No. 25-

IN THE

Supreme Court of the United States

JESSE FERNANDO PEREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Dozens of federal offenses require, as a jurisdictional element, that the offense be committed "within the special maritime and territorial jurisdiction of the United States." Is the status of a particular physical location under this language (i) a question of fact that must be proven beyond a reasonable doubt to the fact-finder or (ii) a question of law that may be answered through judicial notice?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, appellant below, is Jesse Fernando Perez.

Respondent, appellee below, is the United States of America.

No corporate parties are involved in this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the District Court for the Eastern District of Virginia and the Court of Appeals for the Fourth Circuit:

United States v. *Perez*, No. 24-4039 (4th Cir. Aug. 12, 2025); and

United States v. *Perez*, No. 3:23-cr-00019 (E.D. Va. Oct. 25, 2023).

No other proceedings directly relate to this case.

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

CONSTITUTION and STATUTES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner Jesse Fernando Perez respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 150 F.4th 237 and is reproduced in the appendix to this petition at Pet. App. 1a–59a. The district court's unreported opinion is available at 2023 WL 7027501 and is reproduced at Pet. App. 60a–69a.

JURISDICTION

The Fourth Circuit entered judgment on August 12, 2025. Pet. App. 1a. Mr. Perez filed a timely petition for rehearing, which the Fourth Circuit denied on September 23, 2025. Pet. App. 70a. The Chief Justice then extended the time to file this petition to February 20, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides, as relevant, that "No Person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

The Sixth Amendment provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." U.S. Const. amend. VI.

18 U.S.C. § 1466A(a)(1) criminally punishes:

> Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that . . . (A) depicts a minor engaging in sexually explicit conduct; and (B) is obscene . . . .

18 U.S.C. § 1466A(b)(1) criminally punishes:

> Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that . . . (A) depicts a minor engaging in sexually explicit conduct; and (B) is obscene . . . .

18 U.S.C. § 1466A(d)(5) provides:

> The circumstance referred to in subsections (a) and (b) is that . . . (5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

18 U.S.C. § 7(3) provides:

> The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes: . . . (3) 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.

40 U.S.C. § 3112 provides:

> (a) Exclusive Jurisdiction Not Required.—

It is not required that the Federal Government obtain exclusive jurisdiction in the United States over land or an interest in land it acquires.

(b) Acquisition and Acceptance of Jurisdiction.—

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.

(c) Presumption.—

It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

INTRODUCTION

This petition "presents a difficult question that appears to be recurring," Pet. App. 34a (Wynn, J., concurring), on which "there are cases from the other courts of appeals pointing in different directions," *id.* at 40a (Harris, J., concurring in part and dissenting in part). That question is whether a particular physical location's status as within the "special maritime and territorial jurisdiction of the United States"—as

required to establish the jurisdictional element of many federal offenses—must be proved to the factfinder beyond a reasonable doubt. In the splintered decision below, the Fourth Circuit joined four other circuits in answering no: These courts treat this question as a purely legal one that can be answered through judicial notice of legislative facts. Three other circuits, however, say yes: Jurisdictional status must be proved in the same way as any other offense element.

The latter camp is correct, as Judge Harris explained in dissent below. The Fifth and Sixth Amendments impose on the government the burden of proving "all elements of the offense charged" and of "persuad[ing] the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements." *Sullivan* v. *Louisiana*, 508 U.S. 275, 277–78 (1993); *Apprendi* v. *New Jersey*, 530 U.S. 466, 477 (2000). This burden applies equally to jurisdictional elements. *Luna Torres* v. *Lynch*, 578 U.S. 452, 467 (2016). "Special maritime and territorial jurisdiction" is a jurisdictional element. The Fourth Circuit majority erred in asserting that "jurisdictional status" is uniquely exempt from the Constitution's mandates.

The majority likewise erred—again in conflict with other circuits—in concluding that all the messy facts relevant to jurisdictional status are judicially noticeable. Jurisdictional status turns on whether and when (1) the federal government acquired the land in question; (2) the state consented to federal jurisdiction, or ceded its own; and (3) the federal government accepted jurisdiction. Answering these questions is a complex, fact-intensive inquiry, as this case shows: The government submitted more than 300 pages of documents—including "non-public documents like letters, internal government memoranda, deeds, and the work of private land surveyors," which were "never presented to

a trial court, authenticated, or admitted into evidence," Pet. App. 47a n.5, 54a—to try to prove that the wing of the federal prison where Mr. Perez committed his offense is within the United States' special jurisdiction. As other courts have held or suggested, the attributes of a specific location where a particular offense occurred are adjudicative facts, not legislative ones, so they must be proved to the factfinder.

This case presents an ideal vehicle to address these important and recurring issues.

