No. ______

IN THE

Supreme Court of the United States

EARL F. LOVE,
Petitioner,
v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals for the Eighth Circuit

APPENDIX

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United States Court of Appeals
For the Eighth Circuit

No. 20-3386

United States of America

Plaintiff - Appellee

v.

Earl F. Love

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: September 24, 2021
Filed: December 14, 2021

Before LOKEN, COLLOTON, and BENTON, Circuit Judges.

BENTON, Circuit Judge.

A jury convicted Earl F. Love of assault in violation of 18 U.S.C. § 113(a)(6). The district court[1] sentenced him to 84 months in prison, consecutive to a prior sentence. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

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[1]The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri.

I.

Love was serving a sentence at the U. S. Medical Center for Federal Prisoners in Springfield, Missouri. He entered the room of another inmate and attacked him, causing severe injuries, emergency intubation, and facial reconstruction surgery. Love was charged with assault resulting in serious bodily injury at a place within the special maritime and territorial jurisdiction of the United States.

At trial, the government requested judicial notice that the United States has special maritime and territorial jurisdiction over the Center. Love countered that the Sixth Amendment required the government to prove this jurisdiction as an element of the offense. During the first day of trial, three witnesses from the Center—a nursing supervisor, a special investigator, and a special investigative supervisor technician—testified about the "federal nature" of the Center. The government presented no other evidence about special maritime and territorial jurisdiction. On the second day, the district court said, based on its extensive historical research about the Center, it would take judicial notice of special maritime and territorial jurisdiction. It denied Love's motions for acquittal on the basis of insufficient evidence of special maritime and territorial jurisdiction. The court instructed the jury that the Center was within special maritime and territorial jurisdiction. The jury convicted. Love appeals, arguing that the district court violated his Sixth Amendment rights by its judicial notice of special maritime and territorial jurisdiction.

For a conviction under 18 U.S.C. § 113(a)(6), the government must prove: (1) an intentional assault of another person (2) who suffered serious bodily injury (3) within the special maritime and territorial jurisdiction of the United States. *Cf.* ***United States v. Stymiest***, 581 F.3d 759, 766 (8th Cir. 2009) (identifying elements of § 113(a)(6) where assault occurred in "Indian country"). This appeal involves only the third element.

The Enclave Clause of the United States Constitution empowers the federal government to acquire land within a state. **U.S. Const. art. I, § 8, cl. 17**; ***Paul v. United States***, 371 U.S. 245, 264 (1963). For the United States to exercise jurisdiction over the acquired land, the state must agree to it, and the federal government must accept it. ***Paul***, 371 U.S. at 264 (holding that, without state assent to federal jurisdiction, the federal government is "an ordinary proprietor"); ***Adams v. United States***, 319 U.S. 312, 314-15 (1943) (holding that federal jurisdiction requires acceptance by the federal government). State agreement may be expressed by consent at the time of acquisition, or by cession of legislative authority after a nonconsensual acquisition. ***Kleppe v. New Mexico***, 426 U.S. 529, 542 (1976); ***United States v. Brown***, 552 F.2d 817, 820 (8th Cir. 1977). For land acquired before 1940, federal acceptance of jurisdiction is presumed in the absence of contrary evidence. ***United States v. Redstone***, 488 F.2d 300, 302 (8th Cir. 1973). For land acquired after 1940, there is a presumption *against* federal acceptance of jurisdiction. ***Id.***, *citing* **40 U.S.C. § 255** (enacted 1940) (now **40 U.S.C. § 3112**) (statute requiring the federal government to "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").

Love agrees that Missouri consented to federal jurisdiction over the Center. *See* **§ 11072, RSMo 1929** (now **§ 12.010, RSMo 2016**); and **§ 11073, RSMo 1929** (now **§ 12.020, RSMo 2016**). He disputes federal acceptance.

