

1 **UNITED STATES COURT OF APPEALS**
2 **FOR THE SECOND CIRCUIT**

3
4 August Term, 2019

5
6 (Submitted: January 27, 2020 Decided: April 10, 2020)

7
8 Docket No. 18-3235
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13 STEVEN JANAKIEVSKI,

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15 *Petitioner-Appellant,*

16
17 v.

18
19 EXECUTIVE DIRECTOR, ROCHESTER PSYCHIATRIC CENTER,

20
21 *Respondent-Appellee.*
22
23

24 Before:

25
26 LEVAL, CABRANES, and LOHIER, *Circuit Judges.*
27

28 Petitioner Steven Janakievski appeals from the judgment of the United
29 States District Court for the Western District of New York (Michael A.
30 Telesca, J.), dismissing his petition for a writ of habeas corpus. Janakievski's
31 petition attacked his confinement in a state psychiatric institution as a person
32 with a "dangerous mental disorder." The district court dismissed the petition
33 on the grounds that it became moot when Janakievski was conditionally
34 released from confinement. Held, because Janakievski remains subject to an
35 "order of conditions" that leaves him vulnerable to recommitment, and the
36 imposition of this order was a mandatory consequence of the confinement
37 orders that his petition challenges, his conditional release does not render the
38 petition moot. VACATED and REMANDED.
39

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2 Grossman, New York, NY, *for Petitioner-*
3 *Appellant.*

4
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11 *for Respondent-Appellee.*

12
13 LEVAL, *Circuit Judge:*

14 Petitioner Steven Janakievski appeals from the judgment of the United
15 States District Court for the Western District of New York (Michael A.
16 Telesca, J.), dismissing as moot his petition for a writ of habeas corpus. In
17 2009, Janakievski was involuntarily committed to a New York State
18 psychiatric institution after being charged with first-degree assault and
19 pleading “not responsible by reason of mental disease or defect.” N.Y. Crim.
20 Proc. Law (“CPL”) § 330.20. While in the custody of the New York State
21 Office of Mental Health, Janakievski filed a *pro se* petition for a writ of habeas
22 corpus pursuant to 28 U.S.C. § 2254. His petition challenged the validity of
23 the original state-court order that found him to suffer from a “dangerous
24 mental disorder” and committed him for six months to the Rochester

1 Psychiatric Center, as well as three subsequent orders that extended the
2 duration of the confinement.

3 In 2018, several years subsequent to Janakievski's filing of the federal
4 habeas petition, the state court found his mental condition sufficiently
5 improved and ordered him conditionally released from inpatient custody,
6 subject, as required by state law, to an order of conditions of at least three
7 years duration. State law mandates that during that order's duration, he
8 remain subject to the possibility of recommitment on the state's showing by a
9 preponderance of the evidence that he has a dangerous mental disorder. *See*
10 CPL § 330.20(14). The order of conditions further requires that he continue
11 outpatient mental health treatment, refrain from the use of drugs or alcohol,
12 and seek the state's approval before changing his address or leaving New
13 York. That order remains in effect.

14 The district court dismissed Janakievski's habeas petition on the
15 ground that it was moot. The court reasoned that the limited-duration orders
16 of confinement that the petition challenged had all expired and that
17 Janakievski had been released from inpatient custody, with the consequence
18 that he no longer suffered "an actual injury which is likely to be redressed by

1 a favorable decision.” *Janakievski v. Exec. Dir., Rochester Psychiatric Ctr.*, No.
2 6:14-cv-06168, 2018 WL 4681596, at *3 (W.D.N.Y. Sept. 28, 2018) (quoting
3 *United States v. Mercurris*, 192 F.3d 290, 293 (2d Cir. 1999)).

4 We conclude that Janakievski’s release from inpatient custody did not
5 moot his habeas petition because the orders attacked in the petition continue
6 to impose restrictions on his liberty. The 2018 order of conditions to which
7 Janakievski remains subject — but which Janakievski did not directly
8 challenge in his habeas petition — was, under state law, a mandated
9 consequence of the confinement orders he challenges, and constitutes an
10 ongoing injury that can be redressed by a favorable decision. We accordingly
11 VACATE the district court’s judgment and REMAND for further
12 proceedings.

13 BACKGROUND

14 In December 2007, Janakievski attacked a co-worker with a knife,
15 causing life-threatening stab wounds to the victim’s head and neck. At the
16 time, Janakievski had been using controlled substances daily and experienced
17 psychotic delusions, including a belief that the stabbing victim was a Russian
18 spy. He was charged with first-degree assault and tried in the County Court

1 for Monroe County, New York. At trial, psychiatric experts for the
2 prosecution and the defense agreed that, at the time of the knife attack,
3 Janakievski was suffering from a psychotic disorder and did not appreciate
4 the wrongfulness of his conduct. The court accordingly accepted Janakievski's
5 plea of not responsible by reason of mental disease or defect pursuant to CPL
6 § 330.20.

7 CPL § 330.20(2) provides that when a criminal defendant is found not
8 responsible by reason of a mental disease or defect, he must undergo a
9 psychiatric examination. On the basis of that examination, the state court is
10 directed to determine in which of three categories, or "tracks," the defendant
11 belongs.¹ If he is found to have a "dangerous mental disorder," defined as a
12 mental illness that renders him "a physical danger to himself or others," CPL
13 § 330.20(1)(c), then he is classified as "track one" and the court must issue a
14 commitment order confining the defendant in a secure mental health facility
15 for six months. *Id.* § 330.20(6), (1)(f). If the court finds that the defendant is
16 mentally ill but not dangerous, he is classified as "track two" and the court

¹ Although the statute itself does not use the term "tracks" to label its three-tiered system, New York courts and commentators frequently describe its classifications that way. *See In re Norman D.*, 3 N.Y.3d 150, 153 n.1 (2004).

