UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-2502

UNITED STATES OF AMERICA

v.

CHARLES SUMMERS,
Appellant

On Appeal from the U.S. District Court, D.N.J.
Judge Karen M. Williams, No. 1:25-cr-00074-001

Before: RESTREPO, MONTGOMERY-REEVES, and BOVE,
Circuit Judges
Argued: June 11, 2026; Decided: Oct. 6, 2026

OPINION OF THE COURT

BOVE, *Circuit Judge*. Defendant Charles Summers tried to rape a 13-year-old girl. He pleaded guilty in New York to that heinous crime. New York authorities warned him that he needed to register as a sex offender. When he got out of jail in New York, he started to live and work in New Jersey. He did not register in his new state. That was a violation of the federal Sex Offender Registration and Notification Act, or SORNA. Defendant pleaded guilty to his SORNA offense.

This is a two-issue sentencing appeal. First, Defendant argues that the District Court erred in its calculation of his

Criminal History under the Guidelines. This part of the appeal is moot. Defendant recently finished his jail sentence, and the District Court already sentenced him to the statutory minimum amount of supervised release. Thus, no effectual relief is available to him on this issue and we must dismiss this aspect of the appeal.

Second, Defendant challenges his classification as a Tier III SORNA offender, which is the most serious classification. *See* 34 U.S.C. § 20911. This issue is not moot because it impacts the duration of his registration requirement and the frequency of the related in-person reporting requirement. *See id.* §§ 20915(a)(3), 20918(3). On the merits, we join other Circuits that have applied a hybrid categorical approach on similar facts when comparing state and federal sex crimes to make SORNA tiering decisions. Applying that approach here, we agree with the District Court that Defendant's New York sex crime qualifies for SORNA Tier III.

Although Defendant has not identified an error that merits appellate relief, the government has notified us that a remand is necessary, on consent, so that the District Court can memorialize the Tier III obligation in the judgment. *See* Fed. R. Crim. P. 36. Accordingly, we will dismiss the appeal insofar as Defendant challenges the District Court's Criminal History calculation, otherwise affirm the judgment, and remand for the limited purpose of correcting the judgment.

I.

In October 2015, Defendant was convicted of First Degree Attempted Rape in violation of New York Penal Law § 130.35. A New York judge sentenced him to five years' imprisonment and eight years of parole. While serving his term of incarceration for the attempted-rape conviction, Defendant signed paperwork acknowledging that he was required to

notify New York of a change in address and abide by any applicable sex-offender registration requirements in other jurisdictions.

He did not. At some point in 2021, Defendant started to live and work in New Jersey. He failed to notify New York of the changes. He also failed to register as a sex offender in New Jersey. In April 2024, law enforcement arrested Defendant in New Jersey and later extradited him to New York based on parole violations relating to the attempted-rape conviction. Later that month, Defendant was adjudicated guilty of the violations and sentenced to time served. He returned to New Jersey.

In September 2024, federal authorities arrested Defendant in New Jersey based on an alleged violation of SORNA. In February 2025, Defendant consented to the filing of an Information based on the same violation and pleaded guilty pursuant to a plea agreement.

The District Court sentenced Defendant in July 2025. The District Court determined that Defendant qualified as a Tier III sex offender, pursuant to U.S.S.G. § 2A3.5(a) and 34 U.S.C. § 20911, based on his New York sex crime. The District Court then calculated a Guidelines range of 24 to 30 months based on Offense Level 13 and Criminal History Category IV. Following that calculation, the District Court imposed a sentence of 24 months' imprisonment followed by 60 months' supervised release.

Defendant timely appealed. He was released from prison while the appeal was pending. He is currently serving the term of supervised release.

II.

The District Court had jurisdiction under 18 U.S.C. § 3231.

We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We review procedural-error sentencing claims for abuse of discretion, which includes de novo review of legal questions. *United States v. Jackson*, 132 F.4th 266, 272 (3d Cir. 2025).[1]

III.

Defendant challenges the District Court's determinations regarding his Criminal History and placement in SORNA Tier III. The Criminal History issue is moot. The SORNA tiering issue is live, but we agree with the District Court's conclusion.

A.

The mootness doctrine prohibits courts from "pronounc[ing] on past actions that do not have any 'continuing effect' in the world." *FBI v. Fikre*, 601 U.S. 234, 241 (2024). This limitation on our authority arises from Article III's case-or-controversy requirement. The requirement is not satisfied, and a case is moot, "when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). To be effectual, "the relief sought must likely redress the purported injury." *Mejia-Henriquez v. AG*, --- F.4th ----, 2026 WL 2489594, at *8 n.10 (3d Cir. 2026).