The district court resolved this issue by judicial notice that the Center land was acquired by the federal government before 1940. It gave this instruction:

> The United States Medical Center for Federal Prisoners in Springfield, Missouri is a place that falls within the special maritime and territorial jurisdiction of the United States. Therefore, if you find beyond a reasonable doubt that the act alleged occurred at the United States Medical Center for Federal Prisoners in Springfield, Missouri, the third element of the offense has been met.

II.

Love contends that this instruction deprived him of his right to a jury trial. This court reviews claims of constitutional error de novo. ***United States v. Wessels***, 539 F.3d 913, 914 (8th Cir. 2008).

Because this Circuit has not addressed who decides whether a particular place is "within the special maritime and territorial jurisdiction of the United States," the district court applied *United States v. Hernandez-Fundora*, 58 F.3d 802 (2d Cir. 1995). Like Love, Hernandez-Fundora was convicted under 18 U.S.C. § 113 for attacking another prisoner at a federal correctional institution. ***Hernandez-Fundora***, 58 F.3d at 804. Like here, "the district court took judicial notice that [the institution] fell within the special maritime and territorial jurisdiction of the United States, and therefore instructed the jury that if it found 'beyond a reasonable doubt that the act alleged occurred [there],' the jurisdictional element of the offense had been met." ***United States v. Davis***, 726 F.3d 357, 365 (2d Cir. 2013) (alterations added), *summarizing* ***Hernandez-Fundora***, 58 F.3d at 809. On appeal, Hernandez-Fundora argued that the jurisdictional element was improperly removed from the jury. ***Hernandez-Fundora***, 58 F.3d at 809.

The Second Circuit decided that special maritime and territorial jurisdiction is a question of law:

> [T]o determine whether a crime took place within the special maritime and territorial jurisdiction of the United States requires two separate inquiries: one to determine the "locus of the crime" and one to determine the existence *vel non* of federal jurisdiction. While the former is plainly a factual question for the jury to decide, the latter—turning on a fixed legal status that does not change from case to case and involving consideration of source materials (such as deeds, statutes, and treaties) that judges are better suited to evaluate than juries—has always been treated in this Circuit as a legal question that a court may decide on its own.

Davis, 726 F.3d at 368, *summarizing* ***Hernandez-Fundora***, 58 F.3d at 810. The court added that the legal question of special maritime and territorial jurisdiction "requires the determination of legislative facts, rather than adjudicative facts," relying on this court's definitions. ***Hernandez-Fundora***, 58 F.3d at 811, *quoting* ***United States v. Gould***, 536 F.2d 216, 220 (8th Cir. 1976). The Second Circuit concluded that because Federal Rule of Evidence 201 applies only to adjudicative facts, a district court need not submit judicially noticed legislative facts to the jury. ***Id.*** at 812. In short, Hernandez-Fundora's Sixth Amendment claim failed because (1) special maritime and territorial jurisdiction is a question of law (2) that turns on legislative facts (3) that need not be submitted to the jury.

Eighth Circuit precedent aligns with each point. First, federal jurisdiction over a particular place is a question of law. Offenses within the Major Crimes Act have a jurisdictional element like the one in 18 U.S.C. § 113(a). For instance, 18 U.S.C. § 1153(a) penalizes Indians who commit certain crimes (including felony assault under section 113) "within the Indian country." Whether a crime is within the Indian country is a bifurcated inquiry: "[I]t is for the court, not the jury, to determine whether that land is in Indian country. This question . . . is analytically distinct from . . . whether the crime in fact occurred on a particular piece of land or within a particular area. The latter question—the location of the crime—is certainly a factual issue for the jury." ***United States v. Stands***, 105 F.3d 1565, 1575-76 (8th Cir. 1997) (alteration added). *Stands* cited *Hernandez-Fundora* for the proposition that "[i]n other factual situations, courts have held that the existence of jurisdiction over crimes committed in a particular geographic area is a question for the court." ***Id.*** at n.7, *citing* ***Hernandez-Fundora***, 58 F.3d at 809-10. *See also* ***United States v. Jackson***, 853 F.3d 436, 438 n.2 (8th Cir. 2017) ("The court determines whether a particular piece of land is in Indian country; the jury then decides whether the crime in fact occurred on that land."), *discussing* ***United States v. Jackson***, 697 F.3d 670 (8th Cir. 2012).

