin*, 515 U.S. 506 (1995), which address jury-finding requirements, because the jury makes the ultimate finding of the location of the offense that is necessary to satisfy the jurisdictional element. See Pet. App. 16a, 22a.

Judge Thapar authored an opinion concurring in part and concurring in the judgment, in which he observed that "historical practice supports the majority's conclusion that the district court could take judicial notice that [Brittney's address] fell within the special maritime and territorial jurisdiction of the United States." Pet. App. 53a; see *id.* at 41a-53a. In doing so, Judge Thapar recounted how this Court and other federal courts have long taken judicial notice of facts relating to jurisdictional elements in criminal cases and facts giving rise to admiralty jurisdiction. *Id.* at 43a-47a. He also noted a similar practice in the state courts. *Id.* at 47a-50a.

ARGUMENT

Petitioner contends (Pet. 12-19) that the district court erred in taking judicial notice that Fort Campbell lies within the United States' special maritime and territorial jurisdiction. That contention lacks merit. The courts below correctly treated the scope of federal territorial jurisdiction as a non-case-specific legal question that a court may resolve, while a jury finds the site of a defendant's crime and makes the ultimate finding that a defendant's offense occurred within the United States' special maritime or territorial jurisdiction. The court of appeals' decision is consistent with decisions of this Court, and no conflict exists among the courts of appeals on this issue that would warrant further review. This Court has thus previously and repeatedly denied

petitions for writs of certiorari presenting similar issues. See, *e.g.*, *Banks* v. *United States*, 143 S. Ct. 2568 (2023) (No. 22-6600); *Ray* v. *United States*, 141 S. Ct. 1503 (2021) (No. 20-6414); *Redmond* v. *United States*, 589 U.S. 931 (2019) (No. 18-8719); *Davis* v. *United States*, 574 U.S. 828 (2014) (No. 13-8993). It should follow the same course here.

1. Under the Fifth and Sixth Amendments, a criminal defendant is entitled to "a jury determination that he is guilty of every element of the crime with which he is charged, beyond a reasonable doubt," including "every fact necessary to constitute the crime." *Apprendi* v. *New Jersey*, 530 U.S. 466, 477 (2000) (brackets and citations omitted); see *Alleyne* v. *United States*, 570 U.S. 99, 111 (2013). That determination "includes application of the law to the facts," *United States* v. *Gaudin*, 515 U.S. 506, 513 (1995), but pure "questions of law" are "the province of the court," *Georgia* v. *Brailsford*, 3 U.S. (3 Dall.) 1, 4 (1794). Accordingly, "subject to the qualification that all acquittals are final, the law in criminal cases is to be determined by the court," not the jury. *Sparf* v. *United States*, 156 U.S. 51, 87 (1895) (emphasis omitted); see *Gaudin*, 515 U.S. at 513 (explaining that the court, not jury, determines "pure questions of law in a criminal case") (emphasis omitted). "Any other rule * * * would bring confusion and uncertainty in the administration of the criminal law." *Sparf*, 156 U.S. at 101.

For example, as this Court recognized in *Taylor* v. *United States*, 579 U.S. 301, 308 (2016), "[t]here is no question that the Government in a Hobbs Act prosecution must prove beyond a reasonable doubt that the defendant engaged in conduct that satisfies the Act's commerce element, but the meaning of that element is a

question of law." As a result, although a defendant is entitled to have a jury find that his attempted robbery involved marijuana, it is for the court to determine as a matter of law that robberies involving marijuana "obstruct[], delay[], or affect[] commerce" within the meaning of the Hobbs Act, 18 U.S.C. 1951(a). See *Taylor*, 579 U.S. at 308. Similarly here, although the government here was required to—and did—prove to the jury that petitioner's murder of Brittney and various associated offenses took place at a particular location on Fort Campbell, whether Fort Campbell is in the special maritime or territorial jurisdiction of the United States is a question of law that the courts had authority to answer. See *ibid.*; accord *Gaudin*, 515 U.S. at 513; see also *James* v. *United States*, 550 U.S. 192, 214 (2007) (explaining that the court did not invade the province of the jury when it "avoided any inquiry into the underlying facts of [the] particular offense"), overruled on other grounds in *Johnson* v. *United States*, 576 U.S. 591 (2015).

