PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2184

JOSE RAMIRO MEJIA-HENRIQUEZ,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of a Decision of the
Board of Immigration Appeals
(Agency No. BIA -1: A208-364-069)
Immigration Judge: Dennis Ryan

Argued June 10, 2026

Before: HARDIMAN, BOVE, and FISHER, *Circuit Judges*.

(Filed: August 25, 2026)

OPINION OF THE COURT

HARDIMAN, *Circuit Judge*.

Jose Ramiro Mejia-Henriquez petitions for review of a decision of the Board of Immigration Appeals (BIA) denying him deferral of removal under the Convention Against Torture (CAT). While Mejia-Henriquez's petition for review was pending, this Court concluded that he had not shown a likelihood of success on the merits and vacated the administrative stay of removal. Mejia-Henriquez was then removed to his native El Salvador, where officials there detained him on suspicion of gang activity. So there is no longer a removal to defer, the BIA's denial of CAT relief did not result in any sufficient collateral consequence for Mejia-Henriquez, and his return is exceedingly unlikely. Because these events "over[took] those in the courtroom," *FBI v. Fikre*, 601 U.S. 234, 240 (2024), we will dismiss the petition as moot.

I

A

Mejia-Henriquez is a citizen of El Salvador. In 2015, he illegally entered the United States through its southern border. *See* 8 U.S.C. § 1325(a). When he was apprehended, he told authorities that he came to the United States "to look for work." A.R. 370. He also claimed that he feared gang activity back home. Soon after, he was issued a Notice to Appear and released into the United States. In 2022, Mejia-Henriquez filed an application for asylum, withholding of removal, and CAT relief, but the Government eventually moved to dismiss his case, and it was administratively closed. He remained in the country.

Mejia-Henriquez settled near Baltimore where he worked in construction, met a woman, and had a son. He also had multiple run-ins with the law, including at least two arrests for drunk driving. Mejia-Henriquez's most serious offense occurred in 2023, when he robbed a convenience store while his accomplice held the cashier at gunpoint. He pleaded guilty to conspiracy to commit armed robbery and received 179 days' imprisonment.

Months later, the Government charged Mejia-Henriquez as removable because of his illegal entry and conviction of a crime involving moral turpitude. *See* 8 U.S.C. § 1182(a)(6)(A)(i), (2)(A)(i)(I). He conceded removability but filed a new application for asylum, withholding of removal, and protection under CAT.

B

Mejia-Henriquez grew up in Las Margaritas, a neighborhood in San Salvador then controlled by MS-13. He testified that he never joined the gang, but several childhood friends did. Mejia-Henriquez said that the local police suspected him of gang activity anyway and often aggressively questioned him. Officers "would sink [his] head in a bucket of water" and hit him with "mops." A.R. 174–75. On one occasion, police officers broke his nose. Mejia-Henriquez claimed he was arrested "approximately six or seven times" in total and held for three to six days at a time. A.R. 176. He also stated that "everything [in the cells] was disgustingly dirty" and that the cells held up to 45 prisoners at once when they only had space for 15. A.R. 179. Mejia-Henriquez said he was last arrested in 2013 or 2014 when police were patrolling his neighborhood "looking for young men to arrest." A.R. 182. Mejia-Henriquez never appeared before a judge or received documents related to those arrests.

Mejia-Henriquez claimed that the Salvadoran government issued an arrest warrant against him in his absence in 2017, alleging his involvement in a gang-related extortion. (He denies the allegations.) He learned of the charges through a newspaper article in 2017 but was unconcerned until 2022 when he visited the Salvadoran embassy in Washington, D.C. and was unable to renew his passport because of the outstanding warrant. To help corroborate his account, Mejia-Henriquez submitted a copy of a purported Salvadoran indictment alleging his involvement in an extensive multi-gang extortion operation, as well as local news articles that identified him as a participant in that scheme to the Immigration Judge (IJ). Though Mejia-Henriquez denied involvement, he did recall cashing a $500 check for "a guy [he] had never seen before" in exchange for $10. A.R. 749. While detained pending his removal, ICE, detention facility workers, and fellow inmates also identified Mejia-Henriquez (he claims falsely) as an MS-13 member.

Because of his tattoos, Salvadoran indictment, criminal history in the United States, and suspected membership in MS-13, Mejia-Henriquez believed the Salvadoran government would detain him under its "state of exception," a policy of incarcerating gang members.[1] He argued that he would be

[1] To combat gang violence, El Salvador declared a "state of exception" in 2022 that empowered authorities to detain suspected gang members with little, if any, procedural protections. According to a 2023 Human Rights Report issued by the State Department:

subjected to torturous prison conditions in El Salvador and so was entitled to relief under CAT. And even if he was not incarcerated, he also claimed that he would be tortured by MS-13 members (who would know he refused to join their gang over a decade ago when he was a teenager) or rival gangs who would incorrectly identify him as an MS-13 member. Lastly, Mejia-Henriquez represented that he was a member of the "Unidad" (Unity) political party in El Salvador. He feared he would be imprisoned or murdered because of his political opinion.

Mejia-Henriquez testified that he was afraid, "in general. Just, generally, I'm afraid of going back there because of what's going on in El Salvador." A.R. 129.