Second, facts that resolve the special maritime and territorial jurisdiction question are legislative, not adjudicative.

> Adjudicative facts have been described as follows: 'When a court . . . finds facts concerning the immediate parties who did what, where, when, how, and with what motive or intent the court . . . is performing an adjudicative function, and the facts are conveniently called adjudicative facts . . . . They relate to the parties, their activities, their properties, their businesses.' Legislative facts, on the other hand, do not relate specifically to the activities or characteristics of the litigants . . . . Legislative facts are established truths, facts or pronouncements that do not change from case to case but apply universally, while adjudicative facts are those developed in a particular case.

Gould, 536 F.2d at 219-20, *citing and quoting* 2 *K. Davis*, ***Administrative Law Treatise*** § 15.03 (1958), *and footnoting* **Fed. R. Evid. 201, Notes of Advisory Committee**. In *Gould*, this court concluded that cocaine hydrochloride's derivation from coca leaves "simply cannot be appropriately categorized as an adjudicative fact. It does not relate to 'who did what, where, when, how, and with what motive or intent' . . . . [It] is a universal fact that is unrelated to the activities of the parties to this litigation." ***Id.*** at 220 (alteration added). It is "preposterous" to allow a jury to find that coca leaves qualify as a controlled substance in one proceeding, but not in another. ***Id.*** at 221. Equally here, whether a particular facility is within federal jurisdiction is a universal truth.

Third, judicially noticed legislative facts need not be submitted to the jury: "The district court [] may take judicial notice of facts. These facts may be either adjudicative or legislative . . . . Rule 201 [] does not extend to legislative facts, and a district court is not obligated to inform the jury that it could disregard the judicially noticed fact." ***United States v. Lopez***, 880 F.3d 974, 982 (8th Cir. 2018) (alterations added) (affirming judicial notice of "a legislative fact—that Sioux City lies within the geographic bounds of the Northern District of Iowa."). *See also* ***Gould***, 536 F.2d at 221 ("It is clear to us that the District Court took judicial notice of a legislative, rather than an adjudicative, fact in the present case and rule 201([f]) is inapplicable.

The District Court was not obligated to inform the jury that it could disregard the judicially noticed fact.") (alteration added).

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.

Even so, Love argues that the district court abused its discretion by reviewing materials outside the evidence and not identifying them. In light of counsel's lengthy colloquies with the district court and the absence of any specific objection about the materials reviewed, this court's review is at most for plain error. *See* ***EEOC v. HBE Corp.***, 135 F.3d 543, 551 (8th Cir. 1998) ("A timely and specific objection is necessary for a successful evidentiary appeal in the absence of plain error."), *citing* **Fed. R. Evid. 103**. In any event, we need not address the way the district court took judicial notice, because this court takes judicial notice of special maritime and territorial jurisdiction over the Center. "Judicial notice may be taken at any stage of the proceeding, including on appeal, as long as it is not unfair to a party to do so and does not undermine the trial court's factfinding authority." ***United States v. Jones***, 574 F.3d 546, 551 n.2 (8th Cir. 2009). On appeal, the government presents, for the first time, several public records, including a certified copy of the deed conveying the Center land to the United States in 1931—when federal acceptance of jurisdiction was presumed. *See* ***United States v. Eagleboy***, 200 F.3d 1137, 1140 (8th Cir. 1999) (public records may be cited for the first time on appeal). *Accord* ***Davis***, 726 F.3d at 367-69 (judicial notice of special maritime and territorial jurisdiction taken by Court of Appeals based on documents submitted by the government for first time on appeal).

III.

