NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-13646
Non-Argument Calendar

YOEL PITALUGA NUNEZ,
DAYAMI ROLDAN CRUZ,

Petitioners-Appellants,

versus

FIELD OFFICE DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT MIAMI FIELD OFFICE,
ASSISTANT FIELD OFFICE DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT MIAMI FIELD OFFICE,
DIRECTOR,
National Benefits Center, U.S. Citizenship and Immigration Services,
DIRECTOR OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,
SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:25-cv-61814-RS

Before LUCK, ANDERSON, and DUBINA, Circuit Judges.

PER CURIAM:

Yoel Pitaluga Nunez and Dayami Roldan Cruz (collectively, "Petitioners"), a husband and wife from Cuba, appeal the dismissal of their counseled 28 U.S.C. § 2241 petition. The Petitioners were subjected to expedited removal, and during the pendency of this appeal, officials removed them from the United States. On appeal, the Petitioners assert that, because they had no other adequate basis to challenge their immigration detention, the district court had jurisdiction, under the Suspension Clause of the U.S. Constitution, to review their claims that they (1) should not have been detained, (2) should not have been subjected to expedited removal, and (3) should have been placed in traditional removal proceedings. Having reviewed the record and read the parties' briefs, we dismiss in part and affirm in part.[1]

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[1] The Respondents move for judicial notice of documentation regarding the Petitioners' removal from the United States. We grant this motion because the matters contained within are relevant to whether part of the case on appeal is moot. *See Dippin' Dots, Inc. v. Frosty Bites Distrib., LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004) (stating that facts subject to judicial notice must be "relevant to a determination of the claims presented in a case").

I.

Article III confers jurisdiction to federal courts only where a case presents a live issue or controversy "to which the court can give meaningful relief." *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (quotation marks omitted). "[M]ootness is jurisdictional, and [a] court must resolve any question of mootness before it assumes jurisdiction." *United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008). "[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed." *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (quotation marks omitted).

II.

Generally, "'a habeas petition presents a live case or controversy only when a petitioner is in custody.'" *Id.* (quoting *Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1289 (11th Cir. 2019)). "The fundamental question is whether events have occurred that deprive us of the ability to give" meaningful relief. *Id.* at 1107. We have previously stated, "that a habeas petition filed by a subsequently deported alien who challenges not only his detention, but also his final order of removal, may survive a mootness challenge." *Salmeron-Salmeron*, 926 F.3d 1283, 1290 (11th Cir. 2019) (citing *Moore v. Ashcroft*, 251 F.3d 919, 922 (11th Cir. 2001)). However, in *Salmeron-Salmeron*, the petitioner only challenged his detention, not his final order of removal, so we held that his habeas claim was moot. *Id.*

To address the merits of a § 2241 petition, we must determine whether the district court had subject matter jurisdiction over the petition. *Santiago-Lugo v. Warden*, 785 F.3d 467, 471 (11th Cir. 2015). We review questions of subject matter jurisdiction de novo. *Amodeo v. FCC Coleman-Low Warden*, 984 F.3d 992, 996 (11th Cir. 2021).

III.

Under the expedited removal process, when an Immigration Judge ("IJ") determines that an alien "arriving in the United States" is not admissible, then "the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." Immigration and Nationality Act ("INA") § 235(b)(1)(A)(i), 8 U.S.C. § 1225(b)(1)(A)(i). Expedited removal also applies to an inadmissible alien "who has not been admitted or paroled into the United States, and who has" failed to prove to "an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior." INA § 235(b)(1)(A)(iii)(II), 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Under the REAL ID Act of 2005, there is generally no judicial review of "any other cause or claim arising from or relating to the implementation or operation of an" expedited removal order, including review under § 2241. INA § 242(a)(2)(A)(i)-(iv), 8 U.S.C. § 1252(a)(2)(A)(i)-(iv). Nevertheless, aliens may challenge

their expedited removal proceedings in "[h]abeas corpus proceedings," but that review is limited to whether the petitioner (1) is an alien, (2) is subject to an expedited removal order, and (3) can prove that he has been admitted as a lawful permanent resident, a refugee, or an asylee. INA § 242(e)(2), 8 U.S.C. § 1252(e)(2).

When determining whether an alien has been subject to an expedited removal order, the court's inquiry is "limited to whether such an order in fact was issued and whether it relates to the petitioner." INA § 242(e)(5), 8 U.S.C. § 1252(e)(5). The court "may order no remedy or relief other than to require that the petitioner be provided" a traditional removal hearing. INA § 242(e)(4), 8 U.S.C. § 1252(e)(4); INA § 240, 8 U.S.C. § 1229a. Additionally, there shall be no judicial review of causes or claims "by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien." INA § 242(g), 8 U.S.C. § 1252(g).

The Suspension Clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. CONST. ART. I, § 9, CL. 2. "[T]he substitution of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention does not constitute a suspension of the writ of habeas corpus." *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1205-06 (11th Cir. 2006) (quotation marks omitted). If the "substitute remedy provide[s] the same scope of review as a habeas

remedy, it is adequate and effective," without violating the Constitution. *Id.* at 1206 (quotation marks omitted).

