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No. \_\_\_\_\_

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In the  
SUPREME COURT OF THE UNITED STATES

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THOMAS TSO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

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

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Petition for Writ of Certiorari

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## Question Presented

A “statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. *Stogner v. California*, 539 U.S. 607, 615 (2003). The general statute of limitations of five years ensures fair and just proceedings. The general statute of limitations prevents defendants from having to mount a defense despite, due to the passage of time, faded memories, lost evidence, or witnesses who moved, became ill, or died.

- I. Does the phrase “an offense involving the sexual or physical abuse, or kidnaping, of a child” mean even a non-child abuser or kidnapper faces a lifetime threat of prosecution if their offense “involves child abuse” under the Tenth Circuit’s case-specific approach?

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THOMAS TSO, Petitioner

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AMENDED Petition for Writ of Certiorari

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Thomas Tso petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit in his case.

*Opinions Below*

The Tenth Circuit published its decision in *United States v. Thomas Tso* Case No. 24-2081.<sup>1</sup> The district court’s opinion rejecting Mr. Tso’s contention that the statute of limitations had run in his case was not published.<sup>2</sup>

*Statement of Jurisdiction*

On September 30, 2025, the Tenth Circuit affirmed the district court’s order determining a case specific, rather than categorical

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<sup>1</sup> App. 1a-21a. “App.” refers to the attached appendix.

<sup>2</sup> App. 22a-29a.

approach, was the appropriate analysis for the question of the appropriate statute of limitations in Mr. Tso’s case. This Court has jurisdiction under 28 U.S.C. § 1254(1).

*Pertinent Statutes on Statutes of Limitations*

<b>Act</b>	<b>Year</b>	<b>Code</b>	<b>Charging Period</b>
Victims of Child Abuse Act	1990	§3509(k)	Until the child turned twenty-five
Violent Crime Control and Law Enforcement Act	1994	§ 3283	Until the child turned twenty-five (recodification).
Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act	2003	§ 3283	The life of the child.
Violence Against Women and Department of Justice Reauthorization Act	2006	§ 3283	The life of the child or ten years after the offense (whichever is longer).
Adam Walsh Child Protection and Safety Act	2006	§ 3299	Not time limit.

**Statement of the Case**

The general statute of limitations for noncapital crimes is five years. 18 U.S.C. § 3282. Mr. Tso was convicted under 18 U.S.C. §§ 1153, 2244(a)(2), and 2246(3) despite the conduct occurring twenty-four years ago. The district court used a factual rather than categorical analysis

and determined an expanded statute of limitations applied to Mr. Tso's case.

This Court has employed the categorical approach in many different contexts, including cases involving ACCA, the Immigration and Nationality Act ("INA"), and the statutory interpretation of 18 U.S.C. § 924(c). *United States v. Shular*, 140 S. Ct. 779 (2020)(using the categorical approach to determine whether a prior conviction necessarily entails the conduct necessary for a "serious drug offense" under ACCA); *Kawashima v. Holder*, 565 U.S. 478, (2012) (using the categorical approach to review whether a prior conviction "involved" fraud or deceit for the purposes of the INA); and *United States v. Davis*, 139 S.Ct. 2319 (2019)(using the categorial approach to interpret 18 U.S.C. § 924(c)'s residual clause). That analysis should govern the analysis in Mr. Tso's case because a factual approach creates serious practical difficulties and results in potential unfairness because the expanded statute of limitations would apply to *any* federal statute so long as the Government alleged a form of abuse against a minor, whether the abuse actually occurred or was even perpetrated by the defendant or not.

## Introduction

In 1990, Congress created a special statute of limitations for child abuse cases when it enacted 18 U.S.C. § 3509(k). That section read that “[n]o statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25 years.” This statute later became codified at 18 U.S.C. § 3283 and was amended in 2003 to extend the limitations period for offenses “involving the sexual or physical abuse . . . of a child” for the duration of the life of the child.

While “Congress evinced a general intention to cast a wide net to ensnare as many offenses against children as possible,” with statutes related to child sex abuse, this does not mean Congress intended the law to be an *all-encompassing net*, ensnaring every living potential defendant who committed any crime, regardless of the elements, so long as there is a factual allegation that a child was the victim of abuse.

*Weingarten v. United States*, 865 F.3d 48, 60 (2d Cir. 2017).

In *United States v. Shular*, 140 S. Ct. 779 (2020), this Court clarified that the statutory requirement that an offense “involve” a

certain type of conduct means that prior conviction “necessarily entails” such conduct. In that case, the question presented was whether the categorical approach applies to determine whether a prior conviction qualifies as a “serious drug offense” for purposes of enhancement under the Armed Career Criminal Act (ACCA). Because “serious drug offense” is defined as “an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance,” this Court applied a version of the categorical approach asking whether conviction under state law necessarily entails the conduct listed. *See Shular*, 140 S. Ct. at 154-55. *See also* 18 U.S.C. § 924(e)(2)(A)(ii).