C

The Immigration Judge found Mejia-Henriquez's testimony inconsistent, both internally and with the record. He also found much of Mejia-Henriquez's testimony implausible. After finding that Mejia-Henriquez was not credible, the IJ denied him asylum and withholding of removal. The IJ denied

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> Under the state of exception, reports of gang violence decreased significantly, allowing citizens to exercise their right to life, liberty, and security of person, and to engage in daily activities and commerce without the constant threat of violence and extortion. Arbitrary arrests and mass pretrial hearings, however, undermined due process and exacerbated historically difficult conditions in overcrowded prisons.

A.R. 420.

CAT relief as well. Considering the documentary evidence in the record, he reasoned that even if Mejia-Henriquez were detained upon arrival in El Salvador, the generally poor prison conditions there did not constitute torture. Mejia-Henriquez also failed to identify a "specific reason why he personally would be more at risk of torture than anyone else detained by Salvadoran officials." A.R. 87. The IJ then found insufficient evidence that anyone would specifically target him on suspicion that he was a gang member. So the IJ concluded that Mejia-Henriquez failed to meet his burden for CAT relief and ordered him removed from the United States.

Mejia-Henriquez appealed to the BIA, challenging only the IJ's CAT determination.[2] Perceiving no error in the IJ's conclusion that Mejia-Henriquez was not entitled to CAT relief, the BIA adopted and affirmed the IJ's decision.

D

Mejia-Henriquez timely petitioned for our review. He again argued only that he was erroneously denied CAT relief, choosing not to challenge the agency's denial of asylum and withholding of removal. While his petition was pending, Mejia-Henriquez was removed to El Salvador after this Court concluded he had not shown a likelihood of success on the merits to justify a stay of removal. Counsel informs us that

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[2] Because Mejia-Henriquez challenged only the IJ's CAT conclusion, the BIA recognized that he had waived any challenge to the denials of asylum and withholding of removal. A.R. 3 n.1; *see* A.R. 15 n.1 (Mejia-Henriquez's brief to the BIA, stating: "He does not challenge the IJ's denial of asylum or withholding of removal").

Mejia-Henriquez is now "in custody at the San Luis Mariona (La Esperanza) prison" in San Salvador. Mejia-Henriquez Supp. Br., Ex. 1, at 2.

II[3]

Federal courts are courts of limited jurisdiction. Under Article III of the Constitution, we may only decide "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. That limited authority means that we cannot "pronounce on past actions that do not have any 'continuing effect' in the world." *Fikre*, 601 U.S. at 241 (citation omitted). Throughout all stages of litigation, the party claiming an injury "must have suffered, or be threatened with," an actual injury that continues to be "likely to be redressed by a favorable judicial decision." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)). When, given intervening developments, an injury is no longer redressable by a favorable judicial decision, it may no longer be possible "for a court to grant any effectual relief," rendering the case moot. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016) (citation omitted).

That is the case here: we can no longer provide Mejia-

[3] The BIA had jurisdiction under 8 C.F.R. §§ 1003.1(b)(3) and 1240.15. "We have jurisdiction to determine whether we have jurisdiction." *Jarbough v. Att'y Gen.*, 483 F.3d 184, 188 n.3 (3d Cir. 2007). We must consider mootness sua sponte. *See, e.g.*, *Steele v. Blackman*, 236 F.3d 130, 134 n.4 (3d Cir. 2001). Given our conclusion that we lack Article III jurisdiction because there is no longer a live case or controversy, we do not reach the parties' dispute over whether we have statutory jurisdiction under 8 U.S.C. § 1252(a).

Henriquez effectual relief. Recall that he sought deferral of removal under CAT, but after this Court vacated the administrative stay of removal, the Government removed him to El Salvador. The removal is "over[] and cannot be undone." *Spencer*, 523 U.S. at 8; *see also Mendoza-Flores v. Rosen*, 983 F.3d 845, 847 (5th Cir. 2020) ("[T]he petitioner's removal from the United States generally renders the petition moot."); *Kaur v. Holder*, 561 F.3d 957, 959 (9th Cir. 2009) (petition seeking withholding of deportation mooted by deportation).

Even so, Mejia-Henriquez contends that this case is not moot for two reasons. First, he claims that collateral consequences of his removal, specifically the reentry bar imposed on categories of removed aliens under 8 U.S.C. § 1182(a)(9)(A), "prevent[] mootness." Mejia-Henriquez Supp. Br. 4. Second, he claims that ICE Directive No. 11061.1—a policy that details when the Government will facilitate some removed aliens' return to the United States—"otherwise saves a case like this from mootness." Mejia-Henriquez Supp. Br. 4. We are not persuaded.

A

Collateral consequences are a concept familiar to the law of mootness. *See, e.g.*, *Abreu v. Superintendent Smithfield SCI*, 971 F.3d 403, 406 (3d Cir. 2020). In the habeas corpus context, a "petitioner who has been released [from custody] may obtain judicial review of a petition by showing that he continues to suffer from secondary or collateral consequences of his conviction." *Id.* But the Supreme Court has cautioned that collateral consequences may not rest on pure speculation (*i.e.*, the consequence must have occurred or be likely to occur). *Spencer*, 523 U.S. at 14–16. If a petitioner shows that he has incurred a collateral consequence, it effectively stands in for the original injury-in-fact. *See id.* The question then becomes whether the relief the petitioner seeks would likely redress that collateral consequence. *Burkey v. Marberry*, 556 F.3d 142, 148 (3d Cir. 2009).