These principles apply to criminal appeals on an issue-by-issue basis. *See, e.g.*, *United States v. Jackson*, 523 F.3d 234, 237-38 (3d Cir. 2008). Speculation about the "possibility" of a far-removed injury at some point in the future, rather than a

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

"certainty or even a probability," is typically not enough to avoid mootness. *Spencer v. Kemna*, 523 U.S. 1, 14 (1998). The continuing effects we care about most are collateral consequences arising from the case at issue that function as ongoing restrictions of a defendant's liberty. *See United States v. Kissinger*, 309 F.3d 179, 182 (3d Cir. 2002).

The District Court's determination regarding SORNA Tier III has ongoing consequences despite the fact that Defendant is out of jail. Based on the District Court's determination, SORNA requires him to register as a sex offender for the rest of his life and to appear in person to verify his registration every three months. *See* 34 U.S.C. §§ 20915(a)(3), 20918(3). A decision in Defendant's favor could result in direct relief from some or all of those consequences. That is why his challenge relating to SORNA Tier III is not moot.

The same is not true for Defendant's appeal of the Criminal History calculation. There is no dispute that the calculation was relevant to the applicable Guidelines range, which at least arguably affected the District Court's sentencing decisions on imprisonment and supervised release. *See* 18 U.S.C. §§ 3553(a)(4)(A), 3583(c). Nevertheless, Defendant's argument that the District Court erred in that calculation by relying on an offense-commencement date that is different from the date in the charging instrument—which overlooks 18 U.S.C. § 3661—could not lead to effectual relief at this point. In a sentencing remand, the District Court could not reduce the jail sentence that Defendant already completed. And, because the District Court already imposed the mandatory minimum term of supervised release, the court could not reduce that aspect of his punishment either. *See* 18 U.S.C. § 3583(k); *see also Jackson*, 523 F.3d at 239.

Our constitutional authority to adjudicate this part of

Defendant's appeal is not saved by the potential relevance of his federal sentence to the ongoing parole-violation proceedings and open criminal cases that Defendant faces in New York and New Jersey. Defendant argues that a finding here that he served too much jail time would work to his advantage in those cases. Too much speculation for us. The argument requires us to presume that the state proceedings will be resolved against Defendant and that sentencing judges in those proceedings addressing conceptually distinct misconduct would credit a federal error to Defendant's benefit. Reaching the merits based on those presumptions would stretch the case-or-controversy requirement well beyond the breaking point. Accordingly, Defendant's challenge to the District Court's calculation of his Criminal History is moot. We will dismiss that aspect of the appeal.

B.

The District Court was correct that Defendant is a Tier III offender under SORNA. We adopt the hybrid categorical approach employed by other Circuits to resolve the issue in this appeal. Under that approach, Defendant's New York attempted-rape crime is a categorical match for attempted sexual abuse, in violation of 18 U.S.C. § 2242(1).

1.

This appeal requires us to interpret statutory text from the definitions of SORNA Tier II and Tier III. *See* 34 U.S.C. § 20911(3)-(4). Tier I serves as a catch-all for the remainder of sex offenders. *See id.* § 20911(2). For Tiers II and III, the main task is an assessment of whether the offender's sex crime is either (1) "comparable to," or (2) "more severe than," a list of offenses from Title 18 of the U.S. Code. *Id.* § 20911(3)(A), (4)(A).

Other Circuits have employed the categorical approach when applying the first part of this text to consider whether the state crime is "comparable to" a federal crime from Congress's list. *See, e.g.*, *United States v. Coulson*, 86 F.4th 1189, 1194-95 (8th Cir. 2023). In other settings, we have noted flaws in that methodology. *See, e.g.*, *United States v. Vines*, 134 F.4th 730, 733 (3d Cir. 2025). And the categorical approach is not a perfect fit here due to Congress's use of the second phrase, "more severe than." *See United States v. Walker*, 931 F.3d 576, 579 n.2 (7th Cir. 2019). That language is not dispositive in this appeal. So we need not address the delta it creates between SORNA's Tier definitions and other federal statutes where precedent requires us to use the categorical approach. *See id.* We are persuaded that "SORNA triggers at least" the categorical approach with respect to the phrase "comparable to . . . the following offenses" in the definitions of Tier II and Tier III. *Id.* We need not, and do not, go further in this appeal.

In addition to the comparison of state and federal crimes, other features of SORNA's Tiers have a "circumstance-specific thrust." *Ndungu v. AG*, 126 F.4th 150, 162 (3d Cir. 2025). For example, one of the Tier II federal comparators requires that the offense have been committed "against a minor." 34 U.S.C. § 20911(3)(A). A Tier III comparator requires that the federal crime have been committed "against a minor who has not attained the age of 13 years." *Id.* § 20911(4)(A)(ii). These features of the statute apply to "specific circumstances surrounding an offender's commission of [the crime] . . . on a specific occasion." *Nijhawan v. Holder*, 557 U.S. 29, 40 (2009).