Love also challenges the denial of his motions for judgment of acquittal. "Under Federal Rule of Criminal Procedure 29(a), a district court must grant a defendant's motion for judgment of acquittal where the evidence is insufficient to sustain a conviction." ***United States v. Hardin***, 889 F.3d 945, 949 (8th Cir. 2018). Love argues that the evidence at trial—testimony from three witnesses about the "federal nature" of the Center—was insufficient for a reasonable jury to find, beyond a reasonable doubt, that the Center was within the special maritime and territorial jurisdiction of the United States.

"It is a uniform course of appellate review procedure to decline to review questions not necessary to a decision of an appellate court." ***Caldwell v. DeWoskin***, 831 F.3d 1005, 1009 n.5 (8th Cir. 2016), *quoting* ***Highland Supply Corp. v. Reynolds Metals Co.***, 327 F.2d 725, 729 (8th Cir. 1964). In light of the conclusion above about judicial notice, this court need not address whether the evidence at trial was sufficient for a jury to find that the Center is within the special maritime and territorial jurisdiction of the United States. *See* ***United States v. Johnson***, 738 F. Appx. 798, 799 (4th Cir. 2018) (declining to address sufficiency argument because district court properly took judicial notice that a VA hospital was within the special maritime and territorial jurisdiction of the United States); ***United States v. Styles***, 75 F. Appx. 934, 935 (5th Cir. 2003) (same). *See also* ***Davis***, 726 F.3d at 371 (affirming § 113(a)(6) conviction based on appellate court's judicial notice of special maritime and territorial jurisdiction, despite insufficient evidence presented at trial); ***United States v. Redmond***, 748 F. Appx. 760, 761-62 (9th Cir. 2018) ("Redmond argues the government did not provide sufficient evidence to show the assault occurred within the 'special maritime and territorial jurisdiction' of the United States . . . . We do not need to address Redmond's sufficiency of the evidence claim, however, because we can and do take judicial notice that the United States Penitentiary USP at Victorville ('USP Victorville') is within the special maritime and territorial jurisdiction of the United States.").

* * * * * * *

The judgment is affirmed.

____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **6:19-03120-01-CR-S-RK**
EARL F. LOVE	§	USM Number: **65038-004**
	§	**David Mercer, AFPD**
	§	Defendant's Attorney

THE DEFENDANT:

☒	Was found guilty by way of Jury Verdict as to count(s) 1 of the Indictment on 08/18/2020 before the Honorable Roseann A. Ketchmark.

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18 U.S.C. § 113(a)(6) - Assault Resulting in Serious Bodily Injury	12/30/18	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 6, 2020
Date of Imposition of Judgment

/s/ Roseann A. Ketchmark
Signature of Judge

ROSEANN A. KETCHMARK
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

November 10, 2020
Date

DEFENDANT: **Earlfonzo Love**
CASE NUMBER: 6:19-03120-01-CR-S-RK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

84 months on the one-count Indictment. This sentence shall run consecutively to the defendant's undischarged term of imprisonment in Washington, D.C. Superior Court, Case No. 2006 CF2 011274.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ______________________________ to

at ___________________________________, with a certified copy of this judgment.

U.S. MARSHAL

DEPUTY U.S. MARSHAL

DEFENDANT: **Earlfonzo Love**
CASE NUMBER: 6:19-03120-01-CR-S-RK

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: **Earlfonzo Love**
CASE NUMBER: 6:19-03120-01-CR-S-RK

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature ______________________________ Date ____________________

DEFENDANT: **Earlfonzo Love**
CASE NUMBER: 6:19-03120-01-CR-S-RK

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall successfully participate in any outpatient or inpatient substance abuse counseling program, which may include urinalysis, sweat patch, or Breathalyzer testing, as approved by the Probation Office and pay any associated costs as directed by the Probation Office.

2. The defendant shall successfully participate in any mental health counseling program, as approved by the Probation Office, and pay any associated costs, as directed by the Probation Office.