STATEMENT OF THE CASE

1. Mr. Perez was indicted for producing and possessing obscene virtual representations of the sexual abuse of children in violation of 18 U.S.C. § 1466A(a)(1) and (b)(1) in connection with acts committed while incarcerated at Federal Correctional Institution Petersburg. Joint Appendix, *United States* v. *Perez*, No. 24-4039 (4th Cir. filed July 26, 2024), Dkt. 25 ("JA") 10–11. Section 1466A requires the government to prove at least one of five enumerated "circumstance[s]," which serve as jurisdictional elements. 18 U.S.C. § 1466A(a), (b), (d). One jurisdictional element alleged was that "the offense [was] committed in the special maritime and territorial jurisdiction of the United States." *Id.* § 1466A(d)(5); JA 10–11. This element requires "(1) federal acquisition of the property; (2) state consent to federal, or cession of its own, jurisdiction; and (3) federal acceptance of jurisdiction." Pet. App. 28a.

Mr. Perez waived the right to a jury trial. JA 30. At a bench trial, the government called a witness to prove that FCI Petersburg was within the "special maritime and territorial jurisdiction of the United States," but the witness merely confirmed that the inmates are "generally federal inmates serving federal sentences."

JA 60. The district court nevertheless deemed this sufficient to prove § 1466A's federal territorial jurisdictional element and found Mr. Perez guilty. JA 127–128.[1]

After trial, Mr. Perez moved for a judgement of acquittal under Federal Rule of Criminal Procedure 29, arguing that the government's evidence was insufficient to prove the federal territorial jurisdictional element as to FCI Petersburg. JA 181–187. In response, the government defended the sufficiency of the evidence presented at trial but, attaching three historical documents, argued in the alternative that the court could take judicial notice of the prison's jurisdictional status. JA 189–198.

The court denied Mr. Perez's motion, holding both that it could "take judicial notice that the federal government has jurisdiction over FCI Petersburg and that the trial evidence was sufficient to establish the jurisdictional element required for a conviction under § 1466A(d)(5)." Pet. App. 62a. Mr. Perez was sentenced to 180 months' imprisonment. JA 211.

2. On appeal, Mr. Perez argued both that the evidence was insufficient to prove the special territorial circumstance and that the district court improperly took judicial notice of FCI Petersburg's jurisdictional status. Pet. App. 8a. While the appeal was pending, the government moved the Fourth Circuit to "judicially notice roughly 300 pages of deeds, charts,

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[1] The government also alleged that the obscene virtual depictions were "produced using" equipment (the prison copier) "that [was] shipped and transported in interstate and foreign commerce." JA 10–11; *see* 18 U.S.C. § 1466A(d)(4). However, the district court found that the government failed to prove interstate shipment as to the copier (as opposed to its document feeder, which Mr. Perez did not use). JA 126–127.

government reports and Virginia statutes—not introduced at trial—that it argue[d] establish FCI Petersburg's federal territorial jurisdictional status." *Id.*

In a fractured decision with three separate opinions, the Fourth Circuit did not reach the sufficiency-of-the-evidence argument, instead rejecting Mr. Perez's judicial-notice argument. It held that a "location's jurisdictional status is a legal question for the court," and that, "because the facts informing jurisdictional status are legislative in nature, the court can notice them." Pet. App. 4a, 9a.

The majority conceded that "the jurisdictional element of a criminal statute 'must be proved to a jury beyond a reasonable doubt.'" Pet. App. 9a (quoting *Luna Torres*, 578 U.S. at 467). Yet it asserted that such an element can be "bifurcat[ed] . . . into a fact-conduct component and a legal-status component." *Id.* at 11a. On this view, the factfinder need only find beyond a reasonable doubt that "the defendant committed the offense at a particular location." *Id.* at 9a. The court may then find that such a location does or does not satisfy the jurisdictional element. *Id.*

The majority continued by noting that, "[e]ven though a location's jurisdictional status is a question of law for a court, facts underlie that determination." Pet. App. 19a. But, the court said, just because "facts are involved does not necessarily mean that the factfinder must decide them"; rather, that question turns on whether the facts are "adjudicative" or "legislative." *Id.* Adjudicative facts, the court said, address "who did what, where, when, how, and with what motive or intent." *Id.* Under Federal Rule of Evidence 201, "courts may notice adjudicative facts only in particular circumstances and must instruct a criminal jury 'that it may or may not accept the noticed fact as conclusive.'" *Id.* at 19a–20a (quoting Fed. R. Evid. 201(f)). And—

acknowledging that at least one other circuit "disagree[s]"—the majority held that legislative facts are those that "involve established truths, facts or pronouncements that do not change from case to case but apply universally." *Id.* at 20a–22a (cleaned up).

Under these definitions, the Fourth Circuit held that the facts underlying the federal territorial jurisdictional element are legislative and thus could be judicially noticed outside the strictures of Rule 201. Pet. App. 27a. And a "court may notice a legislative fact and charge a criminal jury with accepting its truth," or may notice such a fact on appeal. *Id.* at 20a. The majority nevertheless vacated the judgment and remanded because the district court had looked merely for "practical usage and dominion exercised over the federal establishment by the United States" instead of applying the three-prong jurisdictional test required by the statute. See *id.* at 30a–31a, 68a (cleaned up).

