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January 30, 2015

Office of the Clerk
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *United States v. Kenneth Schneider*, Nos. 12-1145 & 13-1491
(3d Cir.), argued January 20, 2015

Dear Clerk of Court:

Kenneth Schneider respectfully files this letter pursuant to FRAP 28(j) to address the government's citation at oral argument to *United States v. Vickers*, 2014 WL 1838255 (W.D.N.Y. May 8, 2014) (order adopting magistrate judge's report and recommendation), on the statute of limitations issue. The government did not cite *Vickers* in its appellate brief, even though the *Vickers* decision issued more than five months before the government filed its brief.

The government contends *Vickers* supports the district court's ruling that the travel offense proscribed in 18 U.S.C. §2423(b) constitutes "an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years" for purposes of the statute of limitations extension contained in 18 U.S.C. §3283.

If *Vickers* establishes anything, it is that the district court's error in applying §3283 in this case has already spread to another circuit, underscoring the need for this Court's correction of that error here.

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Beyond the Supreme Court's ruling in *Bridges v United States*, 346 U.S. 209, 222 (1953) ("offenses involving" necessitates an "essential ingredient" test), recent Supreme Court rulings confirm that a statute's use of "involving" in reference to an offense requires an elements-based approach. *See James v. United States*, 550 U.S. 192, 201-02 (2007) (Alito, J., writing for the Court) (whether offense "*involves* conduct that presents a serious potential risk of physical injury" requires considering "the *elements of the offense* * * * without inquiring into the specific conduct of this particular offender") (first emphasis added); *see also Leocal v. Ashcroft*, 543 U.S. 1, 7 (2004) (similar).

This Court's precedent is in accord. *See Jean-Louise v. Attorney General*, 582 F.3d 462, 465 (3d Cir. 2009) (whether a conviction is for "a crime involving moral turpitude" requires "look[ing] to the elements of the statutory state offense, not to the specific facts").

As Schneider's briefs explain, "the sexual or physical abuse, or kidnaping, of a child under the age of 18 years" is not an element of the travel-related offense proscribed in §2423(b), and thus the extended limitations period contained in §3283 does not apply to make the indictment timely.

Respectfully submitted,

/s/ Howard J. Bashman

Howard J. Bashman

cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that all counsel listed immediately below on this Certificate of Service are Filing Users of the Third Circuit's CM/ECF system, and this document is being served electronically on them by the Notice of Docket Activity:

Vineet Gauri

Michelle Morgan

Dated: January 30, 2015

/s/ Howard J. Bashman

Howard J. Bashman