That was the question in *Abreu*. Consistent with the Supreme Court's admonition in *Spencer*, we held that a habeas petition challenging a state-court conviction became moot when the petitioner was removed from the United States. *Abreu*, 971 F.3d at 407. No one disputed that Abreu was barred by statute from reentering the United States because of his state-court conviction. *Id.* at 406. So the issue was whether the relief Abreu sought would likely redress that consequence. *Id.* Though vacatur of Abreu's state-court conviction would have removed the barrier to his reentry that resulted from that conviction, he also had a separate federal conviction that independently barred reentry. *Id.* So even if Abreu prevailed, the reentry bar would remain intact; the relief he sought would not redress the injury caused by the reentry bar. *Id.* There was thus no collateral consequence that could save his petition from being moot. *Id.*

So too here. Mejia-Henriquez contends that his petition is not moot because, as a removed alien, he is subject to a reentry bar under 8 U.S.C. § 1182(a)(9)(A)(ii). But as in *Abreu*, the relief Mejia-Henriquez seeks cannot displace that reentry bar. That is because CAT relief "does not disturb [a] final order of removal." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). Petitioners who raise CAT-only arguments do not challenge the validity of their removal order. *See Mendoza-Flores*, 983 F.3d at 847–48. Instead, arguments for CAT-only relief depend on the validity of the final order of removal; the relief requested is the withholding or deferral of an otherwise valid removal. So even if his CAT-only petition were successful, the removal order would remain in place and with it, the reentry bar. Those consequences are therefore not collateral to the challenged decision to deny CAT relief and cannot save Mejia-Henriquez's petition from mootness.[4]

Mejia-Henriquez resists that conclusion. He argues that, under this Court's opinion in *Chong v. District Director, I.N.S.*, 264 F.3d 378 (3d Cir. 2001), he has suffered sufficient collateral consequences. In that case, Chong sought "relief from a final order of removal" in a habeas corpus proceeding filed in the district court. *Id.* at 380. She claimed that the BIA violated her due process rights, the Immigration and Nationality Act (INA), and various regulations in concluding she was "ineligible for withholding of removal." *Id.* While her habeas petition was pending before the district court, she was deported. *Id.* at 382. On appeal, we held that the BIA's removal order itself "create[d] sufficient collateral consequences" to maintain a live controversy because her deportation barred her reentry for ten years under 8 U.S.C. § 1182(a)(9)(A)(ii). *Id.* at 385. Even though Chong could no longer prevent her deportation, she could challenge the validity of the removal

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[4] We note that the facts here are distinct from cases in which an alien *does* challenge the final order of removal, like where he challenges the agency's asylum determination. In those cases, we have held that "a final order of removal creates sufficient collateral consequences" because, if the petitioner succeeds, the final order of removal may be vacated and, with it, the reentry bar removed. *Gomez-Zuluaga v. Att'y Gen.*, 527 F.3d 330, 339 n.4 (3d Cir. 2008) (citation modified); *see also Amanfi v. Ashcroft*, 328 F.3d 719, 724 n.1 (3d Cir. 2003) (case not moot where alien challenged, among other things, agency's asylum conclusion).

order, and if she won, she would not be subject to that reentry bar. *Id.* And although Chong did not challenge the BIA's finding that she had committed an aggravated felony, an independent basis for § 1182(a)(9)(A)(ii)'s reentry bar, we reasoned that, if we disturbed the BIA's decision, "the Attorney General could exercise his discretion and grant 'withholding' of removal and allow Chong to reenter the United States," despite her aggravated felony conviction. *Id.* at 386.

Chong cannot "breathe life" into this moot controversy. *United States v. Kissinger*, 309 F.3d 179, 182 (3d Cir. 2002). First, to the extent *Chong* relied on the reentry bar (even though the alien there failed to challenge a separate independent bar to reentry) and the mere possibility that the Attorney General would exercise discretion to allow the alien to reenter the United States (without assessing the likelihood of that happening), its reasoning is in tension with the Supreme Court's decision in *Spencer*. *Cf. Urda v. Sokso*, 146 F.4th 311, 315 (3d Cir. 2025) (declining to adopt a reading of a precedent that potentially conflicted with Supreme Court precedent). As this Court has explained, under *Spencer*, a proffered collateral consequence is insufficient to keep a case alive if the relief sought "will do nothing to change" it. *Abreu*, 971 F.3d at 407. Instead, the relief sought must be likely to redress the purported collateral consequence. *See id.* We therefore decline to extend *Chong*'s analysis of withholding-only relief beyond its facts.