In other words, while it is not necessary to conduct an elemental comparison of the state law with a generic offense, to fall under the purview of the ACCA, the state offense of conviction must necessarily entail the listed conduct. *See Kawashima v. Holder*, 565 U.S. 478, 483 (2012) (Noting that to determine whether prior offenses “involved” fraud or deceit as required to qualify as an “aggravated felony” for purposes of removal under the Immigration and Nationality Act (INA), “we employ a categorical approach by looking to the statute defining the

crime of conviction, rather than the specific facts underlying the crime.”)

This Court’s case law makes clear that, for a federal statute that encompasses crimes “involving” certain conduct, conviction for the offense in question must “necessarily entail” that conduct.

Here, the government charged Mr. Tso with Sexual Abuse 22 to 24 years after it allegedly happened. After Mr. Tso moved to dismiss the charge as barred by the statute of limitations, the government added language specifying the victim at that time was under 18 years old but did not charge him with a crime where the element necessarily involved a child. The Tenth Circuit held that to determine whether the statute of limitations applied, the court could look beyond the elements to the facts alleged.

This Court should grant this petition to clarify whether a case specific or categorical approach is used to determine whether the expanded statute of limitations applies.

### **Factual Background**

Mr. Tso admitted the following factual basis as part of the plea:

Between on or about August 4, 1998 and on or about October 11, 2000, I caused sexual contact with Jane Doe by intentionally and directly touching Jane Does' genitalia, groin, and inner thigh. I touched her genitalia with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. At the time of the assault, Jane Doe under the age of 18. The assault occurred in my home, which is within the exterior boundaries of the Navajo Nation, in the District of New Mexico. I am an enrolled member of the Navajo Nation and an Indian for purposes of federal law.

*Id.* at 71.

### **District Court Proceedings**

In its order denying Mr. Tso's motion to dismiss the superseding indictment, the district court pointed to cases from the Second Circuit and Third Circuit, *Weingarten v. United States*, 865 F.3d 48, 60 (2d Cir. 2017) and *United States v. Schneider*, 801 F.3d 186, 196 (3d Cir. 2015). It stated that those courts "have held that § 3283 requires a case-specific approach, not the categorical approach" and declined to "depart from this precedent."

But *Weingarten* and *Schneider* did not decide the issue of whether § 3283 requires a case-specific approach rather than a categorical approach. The defendant in *Schneider* was convicted of a violation of 18 U.S.C. § 2423(b) (2000). *Schneider*, 801 F.3d at 190. The subsection of

conviction at issue in *Schneider* criminalizes travel with the intent to engage in illicit sexual conduct. The statute defines “illicit sexual conduct” as

(1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States;

(2) any commercial sex act (as defined in section 1591) with a person under 18 years of age; or

(3) production of child pornography (as defined in section 2256(8)).

18 U.S.C. § 2423(g).

In *Schneider*, the Third Circuit held “a violation of § 2423(b) for “travel[ing] in foreign commerce ... for the purpose of engaging in any sexual act ... with a person under 18 years of age that would be in violation of chapter 109A,” 18 U.S.C. § 2423(b) (2000), involves the sexual abuse of a person under age 18.” *Schneider*, 801 F.3d at 196 (citing See 18 U.S.C. § 2243(a)). This holding is not a case-specific approach: it recognizes the statute of conviction “involves the sexual abuse of a person under 18” by definition. See 18 U.S.C. § 2423(b) and *Schneider*, 801 F.3d at 196. While *Schneider* has no bearing on Mr. Tso’s case because Mr. Tso pled guilty to a count that does not require

the victim to be under the age of 18, the Third Circuit’s approach supports Mr. Tso’s position.

In *Weingarten*, the defendant appealed a district court order denying relief under 28 U.S.C. § 2255. *Weingarten*, 865 F.3d at 50. The defendant argued “his trial counsel failed to provide constitutionally effective assistance when they conceded before trial that the charges were timely under the applicable statute of limitations, 18 U.S.C. § 3283 (2003).” *Id.* The Second Circuit held trial counsel’s failure to raise a statute of limitations defense was not objectively unreasonable because it was “not obvious that the categorical applied to § 3283.”

This holding does nothing to constrain this Court’s de novo review of the legal issue in Mr. Tso’s case. Both *Schneider* and *Weingarten* were decided before *Shular*. And neither opinion considered *Kawashima*. And, like in *Schneider*, the defendant in *Weingarten* was convicted of traveling in foreign commerce for the purpose of engaging in sexual conduct with a minor in violation of 18 U.S.C. § 2423(b).