Concurring, Judge Wynn "emphasize[d] that [his] concurrence hinge[d] on the fact that this matter was tried as a bench trial, not before a jury." Pet. App. 33a. He reasoned that, given "'the jury's constitutional responsibility . . . not merely to determine the facts, but apply the law to those facts and draw the ultimate conclusion of guilt or innocence,'" he "doubt[ed] that [the court] could remand this case without infringing upon Perez's Sixth Amendment right to trial by jury." *Id.* (quoting *United States* v. *Gaudin*, 515 U.S. 506, 514 (1995)). He also agreed with Judge Harris that "this appeal presents a difficult question that appears to be recurring." *Id.* at 34a; see also *id.* at 40a.

Concurring in part and dissenting in part, Judge Harris offered a simpler rule: "Under the Constitution, any fact necessary to establish an element of a crime, jurisdictional or otherwise, must be proven by the government at trial beyond a reasonable doubt."

Pet. App. 40a. Judge Harris acknowledged "that at least three circuits have adopted the approach of the government and the majority," but she "would follow the First Circuit" in holding otherwise. See *id.* In particular, she explained, some aspects of the jurisdictional inquiry "call for findings of fact," like "whether the government acquired the property on which FCI Petersburg sits, and if so, when that acquisition occurred, because the timing may be critical to whether jurisdiction has been accepted." *Id.* at 44a. "What the government did and when it did it—those are fact questions, not questions of law." *Id.*

And, Judge Harris explained, those fact questions cannot be resolved through judicial notice: The government's and the majority's approach has no stopping point. Pet. App. 50a–55a. The better view, taken by the First Circuit, "deem[s] 'adjudicative' the same facts that must be found by a jury beyond a reasonable doubt under the Fifth and Sixth Amendments—those necessary to satisfy an element of the offense." *Id.* at 57a. Judge Harris concluded:

> The prosecution was required by the Constitution to prove at trial, beyond a reasonable doubt, all facts necessary to satisfy the jurisdictional element of the offense with which Perez was charged. It tried to do so and failed twice over. As a result, Perez is entitled to a judgment of acquittal.

Id. at 59a.

The Fourth Circuit denied Mr. Perez's timely petition for rehearing *en banc*. *Id.* at 70a.

REASONS FOR GRANTING THE PETITION

I. There is an open, acknowledged split on the question presented.

A. At least three circuits hold that the fact-finder must find the facts underlying a jurisdictional determination.

The First, Ninth, and D.C. Circuits have all held (and the Third Circuit has suggested) that a jurisdictional element of a criminal offense must be proven beyond a reasonable doubt to the factfinder.

The First Circuit considered the same federal territorial jurisdictional element as here, holding that "the fact that [the] MDC Guaynabo [prison] is under the exclusive jurisdiction of the United States" is "an adjudicative fact rather than a legislative fact." *United States* v. *Bello*, 194 F.3d 18, 21–22 (1st Cir. 1999). The court focused "not on the nature of the fact—*e.g.*, who owns the land—but rather on the use made of it (*i.e.*, whether it is a fact germane to what happened in the case or [more] useful in . . . interpreting a statute)." *Id.* at 22. The court recognized that "the same fact can play either role depending on context." *Id.* In this context—where the prison's jurisdictional status was "an element of the offense"—the status of the prison was "unquestionably an adjudicative fact." *Id.* at 23. Since the status of the prison was an adjudicative fact, the First Circuit only affirmed the defendant's conviction because the district court had complied with the requirements of Rule 201 by instructing the jury that its judicial notice was not conclusive. *Id.* at 24–25; see also Pet. App. 22a (the majority below "disagree[ing] with the First Circuit's approach" in *Bello*).

The Ninth Circuit, considering the same federal territorial jurisdictional element in an assault case, held that the "existence of federal jurisdiction over the

place in which the offense occurred is an element of the offenses defined at 18 U.S.C. § 113(a), which must be proved to the jury beyond a reasonable doubt." *United States* v. *Read*, 918 F.3d 712, 718 (9th Cir. 2019). In addressing evidentiary sufficiency, the Ninth Circuit discussed the kinds of evidence prosecutors use to prove the jurisdictional element to the "jury," or "trier of fact," *e.g.*, "historical documents" and "uncontradicted testimony." *Id.* In holding that the evidence presented at trial was sufficient, the Ninth Circuit thus recognized that such a question was one for the jury, not the judge. *Id.*