3. The defendant shall submit his person and any property, house, residence, office, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to a search, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

4. The defendant shall satisfy any warrants/pending charges within the first 60 days of supervised release.

5. The defendant shall not enter any gambling establishment or engage in any type of gambling, including off-shore or Internet gambling.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have read the conditions of supervision set forth in this judgment and I fully understand them. I have been provided a copy of them.

I understand that upon finding of a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

______________________________ _______________
DEFENDANT DATE

______________________________ _______________
UNITED STATES PROBATION OFFICER DATE

DEFENDANT: **Earlfonzo Love**
CASE NUMBER: 6:19-03120-01-CR-S-RK

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$ 0	$0		

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

No further payment shall be required after the sum of the amounts actually paid by all defendants has fully compensated the victims.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **Earlfonzo Love**
CASE NUMBER: 6:19-03120-01-CR-S-RK

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

☒ **Total assessment of $100 due immediately.** It is ordered that the Defendant shall pay to the United States a special assessment of $100 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

No further payment shall be required after the sum of the amounts actually paid by all defendants has fully compensated the victims.

The Court finds that the defendant does not have the ability to pay a fine, the fine is waived.

Notwithstanding any other provision of this order, the Government may enforce restitution at any time.
Pursuant to 18 U.S.C. 3612(g), the defendant may be subject to delinquent and default penalties.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 20-3386

United States of America

Appellee

v.

Earl F. Love

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:19-cr-03120-RK-1)

ORDER

The supplemental motion to recall the mandate is granted. The mandate dated January 4, 2022, is hereby recalled.

This court's judgment, dated December 14, 2021, is hereby vacated.

Appellant's request for appointment of counsel is denied.

June 04, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 20-3386

United States of America

Plaintiff - Appellee

v.

Earl F. Love

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Springfield
(6:19-cr-03120-RK-1)

JUDGMENT

Before COLLOTON, Chief Judge, LOKEN and BENTON, Circuit Judges.

The district court's judgment dated November 10, 2020, is affirmed.

June 04, 2026

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. **EARL F. LOVE,** Defendant.	**Case No. 19-03120-01-CR-S-SRB**

MEMORANDUM OF LAW REGARDING FEDERAL JURDISCTION OVER THE UNITED STATES MEDICAL CENTER FOR FEDERAL PRISONERS

The United States of America, by and through Timothy A. Garrison, the United States Attorney for the Western District of Missouri, and the undersigned Assistant United States Attorneys, submits the following memorandum regarding the issue of the United States Medical Center for Federal Prisoners in Springfield, Missouri, status as a federal institution for subject matter jurisdiction.

INTRODUCTION

The two questions addressed in this memo are: (1) what is the proof necessary to establish territorial subject matter jurisdiction for a prison assault case at the United States Bureau of Prisons Medical Center for Federal Prisoners in Springfield, Missouri, (USMCFP); and (2) may the district court take judicial notice of the territorial jurisdiction of the United States Bureau of Prisons facility in Springfield, Missouri.

LEGAL AND FACTUAL ANALYSIS

In answering the first question set forth above, the power of the federal government to acquire land within a state, either by purchase or condemnation, is "well established." *Paul v.*

United States, 371 U.S. 245, 264, 83 S.Ct. 426, 9 L.Ed.2d 292 (1963). In general, there are two ways that the United States can also obtain jurisdiction over such land within a state: consent and cession. *See, e.g.*, *Kleppe v. New Mexico*, 426 U.S. 529, 542–43, 96 S.Ct. 2285, 49 L.Ed.2d 34 (1976).