### **Tenth Circuit Decision**

The Tenth Circuit held a case-specific approach must be applied to a § 3283 challenge. Like the district court, the Tenth Circuit determined

that the term “involving” does not trigger the application of the categorical approach. The Tenth Circuit also, like the district court, mistakenly determined “every circuit court that has to date considered this same question” resolved the issue the same way erroneously relying on *Weingarten*.

### **Reasons for Granting the Writ**

- A. The categorical approach results in a lifetime threat of prosecution if there is any allegation of child abuse or kidnapping in the case, regardless of the actual elements of the charges and whether the defendant perpetrated the abuse or kidnapping.**

A case-specific, rather than categorical, analysis results in practical difficulties and potential unfairness. Under a case-specific approach, the government could pursue a 30-year-old offense against a Head Start teacher in Indian Country for *failing to report* child abuse in violation of 18 U.S.C. § 1169, if there was proof someone did abuse the child and the Head Start teacher was aware of it. *See* 18 U.S.C. § 1169 (punishing by up to 6 months in prison the failure of eight categories of people, including Head Start teachers, to report child abuse in Indian country.).

The heart of the categorical approach is its refusal to consider facts of a case. The reason for this is well-founded: focusing on elements rather than facts promoted consistency and even-handedness. The practical difficulties and potential unfairness of a case-specific approach are borne out by the only two cases in the Tenth Circuit to address the issue.

In *United States v. Kepler*, No. 20-CR-00276-GFK, 2021 WL 4027203 (N.D. Okla. Sept. 3, 2021) (unpublished) the defendant was convicted at trial of manslaughter in the first degree (heat of passion) and sentenced to 15 years for the killing of the victim, Mr. Lake, in front of Mr. Kepler's daughter and Mr. Lake's 13-year-old-half-brother. *Id.* at 1. The minor was also injured during the offense. The evidence suggested the minor was hit by a "brick fragment broken and propelled by a ricochet bullet." *Id.* at 4. The district court used a fact-specific approach to determine the "little nick" received by the minor did not qualify as "abuse" and the assault count related to the minor was therefore time barred under the five-year statute of limitations applicable to non-capital crimes. *Id.* at 4.

The trial court correctly noted the most recent expansion of the statute of limitations found in 18 U.S.C. § 3283 does not define “sexual or physical abuse” and looked to the everyday, ordinary meaning to determine the “little nick” that “didn’t bleed much” didn’t amount to physical abuse. A different trial court could have found the “little nick” amounted to physical abuse under the ordinary, everyday meaning. The “ordinary meaning” of physical abuse could comfortably include an injury sustained when the assailant fires shots (more than one) in the direction of a minor as the defendant kills the minor’s half-brother in front of him. *See Black’s Law Dictionary* (12th ed. 2024) (defining “abuse” as “1. A departure from legal or reasonable use; misuse. 2. Cruel or violent treatment of someone; specif., physical or mental maltreatment, often resulting in mental, emotional, sexual, or physical injury.”).

*United States v. Majeed*, No. 21-20060-JAR, 2023 WL 4826849 (D. Kan. July 27, 2023) (unpublished) further highlights the potential unfairness that can result when determining whether a case “involves” child abuse. In *Majeed*, the trial court determined the government’s forced-labor charges were timely under a ten-year statute of limitations.

The government further pressed the trial court to find that the extended statute of limitations under 18 U.S.C. § 3283 also applied because the government alleged the forced labor counts involved minor victims who were “regularly punished, including through physical abuse.” *Id.* at 12.

The trial court addressed the government’s theory and ordered the government to provide dates of birth for the alleged victims so the defendants could “defend against the extended statute of limitations at trial.” *Id.* The trial court, however, denied the defendants’ request for “nexus evidence” erroneously deciding the categorical approach did not apply “therefore, to the extent Defendants demand further information about how the abuse or kidnapping is tied to the forced labor itself, such information is not required under § 3283.” *Id.*

*Majeed* exemplifies the absurd results that will ensue if the case-specific approach to the expanded statute of limitations stands: defendants will be subject to charges under any federal statute, so long as the government alleges some type of physical or sexual abuse of a minor occurred at some point during the offense, regardless of whether that abuse was in any way related to the charged conduct or even

perpetrated by a specific defendant. The trial court can simply find the government “has provided sufficient allegations in the Indictment of physical abuse to put Defendants on notice of the conduct it will rely on at trial to support these allegations” and allow the prosecution to go forward with the only jury question being whether a minor was abused at some point during the offense. *See id.*

This Court should grant this petition for certioari to announce whether a case specific or categorical approach is the proper analysis for crimes, like Mr. Tso’s, that do not necessarily “involve” the abuse or kidnapping of a child.

### **Conclusion**

This Court should grant this petition to announce whether a case specific or categorical approach is used to determine if a particular case involves “the sexual or physical abuse, or kidnaping, of a child.”

Respectfully submitted,

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