The D.C. Circuit reached the same conclusion when considering the identical federal territorial jurisdictional element in a terrorism-related conviction under 18 U.S.C. § 1363. *United States* v. *Khatallah*, 41 F.4th 608, 624, 628 (D.C. Cir. 2022) (per curiam). The government relied on the fact that the defendant had committed his offense "'against a national of the United States' on the premises of U.S. diplomatic facilities abroad" to prove the offense was committed within the "special maritime and territorial jurisdiction of the United States." *Id.* at 624 (quoting 18 U.S.C. §§ 7(9), 1363). But the district court failed to instruct the jury that the government was required to prove the defendant had committed the offense "against a national of the United States." *Id.* at 628. The D.C. Circuit held that the "instructions were therefore erroneous: they omitted a factual element that the jury had to find in order to convict [the defendant]." *Id.* The government "had to prove, and the jury had to find beyond a reasonable doubt, that the [offense] occurred within [the] special jurisdiction" of the United States. *Id.*

The Third Circuit has also suggested that all facts underlying jurisdictional elements must be found by the jury beyond a reasonable doubt: "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." *United States* v. *Thomas*, 610 F.2d 1166, 1171 n.10 (3d Cir. 1979) (per curiam).

B. Five circuits allow judges, not jurors, to decide the offense location's status.

On the other side of the split stand the Second, Sixth, Eighth, and Tenth Circuits, now joined by the Fourth Circuit below.

In a case involving the federal territorial jurisdictional element in the assault provision at 18 U.S.C. § 113(a), the Second Circuit held that it was appropriate for the district court to "remov[e] from the jury's consideration the issue whether [FCI] Raybrook was within the special maritime and territorial jurisdiction of the United States" while "reserv[ing] for the jury the question whether the assault occurred at [FCI] Raybrook." *United States* v. *Hernandez-Fundora*, 58 F.3d 802, 810 (2d Cir. 1995). The court went so far as to approve taking "judicial notice of federal jurisdiction over particular lands where the prosecution *has not offered direct evidence* on the issue." *Id.* at 811 (emphasis added). This was because "whether the federal government had accepted jurisdiction" was, in the court's view, a "question of law." *Id.* at 810 (cleaned up).

Turning to the adjudicative/legislative-fact distinction, the Second Circuit used a nature-of-the-fact approach: "Unlike an adjudicative fact, [the existence of federal jurisdiction over a particular place] does not change from case to case but, instead, remains fixed." *Id.* at 812. Thus, the court concluded that "the jurisdictional issue in this case is premised upon a determination of legislative, rather than adjudicative, facts

to which Rule 201, including Rule 201(g), is inapplicable." *Id.*; see also *United States* v. *Davis*, 726 F.3d 357, 367–70 (2d Cir. 2013) (reaffirming *Hernandez-Fundora* after *United States* v. *Gaudin*, 515 U.S. 506 (1995), and *Apprendi* v. *New Jersey*, 530 U.S. 466).

The Sixth Circuit recently joined this side of the split in *United States* v. *Silvers*, 129 F.4th 332 (6th Cir. 2025). The court acknowledged that "each essential element of a crime with which a criminal defendant is charged"—including the same federal territorial jurisdictional element as here—"must be proven to a jury beyond a reasonable doubt." *Id.* at 342. Yet the court concluded that "whether the parcel of land falls within the United States' special maritime and territorial jurisdiction" is a "legal question, one which turns on legislative, not adjudicative, fact." *Id.* The court distinguished the former from the latter by holding that "adjudicative facts relate to the particular facts of a specific case while legislative facts relate to universally established facts that do not change from case to case." *Id.* at 343.

The Eight Circuit, in another case involving the federal territorial jurisdictional element in the assault-provision 18 U.S.C. § 113(a), likewise held that, because "federal jurisdiction over a particular place is a question of law," 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." *United States* v. *Love*, 20 F.4th 407, 411–12 (8th Cir. 2021). According to the Eighth Circuit, the "facts that resolve the special maritime and territorial jurisdiction question are legislative, not adjudicative." *Id.* at 411. As to the distinction, the Eighth Circuit held that legislative facts are "universal truth[s]," while adjudicative facts "concer[n] the

immediate parties who did what, where, when, how, and with what motive or intent." *Id.* at 411. Moreover, even if the district court had improperly "review[ed] materials outside the evidence and not identif[ied] them," the Eighth Circuit itself could "tak[e] judicial notice of special maritime and territorial jurisdiction over the" site of the crime for the first time on appeal. *Id.* at 412.

The Tenth Circuit has held generally that while "whether the locus of the offense is within [the statutorily defined] area is an essential element that must be resolved by the trier of fact," the "court may determine, as a matter of law, the existence of federal jurisdiction over a geographic area." *United States* v. *Prentiss*, 206 F.3d 960, 967 (10th Cir. 2000), *reheard en banc on other grounds*, 256 F.3d 971 (July 12, 2001); see also *United States* v. *Roberts*, 185 F.3d 1125, 1139 (10th Cir. 1999).

The Fourth Circuit recognized that its decision placed it on this side of the split. Pet. App. 22a–23a. It held that "a factfinder assesses, as a factual matter, whether the defendant undertook activity 'xyz.' But a court determines whether activity 'xyz' affects commerce" or whether the locus of the crime was within federal territorial jurisdiction. *Id.* at 10a–11a. And the court's opinion held that the jurisdictional question "involves legislative facts—which may be judicially noticed." *Id.* at 27a.