The first method, consent, arises from Article I, Section 8, Clause 17 of the Constitution, the so-called Enclave Clause, which provides that Congress has the power

> *[t]o exercise exclusive Legislation in all Cases whatsoever, over [the District of Columbia], ... and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.*

U.S. Const., art. I, § 8, cl. 17; *see also James v. Dravo Contracting Co.*, 302 U.S. 134, 141, 58 S.Ct. 208, 82 L.Ed. 155 (1937) (explaining that "exclusive legislation" means "exclusive jurisdiction"). Until the twentieth century, the prevailing view was that "[w]hen the title is acquired by purchase by consent of the legislatures of the states, the federal jurisdiction is exclusive of all state authority." *Fort Leavenworth*, 114 U.S. at 532, 5 S.Ct. 995. In 1937, however, the Supreme Court made clear that "a State may condition its 'consent' upon its retention of jurisdiction over the lands consistent with the federal use," in which case federal jurisdiction is concurrent rather than exclusive. *Paul*, 371 U.S. at 265, 83 S.Ct. 426 (*citing Dravo Contracting*, 302 U.S. at 146–49, 58 S.Ct. 208).

The second method, cession, was recognized by the Supreme Court in *Fort Leavenworth Railway Co. v. Lowe*, 114 U.S. 525, 5 S.Ct. 995, 29 L.Ed. 264 (1885). That case involved the Fort Leavenworth Military Reservation, which had been under the exclusive jurisdiction of the United States until Kansas was admitted to the Union in 1861. *See id.* at 526, 5 S.Ct. 995. In 1875, the Kansas state legislature passed an act ceding jurisdiction over the property to the federal government, but reserving to Kansas the right "to tax railroad, bridge, and other corporations, their franchises and property...." *Id.* at 528, 5 S.Ct. 995. The Supreme Court upheld this reservation of jurisdiction, holding that because the federal government had not purchased Fort Leavenworth, the state had authority to reserve for itself any jurisdiction that did not conflict with the federal use of the property. *See id.* at 539, 5 S.Ct. 995. In so holding, the Court established that the Enclave Clause "is not the sole authority for the acquisition of jurisdiction. There is no question about the power of the United States to exercise jurisdiction secured by cession, though this is not provided for by clause 17." *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 529, 58 S.Ct. 1009, 82 L.Ed. 1502 (1938) (citing *Fort Leavenworth* and other cases); accord *Kleppe*, 426 U.S. at 542, 96 S.Ct. 2285; *Paul*, 371 U.S. at 264, 83 S.Ct. 426.

Significantly, under either method, consent or cession, the state must agree to the transfer of jurisdiction for it to be valid. *See, e.g., United States v. Johnson*, 994 F.2d 980, 984 (2d Cir.1993) (*citing Paul*, 371 U.S. at 264, 83 S.Ct. 426). In addition, the federal government itself must accept jurisdiction. *See, e.g., Adams v. United States*, 319 U.S. 312, 314–15, 63 S.Ct. 1122, 87 L.Ed. 1421 (1943); *Johnson*, 994 F.2d at 984. Until 1940, "acceptance of jurisdiction over lands acquired by the United States was presumed in the absence of evidence to the contrary." *United States v. Cassidy*, 571 F.2d 534, 536 (10th Cir.1978) (*citing Atkinson v. Tax Comm'n*, 303 U.S. 20, 23, 58 S.Ct. 419, 82 L.Ed. 621 (1938); *Silas Mason Co. v. Tax Comm'n*, 302 U.S. 186, 207, 58 S.Ct. 233, 82 L.Ed. 187 (1937)); *see also United States v. Gabrion*, 517 F.3d 839, 848 (6th Cir.2008). In 1940, however, Congress enacted legislation providing that, "[u]nless and until the United States has accepted jurisdiction over lands hereafter to be acquired ..., it shall be conclusively presumed that no such jurisdiction has been accepted." *Johnson*, 994 F.2d at 984–85 (citing 40 U.S.C. § 3112 (formerly 40 U.S.C. § 255)). Accordingly, "[a]s to lands acquired by the United States after 1940, it has been held that the United States does not acquire jurisdiction over lands acquired by it unless it gives notice of acceptance." *Cassidy*, 571 F.2d at 536–37 (*citing Adams*, 319 U.S. 312, 63 S.Ct. 1122).