In *Boumediene v. Bush*, the Supreme Court held that § 2241(e), which stripped federal courts of jurisdiction to hear habeas corpus actions from persons identified as enemy combatants at Guantanamo Bay, violated the Suspension Clause, deciding that the enemy combatants could "challenge the legality of their detention" via a writ of habeas corpus. 553 U.S. 723, 732-33, 128 S. Ct. 2229, 2240 (2008). The Court held "that the status of these detainees is a matter of dispute," as they "deny they are enemy combatants," and the processes afforded to them fell "well short of the procedures and adversarial mechanisms that would eliminate the need for habeas corpus review." *Id.* at 766-67, 771-72, 786-92, 128 S. Ct. at 2259-60, 2262, 2270-74.

Later, the Supreme Court held to the contrary. In *Department of Homeland Security v. Thuraissigiam*, the Supreme Court held that INA § 242(e)(2), 8 U.S.C. § 1252(e)(2), did not violate the Suspension Clause because Thuraissigiam did not show that when the Constitution was adopted, the writ of habeas corpus was understood "to permit a petitioner to claim the right to enter or remain in a country or to obtain administrative review potentially leading to that result." 591 U.S. 103, 117, 140 S. Ct. 1959, 1969 (2020). The Court explained that the core purpose of habeas relief was to provide a means to contest the lawfulness of custody and secure release and, because Thuraissigiam only sought an opportunity to remain lawfully in the United States, this relief fell outside the scope

of the writ. *Id.* at 117-20, 140 S. Ct. at 1969-71. The Court explained that a habeas court could order the relief of release from detention and that release "may give the alien the opportunity to remain in the country if the immigration laws permit," but that opportunity would be a collateral consequence of the habeas relief, and not the ordered relief. *Id.* at 124-25, 140 S. Ct. at 1973-74.

IV.

As an initial matter, we conclude that by failing to raise all bases of subject matter jurisdiction asserted in their petition below, the Petitioners abandoned these claims but preserved their claim that the district court had habeas corpus jurisdiction under the Suspension Clause. Furthermore, the only merits claim clearly brought by the Petitioners in their argument section on appeal is that the Respondents lacked statutory authority to place them in expedited removal proceedings, instead of traditional proceedings, because they had been paroled. The Petitioners abandoned all other merits arguments from below because they did not raise them sufficiently on appeal. *See Sapuppo v. Allstate Floridian Ins., Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (noting that an appellant abandons a claim if he only makes a passing reference or makes it in a "perfunctory manner" without giving authority or support). "Abandonment of a claim or issue can also occur when the passing references to it are made in the 'statement of the case' or 'summary of the argument,'" section of the party's brief. *Id.* at 681-82

On appeal, considering all the jurisdictional bars at issue, the Petitioners argue that the Suspension Clause should have provided

the district court with a basis to complete traditional habeas review of their immigration detention, as they had no other adequate basis to oppose their detention. To the extent that the Petitioners are challenging their detention, their claim now is moot on appeal because they are no longer detained, due to their removal from this country during the pendency of this appeal. *Djadju*, 32 F.4th at 1106. The Petitioners thus already have received the traditional habeas remedy of release, so we dismiss the Petitioners' challenges to their detention as moot, as no relief can be provided. *See Thuraissigiam*, 591 U.S. 117, 140 S. Ct. at 1969; *Boumediene*, 533 U.S. at 771, 128 S. Ct. at 2262.

Looking solely at the jurisdictional bars because, on appeal, the Petitioners did not allege that (1) they were not aliens, (2) there was no removal order, or (3) they had lawful status, we conclude that the district court lacked jurisdiction over the claims related to their expedited removal proceedings. *See* INA § 242(a)(2)(A)(i)-(iv) and (e)(2), 8 U.S.C. § 1252(a)(2)(A)(i)-(iv) and (e)(2). Hence, as the Petitioners did not challenge whether the removal orders existed, but instead, attacked the validity of the removal orders, the district court was barred from reviewing the claims. *See* INA § 242(e)(5), 8 U.S.C. § 1252(e)(5). Also, we note that the Petitioners' requests that the district court order that the government open traditional removal proceedings and bar the Petitioners' movement were jurisdictionally barred.

The Petitioners also argue that the Suspension Clause provides jurisdiction for the district court to have reviewed their expedited removal orders. In relation to the Petitioners' challenge to their placement in expedited removal and their requests that the district court order the opening of traditional habeas proceedings instead, the jurisdictional bars are not in violation of the Suspension Clause. *See* INA § 242(a)(2)(A), (e), (g), 8 U.S.C. § 1252(a)(2)(A), (e), (g); U.S. Const. Art. I, § 9, cl. 2. Because the only way that a violation of the Suspension Clause could have occurred is if the Petitioners were denied a chance to challenge the legality of their detention, which is now a moot claim on appeal, any attempts by the Petitioners to use the Suspension Clause to try and give the district court jurisdiction over just their immigration requests fail. *See Thuraissigiam*, 591 U.S. at 117, 140 S. Ct. at 1969.

Accordingly, based on the aforementioned reasons, we dismiss this appeal in part as moot and affirm in part.

DISMISS IN PART AS MOOT, AFFIRM IN PART.