II. The question presented is important and recurring.

As the judges below recognized, the question presented here is "difficult" and "recurring." Pet App. 34a (Wynn, J., concurring); *id.* at 59a (Harris, J., concurring in part and dissenting in part). It is also hugely important. Whether a jurisdictional element and the

underlying facts must be proved to the factfinder beyond a reasonable doubt relates to practically every federal criminal trial. Congress's enumerated powers make jurisdictional elements a ubiquitous feature of federal offenses. "'Congress cannot punish felonies generally,'" but instead "may enact only those criminal laws that are connected to one of its constitutionally enumerated powers, such as the authority to regulate interstate commerce." *Luna Torres*, 578 U.S. at 457 (citation omitted). Thus "most federal offenses include, in addition to substantive elements, a jurisdictional one." *Id.*

Examples of jurisdictional elements include whether an offense occurred "in Indian country," *e.g.*, 18 U.S.C. § 1169 (failure to report child abuse), whether a bank is FDIC-insured, *e.g.*, 18 U.S.C. § 1344 (bank fraud), whether a firearm or ammunition was "possess[ed] in or affecting commerce," *e.g.*, 18 U.S.C. § 922(g), and a victim's status as Indian or non-Indian, *e.g.*, 18 U.S.C. § 1152. Every day, jurors sort through evidence—official records, serial numbers, maps, and more—to determine whether the government has proved beyond a reasonable doubt the jurisdictional element of the offense. See, *e.g.*, *United States* v. *Schultz*, 17 F.3d 723, 726–27 (5th Cir. 1994) (evidence included FDIC certificate of insurance). Where the government fails to provide the factfinder with enough evidence from which it could conclude that the jurisdictional elements is satisfied, a conviction cannot stand. *Id.* at 725–28. A location's status as within or without the special maritime or territorial jurisdiction of the United States should be no different.

Yet the Second, Fourth, Sixth, and Eighth Circuits have created an exception for a single species of jurisdictional elements: whether the offense conduct occurred within "the special maritime and territorial

jurisdiction of the United States." Dozens of federal criminal offenses contain this jurisdictional element. See 18 U.S.C. § 113 (assault); *id.* § 1113 (attempted murder); *id.* § 1112 (manslaughter); *id.* § 1111 (murder); *id.* § 956 (conspiracy to kill, kidnap, maim, or injure); *id.* § 81 (arson); *id.* § 662 (receipt of stolen property); *id.* § 2111 (robbery); *id.* § 661 (larceny); *id.* § 1363 (destruction of property); *id.* § 1201 (kidnapping); *id.* § 2261A (stalking); *id.* § 2261 (interstate domestic violence); *id.* § 117 (repeat domestic violence); *id.* § 2262 (violation of a protection order); *id.* § 116 (female genital mutilation); *id.* § 114 (maiming); *id.* § 2243 (sexual abuse of a minor, ward, or individual in federal custody); *id.* § 2244 (abusive sexual contact); *id.* § 2242 (sexual abuse); *id.* § 1591 (child sex trafficking); *id.* § 2422 (sex trafficking of minors); *id.* § 2425 (transmission of information about a minor to induce their engagement in sexual activity); *id.* § 2252 (child pornography); *id.* § 2252A (similar); *id.* § 1466A (obscene visual representations of children); § 2241 (aggravated sexual assault); *id.* § 2426 (repeat sex offenders); *id.* § 1460 (possession of obscene material with an intent to sell); *id.* § 2332b (international terrorism); *id.* § 831 (transactions involving nuclear materials); *id.* § 931 (possession of body armor by violent felons); *id.* § 48 (animal crushing); *id.* § 1801 (video voyeurism); *id.* § 2318 (trafficking counterfeit and illicit labels); *id.* § 1957 (money laundering); *id.* § 1025 (false pretenses on the high seas).

In fiscal year 2024 alone, there were at least 1,349 convictions—resulting in 5,223 years of imprisonment—for offenses that must have occurred within the "special maritime and territorial jurisdiction of the United States," according to data from the United

States Sentencing Commission.[2] In the same year, there were 3,879 convictions—resulting in 38,601 years of imprisonment—for offenses for which being in the "special maritime and territorial jurisdiction of the United States" was either a necessary jurisdictional element or one of several possible jurisdictional elements. See *supra* n.2. *Id.* As a percentage, that comprises approximately 6.3 percent—more than 1 for every 20 cases—of all federal felony and gross misdemeanor cases. *Id.* The upshot: there presently exists an uneven (and unprincipled) treatment of jurisdictional elements among the courts of appeals infecting the corpus of federal criminal law and warranting the Court's intervention.

III. The Fourth Circuit's decision is wrong.

The Fourth Circuit's decision contravenes the Constitution, this Court's precedents, and Federal Rule of Evidence 201. The facts of this case aptly show why the factfinder must determine whether a particular place falls within or without "the special maritime or territorial jurisdiction of the United States."