That approach reflects longstanding differences in the handling of adjudicative and legislative facts. Courts resolve legal questions by relying on "legislative facts," which "have relevance to legal reasoning," Fed. R. Evid. 201 advisory committee's note (2024 Amendments), and "do not change from case to case." *United States* v. *Hernandez-Fundora*, 58 F.3d 802, 812 (2d Cir.) (quoting *United States* v. *Gould*, 536 F.2d 216, 220 (8th Cir. 1976)), cert. denied, 515 U.S. 1127 (1995) (No. 94-9164). Factfinders, meanwhile, find "adjudicative facts," *i.e.*, "the facts of the particular case," Fed. R. Evid. 201 advisory committee's note (1972 Amendments), which "relate to the parties, their activities, their properties, their businesses," *Gould*, 536 F.2d at 219 (quoting 2

Kenneth Culp Davis, *Administrative Law Treatise* § 15.03, at 353 (1958) (Davis)), and use those facts when following a court's instructions to arrive at a verdict.

Although adjudicative facts traditionally are the province of the jury, legislative facts are not. See Pet. App. 16a-18a; *United States* v. *Perez*, 150 F.4th 237, 247-248 (4th Cir. 2025); Davis § 10.6, at 153, 155; see also Pet. App. 43a-52a (Thapar, J., concurring in part and concurring in the judgment). A "jury's role is only to resolve issues of adjudicative fact—those involving the immediate parties." Davis § 10.6, at 153. For example, whether a given activity in the aggregate amounts to interstate commerce involves legislative facts that should be consistent across cases, and thus are found by a court. See *Taylor*, 579 U.S. at 308. Likewise, the question "[w]hether 123 C Street is inside or outside the city" is "not an adjudicative fact" for a jury to answer because it "is a question about 123 C Street, not about a party." Davis § 10.6, at 153, 155; cf. Fed. R. Evid. 201(a) and (f) (requiring that the jury be permitted to disregard judicial notice of adjudicative facts, while specifying that rule does not constrain notice of legislative facts). The similar question here—the legal status of the land on which Brittney's home stood—was similarly legal in nature.

2. As the court of appeals correctly recognized, the territorial jurisdictional element underpinning four of petitioner's convictions involves two separate inquiries. Pet. App. 16a. First, a court must decide the "legal question" of "whether [a] parcel of land falls within the United States' special maritime and territorial jurisdiction," as defined here in Section 7(3). *Ibid.* Second, a jury must then find beyond a reasonable doubt that "the alleged offense occurred within that area" as a factual

matter. *Ibid.* Only after that latter finding may a jury, armed with the court's instruction that a given place falls within the special territorial jurisdiction of the United States, find that a defendant's offense occurred within that jurisdiction. *Id.* at 16a, 27a-28a.

The court of appeals' decision comports with this Court's precedents and ensures consistent treatment of crimes at any particular location. Although the distinction between questions of fact and law sometimes can be "elusive," "the fact/law distinction at times has turned on a determination that, as a matter of the sound administration of justice, one judicial actor is better positioned than another to decide the issue in question." *Miller* v. *Fenton*, 474 U.S. 104, 113-114 (1985). Accordingly, although it might relate to an element of a crime, the scope of federal territorial or legislative jurisdiction is a question of law turning on legislative facts, such as statutes and other legal documents—a task that courts are far "better positioned" than juries to perform, *id.* at 114; see also *Sparf*, 156 U.S. at 101 (stating that courts must decide legal questions to avoid "confusion and uncertainty in the administration of the criminal law"). Indeed, "courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer." *Jones* v. *United States*, 137 U.S. 202, 214 (1890); see *Perez*, 150 F.4th at 247 ("[C]onsidered in its totality, precedent leans heavily one way. Post-*Apprendi* decisions from the Supreme Court, [the Fourth Circuit] and our sister circuits treat jurisdictional status as a legal question.").