In any case, *Chong* does not compel a contrary conclusion. Unlike in *Chong*, where the Attorney General might have exercised his discretion to allow Chong back into the country, here we have ample reason to believe the Attorney General will not exercise his discretion to allow the return of a prisoner suspected of membership in MS-13 (a designated

Foreign Terrorist Organization (FTO)) who is, according to his own application, subject to prosecution in a foreign country.[5] So even *Chong* suggests that Mejia-Henriquez's return is a remote possibility: the Attorney General is not only highly unlikely to exercise his discretion to allow the return of such a petitioner, but his exercise of discretion would not remove any and all other barriers to reaching the United States, like being incarcerated in another country. The Attorney General could *permit* Mejia-Henriquez's entry, but Mejia-Henriquez would not be able to take advantage of such hypothetical permission while incarcerated in a foreign prison. Because the reentry bar is not a consequence of the CAT-only decision Mejia-Henriquez challenges, it is not a sufficient collateral consequence to exercise jurisdiction over this petition.[6]

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[5] *See Foreign Terrorist Organization Designations of Tren de Aragua, Mara Salvatrucha, Cartel de Sinaloa, Cartel de Jalisco Nueva Generacion, Carteles Unidos, Cartel del Noreste, Cartel del Golfo, and La Nueva Familia Michoacana*, 90 Fed. Reg. 10030 (Feb. 20, 2025).

[6] We recognize that, on at least one occasion, we held that a CAT-only petition was not moot because of the collateral consequence of the reentry bar. *See Pieschacon-Villegas v. Att'y Gen.*, 671 F.3d 303, 309 n.5 (3d Cir. 2011), *abrogated on other grounds by Nasrallah*, 590 U.S. at 576. We read the discussion of mootness in *Pieschacon-Villegas* as akin to "a drive-by jurisdictional ruling" that did not grapple with how the reentry bar could be a sufficient collateral consequence of the agency's CAT decision. *Goldman v. Citigroup Glob. Mkts. Inc.*, 834 F.3d 242, 251 (3d Cir. 2016) (citation modified). Because the reentry bar is not a consequence of the denial of

B

Mejia-Henriquez maintains that, even without the reentry bar, his petition seeking CAT deferral is not moot because of ICE Directive 11061.1. That policy allows ICE to facilitate the return of certain removed aliens whose petitions for review are successful. U.S. Immigration & Customs Enforcement, *Facilitating the Return to the United States of Certain Lawfully Removed Aliens, Directive No. 11061.1* (Feb. 24, 2012), https://perma.cc/7SET-GMJ9 (Directive No. 11061.1); *see also* U.S. Immigration & Customs Enforcement, FAQs: Facilitating Return for Lawfully Removed Aliens, https://perma.cc/R9CV-QU7Q (ICE FAQs).[7] On these facts, Directive No. 11061.1 cannot save the petition from mootness.

1

"Absent extraordinary circumstances," if an alien's petition prevails after he has been removed from the country, "ICE will facilitate the alien's return to the United States" if one of two conditions is met. Directive No. 11061.1 § 2. The first is when "the court's decision restores the alien to lawful permanent resident (LPR) status." *Id.* The second is when "the alien's presence is necessary for continued administrative

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CAT relief, we must adhere to the limits imposed on us by the Constitution.

[7] We may take judicial notice of information publicly available on government websites. *See City of Phila. v. Sec'y U.S. Dep't of Int.*, 179 F.4th 169, 184 (3d Cir. 2026).

removal proceedings."[8] *Id.* "Extraordinary circumstances" preventing the application of this policy "may include, but are not limited to, situations where the return of an alien presents serious national security considerations or serious adverse foreign policy considerations." ICE FAQs, https://perma.cc/R9CV-QU7Q. The Directive also explains that "facilitating an alien's return" means "engag[ing] in activities which *allow* a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parole the alien into the United States upon his or her arrival at a U.S. port of entry." Directive No. 11061.1 § 3.1 (emphasis added). According to the Government, DHS does not facilitate aliens' release from foreign detention.

Mejia-Henriquez, who never had any legal status in the

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[8] "If the presence of an alien who prevails on his or her PFR is not necessary to resolve the administrative proceedings, ICE will not facilitate the alien's return." Directive No. 11061.1 § 2. There is one caveat, though:

> [I]f, following remand by the [circuit] court to the Executive Office for Immigration Review (EOIR), an alien whose PFR was granted and who was not returned to the United States is granted relief by EOIR or the Department of Homeland Security (DHS) allowing him or her to reside in the United States lawfully, ICE will facilitate the alien's return to the United States.

Id. No one contends that Mejia-Henriquez will achieve lawful status through the process outlined in this exception.

United States, claims his case falls within the second category. He theorizes an unlikely series of contingencies. If we were to grant his petition for review, we could remand to the BIA, which could in turn remand to an IJ, who could require him to appear for further proceedings. If all those contingencies materialized, the argument goes, ICE would facilitate his return because his "presence [would be] necessary for continued administrative removal proceedings." Directive No. 11061.1 § 2.

The Government, for its part, contends that extraordinary circumstances are present here so, even if all Mejia-Henriquez's proffered contingencies occur, the Directive will not apply: Mejia-Henriquez is suspected of membership in MS-13—an FTO—and is detained in El Salvador under its criminal laws. Even without those extraordinary circumstances, though, the Government argues that the facts of this case make Mejia-Henriquez's prospect of return too remote to maintain a live case or controversy, even if ICE could hypothetically facilitate (*i.e.*, allow) his return. We agree on both points.