1. The Fifth and Sixth Amendments impose on the government the burden of proving "all elements of the offense charged" and of "persuad[ing] the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements." *Sullivan*, 508 U.S. at 277–78; accord *Gaudin*, 515 U.S. at 510, 514; see

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[2] U.S. Sent'g Comm'n, *Individual Datafiles for FY2024*, https://shorturl.at/YQiyo (last visited Feb. 6, 2026) (Filters: NWSTAT1-NWSTAT18 to include references to statutes requiring special maritime or territorial jurisdiction as an element with no alternatives as statute of conviction; SENTTOT for sentence of imprisonment); U.S. Sent'g Comm'n, *Variable Codebook for Individual Datafiles*, 42, 53 (June 10, 2025), https://shorturl.at/nmPgb (defining variables).

also *Apprendi*, 530 U.S. at 477. As Judge Harris noted below, "the constitutional requirement that a fact-finder (a jury, or, at a bench trial, a judge) must find a defendant guilty of every element of the crime extends to 'the *facts* necessary to establish each of those elements.'" Pet. App. 41a (Harris, J., concurring in part and dissenting in part) (emphasis added) (quoting *Sullivan*, 508 U.S. at 278). It is "the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts"—that is "the existence of an element of the crime"—"beyond a reasonable doubt." *Ct. of Ulster Cnty.* v. *Allen*, 442 U.S. 140, 156 (1979).

These principles apply to *all* elements of a federal criminal offense. Here, Mr. Perez's charged offenses require, as a statutory element, that the conduct took place within "the special maritime and territorial jurisdiction of the United States." JA 10–11; 18 U.S.C. § 1466A(a), (b), & (d)(5). As this Court has explained, both substantive elements and jurisdictional elements—like the one here—"must be proved to a jury beyond a reasonable doubt." *Luna Torres*, 578 U.S. at 467.

This Court's decision in *United States* v. *Jackalow*, 66 U.S. 484 (1861), illustrates the point. That case involved a criminal-venue challenge to a federal piracy prosecution. *Id.* at 485. The "material question" was "whether or not the offense was committed out of the jurisdiction of any particular State." *Id.* at 486. The jury determined in a special verdict where the vessel was at the relevant time, without determining "[w]hether this *place* thus described is out of the jurisdiction of a State or not." *Id.* at 487. That was not enough, this Court held, because though "[t]he description of a boundary may be a matter of construction, which belongs to the court," "the application of the evidence in the ascertainment of it as thus described and

interpreted, with a view to its location and settlement, belongs to the jury. All the testimony bearing upon this question, whether of maps, surveys, practical location, and the like, should be submitted to them under proper instructions to find the fact." *Id.* at 487–88. Likewise here, a jury must not only decide where a defendant physically committed his offense, but also must apply the law to determine that that place satisfies the offense's jurisdictional element.

The Fourth Circuit majority purported to agree "that the jurisdictional element of a criminal statute 'must be proved to a jury beyond a reasonable doubt.'" Pet. App. 9a (quoting *Luna Torres*, 578 U.S. at 467). And it agreed that the government failed to prove that element at trial. See *id.* at 30a. As Judge Harris concluded, this failure "to prove at trial, beyond a reasonable doubt, all facts necessary to satisfy the jurisdictional element of the offense with which Perez was charged . . . entitle[s him] to a judgment of acquittal." *Id.* at 59a (Harris, J., concurring in part and dissenting in part).

The majority tried to escape this conclusion by asserting the required jurisdictional element could be "bifurcate[ed] . . . into a fact-conduct component"—"that the defendant committed the offense at a particular location"—"and a legal-status component"—"that location's jurisdictional status." Pet. App. 9a–11a. The latter question, according to the majority, "is a legal question for the court," thus removed from the fact-finder. *Id.* at 9a. In reaching this conclusion, the majority did not meaningfully analyze this Court's precedents requiring that every element of a crime be proved to a jury at trial beyond a reasonable doubt.

Instead, the Court based its conclusion on a misreading of *Taylor* v. *United States*, 579 U.S. 301 (2016)—a case that does not discuss the Fifth or Sixth

Amendments at all. Pet. App. 9a–10a. *Taylor* involved the commerce element of a Hobbs Act robbery prosecution. The Fourth Circuit majority asserted: "*Taylor* tells us a factfinder assesses, as a factual matter, whether the defendant undertook activity 'xyz.' But a court determines whether activity 'xyz' affects commerce." *Id.* at 10a–11a. As the dissent pointed out, however, what *Taylor* actually established was that "the government must prove at trial all facts necessary to show a defendant's conduct satisfies the commerce element of the Hobbs Act." *Id.* at 42a (Harris, J., concurring in part and dissenting in part). On the other hand, the "'*meaning* of that element'—the kind of impact on interstate commerce required—is a question of law." *Id.* (quoting *Taylor*, 579 U.S. at 308). In other words, this Court treated as a question of law only "what the Government must prove to satisfy" an element of a crime—not whether it has done so in a specific case. *Taylor*, 579 U.S. at 302. And, here, the government below agreed that the court decides the "legal meaning" of the "interstate commerce" "jurisdictional element" but "the factfinder alone" must apply the facts to that meaning. Letter Correcting Oral Argument at 1, *United States* v. *Perez*, No. 24-4039 (4th Cir. filed Dec. 16, 2024), Dkt. 55; see also Pet. App. 52a n.7.