As Judge Thapar recognized, history and tradition support judicial resolution of a site's jurisdictional status as a matter of law. Pet. App. 41a-53a. This Court and other federal courts have long taken judicial notice

of the facts that create federal jurisdiction over a piece of land. *Id.* at 43a-47a; see, *e.g.*, *Jones*, 137 U.S. at 211-214, 217, 224. And state courts took the same approach at least as early as 1819. Pet. App. 47a-49a; see, *e.g.*, *People* v. *Godfrey*, 17 Johns. 225 (N.Y. 1819). That long-standing practice makes good sense. It would be highly anomalous for the legal status of land to vary case-by-case or defendant-by-defendant.

3. Petitioner errs in suggesting (Pet. 1, 11-12) that the court of appeals' decision is inconsistent with this Court's decisions in *Apprendi* v. *New Jersey*, *supra*, and *United States* v. *Gaudin*, *supra*, on the theory that it relieved the government of the burden to prove the elements of the crime beyond a reasonable doubt. The district court did not take conclusive judicial notice that petitioner committed his crime within the special maritime and territorial jurisdiction of the United States—the geographic element of his convictions. Instead, the *jury* determined beyond a reasonable doubt that petitioner committed his crimes at a specific location (Brittney's home at Fort Campbell), and the district court simply determined that, as a matter of law, "the special maritime and territorial jurisdiction of the United States" encompassed that specific location. Pet. App. 27a (citation omitted).

That approach comports with *Gaudin*'s and *Apprendi*'s requirement that a jury find each element of an offense. Petitioner errs in asserting (Pet. 18) that *Gaudin* "squarely rejected" an approach akin to the court of appeals' approach here The approach that *Gaudin* rejected was one in which the jury would make subsidiary findings relating to materiality—"'what statement was made'" and "'what decision * * * [an] agency [was] trying to make'" and then leave it for the

judge to determine the "ultimate question" of "'whether the statement was material to the decision.'" *Gaudin*, 515 U.S. at 512. But the fundamental problem with that approach was that the "ultimate" issue that would be determined by a court was one that traditionally fell within the jury's purview. *Ibid.*, see *id.* at 512-515. *Gaudin* itself recognized that courts are entitled to give binding instructions to jurors on purely legal questions, see *id.* at 513, and *Taylor* makes clear that questions of federal legislative jurisdiction that are incorporated into elements of crimes are legal in nature, see 579 U.S. at 308.

To the extent that a parcel of land's jurisdictional status turns on "facts," Pet. 15-16, those facts are legislative facts for a court to determine, Pet. App. 18a; see *Perez*, 150 F.4th at 248-249 (collecting cases for that proposition); see also Pet. App. 43a-52a (Thapar, J., concurring in part and concurring in the judgment). Such historical facts about a parcel of land are "universally established" and "do not change from case to case;" they serve only to answer whether a given *place* falls within the United States' special territorial jurisdiction. Pet. App. 17a. Indeed, these facts "are almost entirely divorced" from the facts underlying a defendant's crime and are "unchanging." *Perez*, 150 F.4th at 249. And submitting such facts to a jury for resolution in every criminal case "would leave open the distinct possibility of conflicting decisions as to federal jurisdiction over an identical piece of property—a status which by its nature either exists or does[not] exist." *Ibid.* (citation omitted).