Several of our sister courts have held that, in certain circumstances, Directive No. 11061.1 may save an otherwise moot CAT-only petition for review. *See Del Cid Marroquin v. Lynch*, 823 F.3d 933, 936 (9th Cir. 2016) (per curiam); *Aguilar-Quintanilla v. McHenry*, 126 F.4th 1065, 1068 (5th Cir. 2025); *Igiebor v. Barr*, 981 F.3d 1123, 1129 (10th Cir. 2020); *Lopez-Sorto v. Garland*, 103 F.4th 242, 249 (4th Cir. 2024). But those courts have not squarely addressed how a petitioner's incarceration in a foreign country under that country's criminal laws might affect the extraordinary circumstances and likelihood-of-return analysis. Nor have they addressed a situation where, as here, the alien is suspected of membership in a designated FTO. There may be cases in which the application of Directive No. 11061.1 could save a CAT-only petition from mootness, but this is not one of them.

Mejia-Henriquez's case is quite different from our sister courts' cases analyzing Directive No. 11061.1. Start with *Del Cid Marroquin*. 823 F.3d at 934–36. The removed alien there sought only CAT protection, so the Ninth Circuit looked to the potential application of Directive 11061.1. *Id.* at 936. The government represented that it was, at that time, ICE's policy to "facilitate the return of an alien who prevailed on a petition for review challenging the denial of CAT protection if the court of appeals directed an outright grant of CAT protection." *Id.* (citation omitted). It also confirmed that ICE—again, at that time—would deviate from that general practice only if there were "intervening factual developments," like an "alien's firm resettlement in a third country." *Id.* (citation omitted). And the government represented that if a court of appeals remanded the case to the BIA and the BIA then took favorable action on it (such as remanding to the IJ for further proceedings), it would also be ICE's general practice to facilitate the alien's return to the United States. *Id.* Given those representations, potentially granting the alien's petition would "at least increase his chances" of returning to the United States. *Id.* So the court held that the case was not moot.

The Tenth Circuit echoed *Del Cid Marroquin*'s reasoning in *Igiebor v. Barr*, 981 F.3d 1123 (10th Cir. 2020). The alien there sought CAT-only relief and was removed from the United States while his petition for review was pending. *Id.* at 1125–26. Because the government again "made clear" that ICE would use the Directive No. 11061.1 to "facilitate Igiebor's return to the United States" if his petition were successful, the petition was not moot. *Id.* at 1126. But the court emphasized that, "as the government affirmatively attest[ed]," "no evidence in the record indicates extraordinary circumstances [existed that] would prevent ICE from facilitating Igiebor's return to the United States if his petition is granted." *Id.* at 1130 n.2. The Fifth Circuit agreed in *Aguilar-Quintanilla v. McHenry*, 126 F.4th 1065 (5th Cir. 2025). There, it concluded that the removed alien's petition was not moot because his return "could be facilitated" under Directive No. 11061.1. *Id.* at 1069. The court also reasoned that, if it were to remand to the BIA, the agency might in turn remand to the IJ who could seek additional fact-finding and require the alien's in-person testimony. *See id.* at 1069–1070 (relying on *Lopez-Sorto v. Garland*, 103 F.4th 242 (4th Cir. 2024)).

None of these cases grappled with facts like those presented in Mejia-Henriquez's case: a CAT-deferral-only petitioner who has already been removed is incarcerated in a foreign country under that country's criminal laws, has an extensive criminal history, and is suspected of membership in a designated FTO. These facts fit within ICE's conception of "extraordinary circumstances," *i.e.*, those implicating national security and foreign policy concerns. For those reasons, the Government informs us that, contrary to its attestations in the above cases, the Directive will not apply to Mejia-Henriquez. And even if it did, a court of the United States cannot effectuate the release of a foreign prisoner.[9]

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[9] We recognize the surface-level similarities between this case and *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025). In that case, the government removed an alien to El Salvador, where he was subsequently detained. *Id.* at 1018. It conceded that "the removal to El Salvador was . . . illegal" because the alien "was subject to a withholding order forbidding his removal to El

The facts here are distinguishable from cases like *Del Cid Marroquin*, *Igiebor*, and *Aguilar-Quintanilla* for several reasons. First, the Government persuasively explains why extraordinary circumstances preclude the application of Directive No. 11061.1 to Mejia-Henriquez. *Igiebor* provides more support for that conclusion. 981 F.3d at 1130 n.2. The court there reasoned that, according to the government, there were no extraordinary circumstances that would prevent the application of the Directive to the alien, so the Directive would apply. *See id.* Here we have precisely the opposite situation: the Government informs us that there are extraordinary circumstances so the Directive will not apply. Besides, as we have discussed, *Del Cid Marroquin*, *Igiebor*, and *Aguilar-Quintanilla* did not address the role, if any, that foreign incarceration and prosecution as well as an alien's suspected membership in a designated FTO would play in assessing the possibility of his return. Second, we recognize that some of these courts have reasoned (as Mejia-Henriquez urges us to) that if a petition were successful, the BIA *could* remand to an IJ who *could* then require in-person proceedings that would

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Salvador." *Id.* Because the removal was illegal, the Supreme Court upheld a district court's order requiring the Executive Branch to "facilitate" the alien's return to the United States. *Id.* The facts here are similar only insofar as they involve two Salvadoran nationals removed from the United States and subsequently detained there. Though Mejia-Henriquez requested that we "order the government to facilitate Mr. Mejia-Henriquez's immediate return from El Salvador to the United States," he has not pointed to any authority to support the entry of such an order in a case like this. Mejia-Henriquez Br. 22. As we have explained, Mejia-Henriquez does not challenge his removal order, let alone contest its legality.

make return a possibility under Directive No. 11061.1. *See Aguilar-Quintanilla*, 126 F.4th at 1070; *Lopez-Sorto*, 103 F.4th at 252. Because we have explained that Directive No. 11061.1 will not apply to Mejia-Henriquez, we need not decide whether that reasoning would persuade us or whether it is impermissibly speculative. *See United States v. Corrigan*, 6 F.4th 819, 821 (8th Cir. 2021) ("[S]peculation alone does not allow us to retain jurisdiction over a moot case" (citation modified)); *Liu v. I.N.S.*, 274 F.3d 533, 535 (D.C. Cir. 2001) (similar); *cf. Spencer*, 523 U.S. at 16.