The Fourth Circuit majority also declined to follow *Jackalow*. It conceded that "*Jackalow* dictates that a jury find material facts for purposes of venue," but noted that "no precedent has applied it to a federal territorial jurisdictional element," and declared that this Court "has barely cited *Jackalow* at all." Pet. App. 16a–17a. The court did not try to explain why facts relevant to venue are any different, for constitutional purposes, than those relevant to jurisdictional elements. And vertical *stare decisis* requires lower courts to follow this Court's controlling precedents, citation

counts notwithstanding. See *Mallory* v. *Norfolk S. Ry.*, 600 U.S. 122, 136 (2023).

2. The Fourth Circuit's error in removing FCI Petersburg's jurisdictional status from the factfinder at trial is compounded by its sweeping definition of legislative facts. Federal Rule of Evidence 201 "governs judicial notice of adjudicative fact" not "legislative fact" and requires the court in a criminal case to "instruct the jury that it may or may not accept the noticed fact as conclusive." Fed. R. Evid. 201(a), (f).

The majority acknowledged that even though it found that "a location's jurisdictional status is a question of law for a court, facts underlie that determination." Pet. App. 19a. But, according to the majority, some facts that establish an element of a crime do not go to a factfinder. *Id.* Instead, it found that the facts underlying FCI Petersburg's jurisdictional status are "legislative facts." *Id.* at 27a.

In reaching this conclusion, the majority asserted that, on the one hand, "[a]djudicative facts concern 'the immediate parties—who did what, where, when, how, and with what motive or intent'" and "'go to the jury.'" Pet. App. 19a (quoting Fed. R. Evid. 201(a) advisory committee's note to 1972 proposed rules ("Advisory Committee Note")). On the other hand, "'legislative facts,' involve 'established truths, facts or pronouncements that do not change from case to case but apply universally.'" Pet. App. 20a (quoting *United States* v. *Gould*, 536 F.2d 216, 220 (8th Cir. 1976)). These may be judicially noticed by courts without following Rule 201. *Id.* Because "Perez's actions at FCI Petersburg are almost entirely divorced" from the facts determining "FCI Petersburg's jurisdictional status" and such status "is unchanging," the majority found those facts are legislative. Pet. App 21a–23a.

The majority's definition of "legislative fact" suffers from at least four major flaws. *First*, the majority misreads Rule 201's Advisory Committee Note. The note specifies that legislative facts "have relevance to legal reasoning and the *lawmaking* process" while "adjudicative facts are those to which the law is applied in the process of adjudication." Advisory Committee Note (emphasis added). As Judge Harris properly concluded, the "facts [the court was] being asked to judicially notice on appeal—including whether and when the federal government acquired the land on which FCI Petersburg sits—are not facts being used to make law, but facts 'to which the law is applied.'" Pet. App. 56a (Harris, J., concurring in part and dissenting in part) (quoting Advisory Committee Note); see also Haley N. Proctor, *Rethinking Legislative Facts*, 99 Notre Dame L. Rev. 955, 1004 (2024) (questions involving "fact identification and law application, not law declaration" by "convention," go "to the jury"). Under the correct reading of the Advisory Committee Note, "[w]hether a fact is adjudicative or legislative depends not on the nature of the fact . . . but rather on the use made of it": A "fact germane to what happened in the case" or that goes to "an element of the offense" is adjudicative, while "a fact useful in formulating common law policy or interpreting a statute" is legislative, "and the same fact can play either role depending on the context." *Bello*, 194 F.3d at 22 (citing Advisory Committee Note); see also Pet. App. 56a.

Second, the Fourth Circuit majority's definition of legislative facts as "established truths, facts or pronouncements that do not change from case to case but apply universally," Pet. App. 20a (cleaned up), swallows Rule 201 entirely. Rule 201 allows an adjudicative fact to be judicially noticed if 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). Under the Fourth Circuit's definition, it is hard to see what could be considered an adjudicative fact subject to non-conclusive judicial notice in a criminal case ("generally known") but not also be a legislative fact ("apply universally"). Rule 201, therefore, has no application under the Fourth Circuit's misguided interpretation.

Third, as Judge Harris aptly noted, the majority's definition lacks "a principled stopping point." Pet. App. 51 (Harris, J., concurring in part and dissenting in part).