Congress acted to create the USMCFP in 1930. Construction began in 1931. *Joseph A. Holpuch Company v. United States*, U.S. Court of Claims, Cont.Cas.Fed. (CCH) P 616 (C.C.H.), 1945 WL 313839 (May 7, 1945). The people of Springfield gave 620 acres of land to the federal government to build the prison hospital. The first buildings were completed in 1933. The unoccupied land was originally used by the prisoners for farming. In 1966, this farming was abandoned. In 1977 the federal government returned some of the original 620 acres to Springfield, maintaining the rest for the use of the prison hospital.

In light of this history, the USMCFP is indeed within the special maritime and territorial jurisdiction of the United States. First, the state of Missouri ceded the exercise of jurisdiction in the form of a general consent statute or consent to a particular acquisition. Missouri has such general consent statutes. Mo. Rev. Stat. Ann. § 12.010 (West):

> *The consent of the state of Missouri is given in accordance with the seventeenth clause, eighth Section of the first Article of the Constitution of the United States to the acquisition by the United States by purchase or grant of any land in this state acquired for the purpose of establishing and maintaining post offices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, and land for reforestation, recreational and agricultural uses; but land acquired by eminent domain or condemnation for the purpose of reforestation, Native American/Indian gaming, recreational or agricultural uses shall only be acquired with statutory authorization of the general assembly. Land used exclusively for the erection of hospitals by the United States may also be acquired by condemnation.*

See also Mo. Rev. Stat. Ann. § 12.020 (West)

> *The jurisdiction of the state of Missouri in and over all land acquired as provided in section 12.010 is granted and ceded to the United States so long as the United States owns the land; except that there is reserved to the state of Missouri, unimpaired, full authority to serve and execute all process, civil and criminal, issued under the authority of the state within the lands or the buildings.*

See Exclusive federal jurisdiction over state-ceded land. 4 St.Louis U.L.J. 334 (Spring, 1957); *see, e.g., United States v. State Tax Comm'n of Miss.*, 412 U.S. 363, 372 n. 15, 93 S.Ct. 2183, 37 L.Ed.2d 1 (1973).

Second, the federal government acquired the property for use by the Bureau of Prisons in 1933. Given the pre–1940 presumption-of-acceptance rule then in place, the United States accepted jurisdiction when it acquired the land and no further affirmation was necessary. *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369, 371 (1964)(territorial jurisdiction over land donated by the state of Louisiana and its political subdivisions to the federal government); *United States v. Gabrion*, 517 F.3d 839, 848 (6th Cir. 2008); *United States v. Cassidy*, 571 F.2d 534, 536–37 (10th Cir.); cert. denied, 436 U.S. 951 (1978); *United States v. Fields*, 516 F.3d 923, 935–36 (10th Cir. 2008) (territorial jurisdiction established because there was no evidence affirmatively negating the federal government's acceptance of land acquired from Oklahoma in 1931), cert. denied, 556 U.S. 1167 (2009). Further, Section 7(3) grants the United States jurisdiction over those territories over which it has "practical usage and dominion" or "regulatory authority." Under this standard, a court must consider whether the federal government "enjoys such control over the area that the law should constructively regard it as [federal] territory." *United States v. Sadekni*, 3:16-CR-30164-MAM, 2017 WL 807024, at *7 (D.S.D. Mar. 1, 2017)

Thus, because the state of Missouri ceded jurisdiction to the federal government, and further, because the purchase of the land took place prior to 1940, acceptance of jurisdiction by the federal government is presumed absent evidence to the contrary. *See Cassidy, 571 F.2d at 536; see also Markham v. United States*, 215 F.2d 56, 58 (4th Cir.1954) (presuming acceptance of jurisdiction over land acquired in 1919).