Petitioner overstates (Pet. 16-17) the concern that a court may wrongly ascertain legislative facts that determine a parcel's jurisdictional status. Should a district

court misapprehend any legislative facts relevant to that inquiry, a court of appeals or this Court remains free to notice the proper facts and overturn de novo the district court's faulty ruling. Cf. *McGirt* v. *Oklahoma*, 591 U.S. 894, 898, 903-938 (2020) (undertaking a similar exercise to overturn a court's recognition that a given parcel of land was "Indian country"). Meanwhile, should new pertinent legislative facts demonstrate that a prior ruling as to a parcel's jurisdictional status is wrong, courts have means to correct such errant rulings, see Fed. R. App. P. 40, including reconsidering their own precedents where appropriate, see *United States* v. *McKee*, 68 F.4th 1100, 1109-1110 (8th Cir. 2023) (considering but rejecting such an argument).

4. Contrary to petitioner's contention (Pet. 19-25), the decision below does not implicate any circuit conflict that would warrant this Court's review. As the court of appeals recognized (Pet. App. 22a-27a), petitioner had not identified any other circuit that would preclude judicial notice of jurisdictional boundaries under circumstances like those presented here. Instead, like the district court here, courts have generally recognized that a court may take judicial notice of the scope of federal territorial jurisdiction. See, *e.g.*, Pet. App. 27a-28a; *Perez*, 150 F.4th at 239; *United States* v. *Love*, 20 F.4th 407, 411 (8th Cir. 2021); *United States* v. *Davis*, 726 F.3d 357, 368 (2d Cir. 2013), cert. denied, 574 U.S. 828 (2014) (No. 13-8993); *United States* v. *Warren*, 984 F.2d 325, 327 (9th Cir. 1993); see also *United States* v. *Bowers*, 660 F.2d 527, 531 (5th Cir. 1981) (per curiam); *United States* v. *Rummell*, 642 F.2d 213, 216 (7th Cir. 1981). And petitioner errs in contending (Pet. 20-21) that the decision below conflicts with decisions of the First, Ninth, and D.C. Circuits.

In *United States* v. *Bello*, 194 F.3d 18 (1999), for example, the First Circuit disapproved of courts' taking binding judicial notice of territorial boundaries, but it did so without adversary briefing and in a manner that does not conflict with the result here. In *Bello*, at the request of prosecutors, the district court took judicial notice that a prison fell within the special maritime and territorial jurisdiction of the United States using the procedures in Federal Rule of Evidence 201 governing notice of adjudicative facts, including instructing the jury that the judicial notice was not binding. *Id.* at 23-24. The court of appeals rejected the defendant's claims that the district court took judicial notice in a manner that violated Rule 201 or the Constitution, and it affirmed the conviction. *Ibid.* Although it stated that it agreed with the parties' assumption that "[w]here the prison sits is * * * unquestionably an adjudicative fact" that could be noticed only in the non-binding manner authorized under Rule 201, *id.* at 23, that statement was made without the benefit of adversarial briefing—the parties in *Bello* "assumed" that Rule 201 applied, and simply disputed whether the district court had complied with the rule, *id.* at 22—and was unnecessary to the judgment. The court also expressly noted that it "remain[ed] unsettled" whether Rule 201(g)'s procedures for non-binding notice were constitutionally required. *Id.* at 26 n.10; see also *United States* v. *Vázquez-Rijos*, 119 F.4th 94, 115 n.17 (1st Cir. 2024) (noting that the concept of an "[a]djudicative fact" is a "fuzzy concept") (citation omitted; brackets in original). *Bello*'s affirmance of the conviction in that case would therefore not preclude a future First Circuit panel from affirming a conviction in a case like this.