Even so, assume for a moment that such a chain of contingencies could keep Mejia-Henriquez's case alive. Here, even if an IJ somehow determined that Mejia-Henriquez's in-person presence were required in further proceedings, his actual return is an exceedingly remote possibility. In other words, even if all Mejia-Henriquez's proffered speculative contingencies occurred, he would still need to get out of prison before he could travel to the United States. (Recall that ICE's facilitation of return policy is about *allowing* aliens to reenter, not securing their release from foreign prisons and escorting them back to the United States.) *Cf. Munaf v. Green*, 553 U.S. 674, 700 (2008) (expressing "concerns about interfering with a sovereign's recognized prerogative to apply its criminal law to those alleged to have committed crimes within its borders"). So any relief would not likely redress Mejia-Henriquez's removal from the United States.[10]

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[10] In *Burkey v. Marberry*, 556 F.3d 142 (3d Cir. 2009), a petitioner had been released from prison but still tried to challenge the Bureau of Prisons's determination that he was not eligible for early release. *Id.* at 145. He argued his case was not moot because, if his habeas petition were successful, the

sentencing court in a different state *might* consider reducing his term of supervised release under 18 U.S.C. § 3583(e). *Id.* at 145–46. We explained that, under *Spencer*, it was not likely that the habeas petition's success would redress any purportedly excessive term of supervised release. *Id.* at 148–49. In other words, it was unlikely that the petition's success would cause the sentencing court to exercise its discretion to terminate (or shorten) supervised release. *Id.* More recently, however, we suggested that there may be tension between our Court's application of *Spencer* in *Burkey* and the Supreme Court's oft-repeated refrain that a case is moot only if "it is *impossible* for a court to grant *any* effectual relief whatever to the prevailing party." *United States v. Scripps*, 961 F.3d 626, 631 n.3 (3d Cir. 2020) (citation modified). But the two can be reconciled. Read together, they reinforce the uncontroversial proposition that, for a court to possibly grant effectual relief, the relief sought must *likely* redress the purported injury. *Cf. TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (injury-in-fact must "likely be redressed by judicial relief.").

In any event, we underscore that we do not rest our decision on any freestanding requirement that to keep moot cases alive, hypothetical events must be more likely than not. Instead, we conclude that the relief sought in this petition will not redress Mejia-Henriquez's purported injuries. First, no one disputes that Mejia-Henriquez faces the reentry bar, so we need not assess the likelihood of that consequence occurring. We simply conclude that, if Mejia-Henriquez were to prevail, the relief he seeks will not—indeed, cannot—remove the reentry bar. Second, if Mejia-Henriquez's petition prevailed, he would still be unable to return to the United States to seek deferral of a second removal: ICE's facilitation-of-return policy does not

Mejia-Henriquez's remaining arguments fail to persuade. He contends that the Supreme Court's decision in *Chafin v. Chafin*, 568 U.S. 165 (2013), supports his position that there is a live case or controversy. *Chafin* was an international child custody dispute between two parents: Mr. Chafin was American and Ms. Chafin was Scottish. *Id.* at 170. Their child was residing with Mr. Chafin in Alabama when Ms. Chafin petitioned a federal district court to procure the child's return to Scotland with her. *Id.* at 170–71. She won in the district court and took the child with her before Mr. Chafin's appeal was decided. *Id.* at 171. The Supreme Court held that the dispute was not mooted by the travel to Scotland. *Id.* at 174–75. It reasoned that, even if Scotland were to pay no mind to a U.S. court order ordering Ms. Chafin, the party who initiated the suit, to return the child, U.S. courts "continue[d] to have personal jurisdiction over Ms. Chafin, may command her to take action even outside the United States, and may back up any such command with sanctions," even if enforcement of that order was uncertain. *Id.* at 175.

Chafin is not on point. "Mr. Chafin [asked] for typical appellate relief," *i.e.*, that "the District Court undo what it has done" so that he could prevail in his custody battle. *Id.* at 173. Mejia-Henriquez does not ask for typical appellate relief: the only relief he sought from the BIA was deferral of removal and that removal has already happened. Disturbing the agency's conclusion at this point could not undo that harm, whereas in *Chafin*, "undo[ing]" the District Court's order could have

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apply to him and even if it did, he is in Salvadoran criminal custody and thus unable to travel to the United States. So this Court can no longer grant any effectual relief.

resulted in Mr. Chafin winning the child-custody dispute. *Id.* We decline to transpose the principles of international child custody disputes under the Hague Convention that were at issue in *Chafin* onto the deferral-of-removal-only immigration matter here.