Based on *Nijhawan*, we hold that District Courts are to apply the circumstance-specific features of the SORNA Tier definitions based on documents relating to the state offense,

including the charging instrument, the judgment, presentence reports, and any other sentencing material that provides evidence relating to Defendant's conduct in connection with the sex crime. *See Rad v. AG*, 983 F.3d 651, 659 (3d Cir. 2020). This is why it is known as the hybrid categorical approach. Categorical as to the generic federal crimes listed in the Tier definitions, and circumstance-specific as to the victim's age. *See Coulson*, 86 F.4th at 1194; *Walker*, 931 F.3d at 580; *United States v. Berry*, 814 F.3d 192, 197 (4th Cir. 2016).

2.

Applying the hybrid categorical approach, we agree with the District Court that Defendant is a Tier III offender. We reach that conclusion, however, based on a different federal comparator than the one relied upon at Defendant's sentencing. Defendant's sex crime is a categorical match for the federal crime of attempted sexual abuse, in violation of 18 U.S.C. § 2242(1). *See* 34 U.S.C. § 20911(4)(A)(i).

Defendant contends that § 2242(1) is off the table because the government did not cite that crime at his sentencing or in its main appellate brief. The government concedes having overlooked the argument, but there is no indication that we are dealing with an intentional waiver. *See United States v. Dowdell*, 70 F.4th 134, 140 (3d Cir. 2023). "[W]e may, and here do, affirm on any ground supported by the record as long as the appellee did not waive—as opposed to forfeit—the issue." *United States v. Brow*, 62 F.4th 114, 119 n.4 (3d Cir. 2023). In addition, we may excuse forfeitures based on extraordinary circumstances. *See Dowdell*, 70 F.4th at 140. In this case, the public's interest in reaching the argument presents such a circumstance because of the sensitive class of victims that SORNA protects.

The dispositive comparison between Defendant's attempted-rape crime and the federal sexual abuse statute turns on the level of coercion required. For both, coerciveness turns on the victim's fear. Defendant's state sex offense required proof of "forcible compulsion." N.Y. Penal Law § 130.35(1) (2015). New York defines "forcible compulsion" to include a threat that "places a person in fear of immediate death or physical injury to himself, herself or another person." *Id.* § 130.00(8)(b). Under the relevant federal statute, attempted sexual abuse is defined as causing "another person to engage in a sexual act by threatening or placing that other person in fear." 18 U.S.C. § 2242(1). The fear-based compulsion that was necessary to establish Defendant's New York sex crime is a categorical match for the threat element of 18 U.S.C. § 2242(1). *Cf. United States v. Valder*, 188 F.4th 183, 193 (2d Cir. 2026) ("[T]here is no form of compulsion a person can use to commit that state crime without necessarily engaging in compulsive conduct that would be a Federal sex offense . . . ."); *United States v. Gavin*, 959 F.2d 788, 791 (9th Cir. 1992). This is enough to sustain the District Court's placement of Defendant in Tier III.

Seeking to avoid that conclusion, Defendant argues that the New York crime is broader than the federal comparator because "forcible compulsion" includes fear of harm to "another person." N.Y. Penal Law § 130.00(8)(b). We are not persuaded. Forcible compulsion under § 130.00(8)(b), like attempted sexual abuse under § 2242(1), requires proof that the perpetrator coerced the victim through fear. Under New York law, the "'*proper focus is on the state of mind produced in the victim by the defendant's conduct*.'" *Valder*, 188 F.4th at 197 (quoting *People v. Thompson*, 530 N.E.2d 839, 842 (N.Y. 1988)). The forcible-compulsion definition "does not suggest that compulsion of a victim can be proved by instilling fear in

a third party in the absence of any fear in the victim." *Id.* at 12. Defendant has cited no evidence demonstrating even a "theoretical possibility," much less the required "realistic probability," that New York prosecutors would apply the statute in such an atextual fashion. *United States v. Henderson*, 80 F.4th 207, 213 n.6 (3d Cir. 2023). Therefore, the term "another person" in New York Penal Law § 130.00(8)(b) does not undermine the categorical match between Defendant's sex crime and the federal crime of attempted sexual abuse.

IV.

Based on the foregoing, we will dismiss the appeal insofar as Defendant challenges the District Court's Criminal History calculation, otherwise affirm the judgment, and remand for the limited purpose of allowing the District Court to modify the judgment by memorializing that Defendant is a Tier III SORNA offender.

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