> Facts that can be described as universal also can be "restated in ways that are both particular and concrete," so that how a court chooses to formulate a finding may "alter the procedural limits" that apply. And perhaps most important, there is no "obvious place to draw a line beyond which a fact becomes general enough to be legislative."

Id. (quoting Proctor, *supra*, at 979). For example, the government failed in this case to prove "the photocopier used by Perez travelled through foreign commerce, as an alternative means of satisfying the 18 U.S.C. § 1466A jurisdictional element." Pet. App. 52a. "But," as Judge Harris noted, "where the photocopier was manufactured and put together is also an unchanging and 'universal' fact that would apply in any case involving its illegal use at FCI Petersburg, and it has nothing to do with Perez's actions." *Id.* There is no reason why, under the majority's definition, the government could not have "simply present[ed] the district court with the actual serial number of the photocopier and ask[ed] the court to take judicial notice that it was assembled overseas." Pet. App. 52a–53a.

Finally, and most importantly, such a definition puts Rule 201 "on a collision course with the Constitution's requirements for factfinding in criminal adjudications." Pet. App. 50a. "The prosecution 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*, 508 U.S. at 277–78. That does not happen when the jurisdictional element is only judicially noticed, in any part, by the court.

3. This case shows the need for proof beyond a reasonable doubt to the factfinder. *First*, the "special maritime and territorial jurisdiction of the United States" is not synonymous with land possessed by the federal government. See *Davis*, 726 F.3d at 365. Nor is it a clunky term of art with a straightforward practical meaning. Applying this requirement turns on complex historical facts, which only a factfinder can properly sort through.

The federal government exercises jurisdiction only over land that it has acquired through either consent or cession. *Id.* at 363. In either case, "the state must agree to the transfer of jurisdiction" and "the federal government itself must accept jurisdiction." *Id.*; see also Pet. App. 28a (majority) (stating 18 U.S.C. § 7(3)'s three-part test). For lands acquired after 1940, moreover, there is a presumption *against* jurisdiction of acquired land. *Davis*, 726 F.3d at 363–64; Pet. App. 29a n.13; see also 40 U.S.C. § 3112(c). Under this framework, courts have concluded that a U.S. Army base, a federal post office, and a VA hospital are *not* in the "special maritime and territorial jurisdiction of the United States."[3]

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[3] *Adams* v. *United States*, 319 U.S. 312, 313 (1943) (army base); *United States ex rel Greer* v. *Pate*, 393 F.2d 44, 47 (7th Cir. 1968)

Given the complications involved, it is no surprise that a location's jurisdictional status confounds even some federal judges. See, *e.g.*, *United States* v. *Redmond*, F. App'x 760, 761–62 (9th Cir. 2018) (split panel on whether USP Victorville was within special maritime and territorial jurisdiction); *Davis*, 726 F.3d at 365 (discussing case in which district court and appellate court initially agreed a federal prison was in special maritime and territorial jurisdiction but realized on remand that everyone was wrong); see also *Jackalow*, 66 U.S. at 487 (noting that two judges of New York's highest court "entertained different opinions" about whether a particular location was within the jurisdiction of New York, Connecticut, or neither).

Second, had the jurisdictional status of FCI Petersburg ever been subjected to the reasonable doubt standard, the trier of fact might well have concluded that it is not within the federal territorial jurisdiction. The government has never—not even in its post-trial submission to the Fourth Circuit—introduced evidence about the specific location of Mr. Perez's cell. This matters because, according to the unauthenticated plat maps and deeds in the government's post-trial submission, the United States acquired different parcels at different times and in different ways. See Reply Br. at 19, *United States v. Perez*, No. 24-4039 (4th Cir. filed Oct. 18, 2024), Dkt. 49 ("C.A. Reply Br."). That fact can make or break jurisdictional-status determinations. See *United States ex rel. Greer* v. *Pate*, 393 F.2d 44, 46 (7th Cir. 1968) (the status of a primary post office building did not necessarily establish that the annex building where the relevant conduct occurred was within federal territorial jurisdiction). And transferring the land which FCI Peterburg sits on

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(post office); *DeKalb Cnty. Ga.* v. *Henry C. Beck Co.*, 382 F.2d 992, 996 (5th Cir. 1967) (VA hospital).

from the Department of Defense to the Bureau of Prisons arguably triggered the reversion clause in Virginia's cession statute. See C.A. Reply Br. 19–23.

IV. This case is an excellent vehicle for resolving the question presented.

This case arrives on direct appeal and presents a single question. That question was pressed and passed upon below. And it is dispositive. Mr. Perez does not challenge the substantive elements of his convictions, only the jurisdictional element. Pet. App. 8a. If he is right, the judgment below must be reversed and his conviction cannot stand. If he is wrong, the Fourth Circuit's judgment below is correct and the district court will be able to readopt its prior conclusion merely by judicially noticing materials that satisfy the Fourth Circuit's three-prong test. This case is thus an ideal vehicle to resolve the circuit split on this important, recurring issue.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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