Next, Mejia-Henriquez seems to argue that because the Government has averred in other cases that Directive No. 11061.1 might apply, it must reflexively do the same here. But the Government's making different representations about how its policy applies to different petitioners is not an "about-face," it's a precise accounting of the varying circumstances and considerations of each case. *Contra* Mejia-Henriquez Supp. Br. 12. To the extent Mejia-Henriquez implies that the Government already took the opposite position in this litigation, he is wrong. In its response brief, the Government cited Directive No. 11061.1 in a footnote and said that "it is up to ICE whether it will facilitate [Mejia-Henriquez's] return." Gov't Br. 34 n.4. Nothing about that position has changed. After further briefing requests from this Court and consultation with DHS (which oversees ICE), the Government explained the reasons ICE will not apply its policy to a foreign prisoner suspected of membership in an FTO with a high unlikelihood of release.

Finally, Mejia-Henriquez maintains that he "faces the very threat of torture on which he based his application for deferral of removal under the CAT." Mejia-Henriquez Supp. Br. 6. But that merely collapses his mootness argument into his merits arguments, the latter of which we cannot reach, "even if we were disposed to do so." *Spencer*, 523 U.S. at 18.

III

Mejia-Henriquez asks us to give him another shot at deferring a removal that already happened. But we cannot turn back the clock. And he cannot point to any collateral consequence of his removal or facts that would make his potential return more than a remote possibility to support our jurisdiction. First, Mejia-Henriquez does not challenge his final order of removal so, even if his petition were to succeed, he would still be barred from reentering the United States. Second, he is incarcerated in a Salvadoran prison and, by his own admission, subject to criminal prosecution there for alleged violations of its laws. Though ICE sometimes facilitates the return of previously removed aliens under Directive No. 11061.1, the Government has persuaded us that, given Mejia-Henriquez's criminal history in the United States, status as a foreign prisoner, and suspected membership in a FTO, that limited policy will not apply to him. And even if that policy could apply to him, we, as a court of the United States, are unable to secure his release from Salvadoran criminal custody so that he might secure that policy's benefits. For those reasons, it is no longer possible for this Court to provide Mejia-Henriquez effectual relief. We will therefore dismiss his petition as moot.

Joel S. Nolette [**Argued**]
Theodore A. Howard
Kimberly A. Reynolds
Stephen A. Morrison
Alexis G. Berg
WILEY REIN
Counsel for Petitioner

Brett Shumate
Michael Weisbuch [**Argued**]
Sheri R. Glaser
Andrew B. Insenga
UNITED STATES DEPARTMENT OF JUSTICE
Counsel for Respondent

Mejia-Henriquez v. AG, No. 25-2184
BOVE, *Circuit Judge*, joined by HARDIMAN, *Circuit Judge*, concurring.

I join the panel's thoughtful opinion in its entirety. The Petition For Review is moot. I write to address the additional jurisdictional problem referenced but not resolved in footnote 3 of the opinion. Under 8 U.S.C. § 1252(a)(1), there is no statutory jurisdiction to review Petitioner's CAT-only claim. Similar to other areas of immigration law, in light of the growing body of authority explaining our lack of jurisdiction, this case presents no "excuse for burdening the reader with exegesis." *Cirrus Rojas v. Olson*, --- F.4th ----, 2026 WL 2198315, at *17 (7th Cir. 2026) (Sykes, J., dissenting).[1] So I will amplify some, but not all, of the sound points already made by others on this topic.[2]

"[A] petition advancing a standalone claim for review of a CAT order is not sufficient to invoke our jurisdiction under 8 U.S.C. § 1252(a)(1)." *Laureano v. AG*, 177 F.4th 453, 475 (3d Cir. 2026) (Matey, J., dissenting). That is exactly the type of claim that Petitioner brought to us. An IJ sustained DHS's

[1] Unless otherwise indicated, case quotations omit all internal citations, quotation marks, footnotes, alterations, and subsequent history.

[2] *See, e.g.*, *Riley v. Bondi*, 606 U.S. 259, 277-81 (2025) (Thomas, J., concurring); *EEV v. Blanche*, 180 F.4th 954, 983-85 (7th Cir. 2026) (Brennan, C.J., dissenting); *Riley v. Blanche*, 180 F.4th 187, 202-06 (4th Cir. 2026) (Quattlebaum, J., dissenting); *Hayles v. AG*, 179 F.4th 872, 876-80 (11th Cir. 2026); *Navarrete v. Bondi*, 170 F.4th 1214, 1219-25 (9th Cir. 2026); *Ruiz-Perez v. Garland*, 49 F.4th 972, 980-84 (5th Cir. 2022) (Oldham, J., dissenting); *Bhaktibhai-Patel v. Garland*, 32 F.4th 180, 190 n.13 (2d Cir. 2022).

charge of removability on May 31, 2024. The IJ's ruling amounted to a removal order because it was a decision "concluding that" Petitioner "is deportable." 8 U.S.C. § 1101(a)(47)(A); *see also Riley*, 606 U.S. at 267. The 10-day period for an appeal to the BIA expired on June 10, 2024, without action by Petitioner. *See* 8 C.F.R. § 1003.38(b)(1). He did not timely file a Petition For Review of the removal order either. *See* 8 U.S.C. § 1252(b)(1).