Likewise, as the court of appeals explained, Pet. App. 25a-26a, its decision does not conflict with the D.C. Circuit's opinion in *United States* v. *Khatallah*, 41 F.4th 608 (2022) (per curiam), cert. denied, 143 S. Ct. 2667 (2023). The conviction in *Khatallah* required the jury to find that the defendant had damaged a building in the special territorial jurisdiction of the United States, 18 U.S.C. 1363, which—if the offense were "committed by or against a national of the United States," 18 U.S.C. 7(9)(A)—would include "premises of U.S. diplomatic * * * '[m]issions.'" *Khatallah*, 41 F.4th at 624 (citation omitted). But the district court failed to instruct the jury that it had to find that "the crime in question [was] committed 'by or against a national of the United States.'" *Id.* at 628 (citation omitted). Unlike the generalizable issue of the legal status of a particular location, that issue encompasses adjudicative facts, like the identity of the crime victim, and the government conceded that the omission was erroneous, *ibid.* No analogous error occurred here—the district court did not, for example, fail to instruct the jury that it must find that petitioner's crime took place on the grounds of Fort Campbell. And *Khatallah*—which supports only the uncontroversial idea that juries must consider adjudicative facts relevant to the circumstances of the offense at issue, see Pet. App. 25a-26a (agreeing)—would not require a finding of error here. See *ibid.*

Nor, as the court of appeals recognized (Pet. App. 22a-23a), would the Ninth Circuit's decision in *United States* v. *Read*, 918 F.3d 712 (2019), require a new trial in these circumstances. *Read* noted that "[t]he existence of federal jurisdiction over the place in which the offense occurred" is an element of the offense that the government must prove beyond a reasonable doubt. *Id.*

at 718. But as the court of appeals here observed, "the *Read* court did not, at least not clearly, decide the issue of whether a judge may determine the existence of special maritime or territorial jurisdiction and take judicial notice of that fact where the government's evidence of jurisdiction is contested," while—as here—leaving the location of the offense as a question to the jury. Pet. App. 23a-24a. If *Read* had foreclosed that approach, then it would have silently altered prior Ninth Circuit precedent allowing it, see *e.g.*, *Warren*, 984 F.2d at 327 ("A district court 'may determine as a matter of law the existence of federal jurisdiction over the geographic area, but the locus of the offense within that area is an issue for the trier of fact.'") (citation omitted). The Ninth Circuit could accordingly "reconsider *Read* in an appropriate case," *United States* v. *Banks*, No. 20-50175, 2022 WL 3278942, at *4 (9th Cir. Aug. 11, 2022) (Koh, J., concurring), cert. denied, 143 S. Ct. 2568, and 143 S. Ct. 2569 (2023); see *id.* at *3 n.3 (questioning *Read*'s relation to earlier case law such as *Warren*). And in the meantime, the Ninth Circuit appears to continue to allow judicial notice of territorial status. See, *e.g.*, *United States* v. *Redmond*, 748 Fed. Appx. 760 (2018) (taking judicial notice that a particular federal penitentiary was within the territorial jurisdiction of the United States), cert. denied, 589 U.S. 931 (2019).

Finally, the Third and Fifth Circuit decisions that petitioner cites (Pet. 21-22) also do not conflict with the decision below. The Fifth Circuit's decision in *United States* v. *Perrien*, 274 F.3d 936 (2009) (per curiam), affirmed a conviction and did not address whether a territorial element requires that a jury find not only the location of a crime, but also a parcel's jurisdictional status. See *id.* at 939 & n.1. And, as petitioner acknow-

ledges (Pet. 22 n.6), the Fifth Circuit has in unpublished decisions recognized that "[a] district court may take judicial notice of the legislative fact that a federal installation is under federal jurisdiction." Pet. App. 22a n.4 (quoting *United States* v. *Styles*, 75 Fed. Appx. 934, 935 (5th Cir. 2003)) (per curiam) (brackets in original). As for the Third Circuit, its statement that Federal Rule of Evidence 201(f) allows juries to "disregard a judicially noticed 'fact,'" *United States* v. *Thomas*, 610 F.2d 1166, 1171 n.10 (1979) (per curiam), concerns noticing of adjudicative facts—not legislative facts relevant to interpreting such elements, see Fed. R. Evid. 201(a) ("This rule governs judicial notice of an adjudicative fact only, not a legislative fact.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2025