Lastly, in answering the second question previous set forth, it is entirely appropriate for the court to take judicial notice of the territorial jurisdiction of the United States Bureau of Prisons in Springfield, Missouri, since: (1) the state of Missouri has ceded jurisdiction to the federal government, and (2) because the property on which the USMCFP is located was purchased prior to 1940, acceptance of jurisdiction by the federal government is presumed absent evidence to the contrary. *United States v. Davis*, 726 F.3d 357, 369 (2d Cir. 2013)(taking judicial notice of the territorial jurisdiction of a federal prison).

CONCLUSION

For the reasons set forth above, the Government would aver that this Honorable Court can take judicial notice given the evidence supported and law associated with USMCFP that this institution is on land acquired for the use of the United States and under its exclusive or concurrent jurisdiction for the purposes of the trial in the above captioned case.

Respectfully submitted,

Timothy A. Garrison
United States Attorney

By __________________________
Patrick Carney
Assistant United States Attorney
901 St. Louis Street, Ste. 500
Springfield, Missouri 65806-2511

General
WARRANTY DEED—

ELKINS-SWYERS CO., SPRINGFIELD, MO.

THIS INDENTURE, Made on the 31st day of March, 1931

by and between Louis S. Meyer and Henrietta M. Meyer, husband and wife

of Greene County, Missouri parties of the first part, and
THE UNITED STATES OF AMERICA
~~of the County of Greene, in the State of Missouri,~~ party of the second part.

WITNESSETH, That the said parties of the first part for and in consideration of the sum of
One hundred thirty three thousand, five hundred ($133,500.00) Dollars,
to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part its successors and assigns, the following described lots, tracts or parcels of land lying, being and situate in the County of Greene and State of Missouri, to-wit:

All of the Northwest quarter ($NW\frac{1}{4}$) and the West half ($W\frac{1}{2}$) of the Northeast quarter ($NE\frac{1}{4}$) and the North half ($N\frac{1}{2}$) of the Southwest quarter ($SW\frac{1}{4}$) and the East half ($E\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) of the southwest quarter ($SW\frac{1}{4}$), and the West half ($W\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) and the West half ($W\frac{1}{2}$) of the East half ($E\frac{1}{2}$) of the Southeast quarter ($SE\frac{1}{4}$) all in Sectio thirty four (34), Township twenty nine (29) Range twenty two (22), except that portion of said property heretofore granted and used by the Missouri Pacific Railroad as a right of way, and except five (5) acres, more or less, described as follows: Beginning at the Northwest corner o said Section thirty four (34), thence East to the West right of way line of the Springfield Southwestern Railroad, thence in a Southwesterly direction along the right of way to a point si hundred twelve (612) feet East of the section line; thence West six hundred twelve (612) feet section line dividing section thirty four (34) and section thirty five (35); thence North three hundred twenty four (324) feet to place of beginning. Excepting also that portion of the abov described tract of land heretofore taken for public road and highway purposes.

Internal Revenue cancelled.

hereby covenanting that they are lawfully seized of an indefeasible estate in fee in the premises herein conveyed, that they have good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by them or those under whom they claim ; and that they will warrant and defend the title to the said premises unto the said party of the second part, and unto its successors and assigns, forever, against the lawful claims and demands of all persons whomsoever.

except taxes due and payable in the year 1931 and thereafter

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals this the day and year first above written.

Signed, sealed and delivered in the presence of us.

Louis S. Meyer (SEAL)
Henrietta M. Meyer (SEAL)
(SEAL)
(SEAL)

STATE OF MISSOURI,
County of Greene } ss.

On this 31st day of March 1931, before me personally appeared Louis S. Meyer and Henrietta M.Meyer, husband and wife ~~his wife~~, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Springfield, Missouri the day and year first above written. My commission as Notary Public will expire on the 27th day of January 1935.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX

(L. S.)

Betty Lutz Notary Public.

STATE OF MISSOURI,
County of Greene } ss.

On this day of 19 , before me personally appeared

to me known to be the person described in and who executed the foregoing instrument, and acknowledged that executed the same as free act and deed. And the said further declared to be single and unmarried.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the day and year first above written.

(L. S.) My term of office as Notary Public will expire 19

Notary Public.