Based on this sequence of events, Petitioner forfeited any challenges to the removal order and would, in any event, have faced an exhaustion problem had he filed such a challenge in this Court. *See* 8 U.S.C. § 1252(d)(1); *see also Herrera v. Bondi*, 162 F.4th 617, 621 (6th Cir. 2025). Even a challenge to his withholding applications would not have sufficed. *See Monsalvo v. Bondi*, 604 U.S. 712, 760 (2025) (Barrett, J., dissenting) ("How can [an alien] seek judicial review of his final order of removal while conceding that his final order of removal was lawful? He cannot . . . ."). To invoke our § 1252(a)(1) jurisdiction, an alien must present a colorable challenge to his removal order to the BIA and in a Petition For Review.

Petitioner and his counsel chose a different path, which does not culminate in judicial review under the relevant statutory text. "[W]e cannot rewrite the laws passed by Congress and signed by the President to shield [Petitioner] from the consequences of his choice." *Monsalvo*, 604 U.S. at 747 (Thomas, J., dissenting). Petitioner waited until after he faced a removal order, which he did not challenge, and then sought CAT protection and other relief. The IJ denied the CAT application on January 17, 2025, more than six months after concluding that Petitioner was removable. Petitioner only challenged the CAT ruling before the BIA, which dismissed his appeal on June 13, 2025. Petitioner then filed a Petition For Review limited to the application for CAT relief. The "CAT order is not itself a final order of removal." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). And a final order of removal must be implicated in a colorable way to invoke our jurisdiction under § 1252(a)(1).

At argument in this case, Petitioner's counsel contended that we have jurisdiction based on a "straightforward" application of *Nasrallah*.[3] Wrong. The premise of *Nasrallah* is that "CAT orders may be reviewed together with final orders of removal." 590 U.S. at 581. Justice Kavanaugh used the word "together" five times in that majority opinion. Here, Petitioner sought review of the CAT order, only, and not "together" with anything. Perhaps counsel was referring to the passage from *Nasrallah* indicating that § 1252(a)(4) "provides for direct review of CAT orders in the courts of appeals." *Id.* at 585. The cited provision includes the caveat that such CAT claims may only be reviewed "in accordance with this section." 8 U.S.C. § 1252(a)(4). As *Nasrallah* made clear repeatedly in other parts of the opinion, § 1252 review of a CAT claim is limited to situations where the review also includes a challenge to "a final order of removal." 8 U.S.C. § 1252(a)(1).

In fact, recent precedent in this Circuit requires that we must look "elsewhere"—*i.e.*, a statute other than § 1252(a)(1)—for statutory jurisdiction to review CAT-only claims. *Laureano*, 177 F.4th at 457. Like Judge Matey and others outside the Circuit, I don't see it. *See id.* at 473-76 (Matey, J., dissenting). Section 1252(a)(4) does not work. FARRA provides that "that federal courts of appeals lack

[3] Oral Argument Audio Recording at 6:48, *Mejia-Henriquez v. AG*, No. 25-2184 (3d Cir. 2026).

jurisdiction to review CAT orders 'except *as part of* the review of a final order of removal.'" *Riley*, 606 U.S. at 278 (Thomas, J., concurring) (quoting FARRA § 2242). Regulations implementing FARRA dating back to 1999 provide that "there shall be no judicial appeal or review" of a CAT claim without a § 1252 challenge to a final order of removal. 8 C.F.R. § 208.18(e)(1); *see also* Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999) ("Nor does this rule expand the availability of judicial review for aliens who make claims to protection under the Convention Against Torture.").

After conceding that § 1252(a)(1) does not establish our jurisdiction to review a CAT-only claim, the lead opinion in *Laureano* divined an unstated jurisdictional ruling from *Riley*. *See Laureano*, 177 F.4th at 458-59. If the Supreme Court had addressed that issue in *Riley*, then I doubt Justice Thomas would have styled his opinion as a concurrence. Instead, he described § 1252(a)(1) jurisdiction as a "different" issue and suggested that the Fourth Circuit address it on remand. *Riley*, 606 U.S. at 278 (Thomas, J., concurring).

The Fourth Circuit panel that handled the *Riley* remand did not think that Justice Thomas misread the Supreme Court's majority opinion, which he joined, or somehow missed the fact that the majority had resolved our statutory jurisdiction. *See Riley*, 180 F.4th at 201 (Quattlebaum, J., dissenting). Two members of the panel acknowledged the "substantial argument" for a lack of jurisdiction and then invented the concept of a "placeholder" or "protective" Petition For Review in order to address that "complicated question." *Id.* at 193. I agree that such a Petition is "fake" and therefore insufficient to bring a CAT-only challenge within the ambit of § 1252(a)(1). *Id.* at 205 (Quattlebaum, J., dissenting). In any event, Petitioner did not choose the path suggested by the Fourth Circuit. There was no placeholder. Just a CAT-only Petition For Review filed long after his removal order became final.

All of this leads me to believe that there is no "contemplation" of statutory jurisdiction in *Riley* for a case like this one. *Laureano*, 177 F.4th at 458 n.9. Not under § 1252(a)(1). And not "elsewhere." *Id.* at 457. Accordingly, in addition to the Petition being moot, we lack statutory jurisdiction because Petitioner is challenging only a CAT order and not a "final order of removal." 8 U.S.C. § 1252(a)(1).