1 must issue an “order of conditions”² and an order committing him to a non-
2 secure facility, which custody is governed not by the Criminal Procedure Law
3 but by the civil Mental Hygiene Law. *Id.* § 330.20(7); *see also Allen B. v. Sproat*,
4 23 N.Y.3d 364, 368–69 (2014). If the defendant is found to be neither
5 dangerous nor mentally ill, he is classified as “track three” and must either be
6 discharged unconditionally or released subject to an order of conditions. CPL
7 § 330.20(7). The status of a “track one” defendant remains subject to ongoing
8 review, and the state must apply for periodic “retention orders” to keep a
9 defendant in inpatient custody. *Id.* § 330.20(8), (9). A defendant’s “track
10 status,” however, is permanent and “governs [his] level of supervision in
11 future proceedings.” *In re Norman D.*, 3 N.Y.3d 150, 152 (2004).

12 In April 2009, having undergone the required examination, Janakievski
13 was found by the state court to suffer from a dangerous mental disorder (i.e.,
14 to be in “track one”) and was committed to the Rochester Psychiatric Center
15 (“RPC”). The state court issued subsequent retention orders continuing his
16 involuntary commitment in October 2009, October 2010, December 2010, and

² An “order of conditions” is an order that, *inter alia*, requires a defendant to comply with a particular treatment plan or any other condition which the court determines to be reasonable, and is “valid for five years from the date of its issuance.” CPL § 330.20(1)(o).

1 August 2012, on the ground that Janakievski continued to suffer from mental
2 illness. In the last of these orders, the court determined that Janakievski was
3 no longer dangerous but remained mentally ill and in need of inpatient
4 treatment. The August 2012 retention order expired in July 2013, but
5 Janakievski continued to be confined in a non-secure wing of the RPC
6 pursuant to a temporary retention order.

7 In April 2014, Janakievski, proceeding *pro se*, filed the instant habeas
8 petition in the United States District Court for the Western District of New
9 York. The petition asserted a range of statutory and constitutional violations
10 with respect to the original April 2009 commitment order, the October and
11 December 2010 retention orders, and the August 2012 retention order. The
12 petition challenged the sufficiency of the evidence supporting the original
13 finding that he was dangerous and mentally ill, asserting that at the time of
14 his commitment to the RPC “the hospital records show that he was in full
15 remission,” and that he “should have been released.” Supp. App’x at 42. He
16 also alleged that the initial commitment order violated his right to due
17 process and the Eighth Amendment. With respect to the subsequent retention
18 orders, Janakievski asserted that they, too, were not supported by sufficient

1 evidence, that they violated due process (as well as the Federal Rules of Civil
2 Procedure), and that he was deprived of the effective assistance of counsel. As
3 relief, Janakievski demanded that the commitment and retention orders be
4 vacated and that he be unconditionally discharged from state custody.

5 In June 2018, while this petition to the federal court was pending, the
6 state court released Janakievski from the RPC subject to an “order of
7 conditions.” Supp. App’x at 245-52; *see* CPL § 330.20(12). The ruling was
8 based on a finding that Janakievski’s clinical condition warranted
9 “conditional release from inpatient treatment” because he did not “currently
10 suffer from a dangerous mental disorder and [was] not mentally ill.” Supp.
11 App’x at 247. The order of conditions mandated that for three years (until
12 June 2021) Janakievski continue outpatient mental health treatment, refrain
13 from the use of drugs or alcohol, and seek the state’s approval before
14 changing his address or leaving the state. The conditions may be extended for
15 an additional three years on a showing of good cause by the state.

16 In addition to these particular conditions — all of which were found by
17 the state court in June 2018 to be “reasonably necessary or appropriate” for
18 Janakievski’s treatment, CPL § 330.20(12) — Janakievski faces an overarching

1 restriction that is inherent to any “order of conditions” under CPL § 330.20.
2 Any defendant subject to an order of conditions can, at any time, be
3 recommitted upon application of the state, based on a showing by a
4 preponderance of the evidence that the defendant suffers from a dangerous
5 mental disorder. *See* CPL § 330.20(14); *Ernst J. v. Stone*, 452 F.3d 186, 187 (2d
6 Cir. 2006). When the state makes such an application, the court must order the
7 defendant to appear for a hearing, and if the defendant fails to appear he can
8 be arrested, brought before the court, and confined. *See* CPL § 330.20(14). If
9 the court finds that the defendant has a dangerous mental disorder, it must
10 issue a “recommitment order” mandating his confinement to a secure facility
11 for six months. *Id.*; *see also id.* § 330.20(1)(f).

12 In dismissing Janakievski’s petition in September 2018, the district
13 court reasoned that the petition became moot when Janakievski was
14 conditionally released from inpatient custody, as he was “no longer subject to
15 any of the orders” that he challenged in his petition and thus no longer had
16 any redressable injuries. 2018 WL 4681596, at *3. The district court declined to
17 issue a certificate of appealability, *id.*, but a motions panel of our court

1 granted one on the question “whether the district court erred in dismissing
2 Appellant’s 28 U.S.C. § 2254 petition as moot,” Dkt. No. 30.

3 DISCUSSION

4 We review *de novo* the denial of a petition for a writ of habeas corpus,
5 including whether the petition is moot. *Nowakowski v. New York*, 835 F.3d 210,
6 215 (2d Cir. 2016). Although Janakievski is now represented by counsel, we
7 construe his *pro se* “submissions liberally and interpret them to raise the
8 strongest arguments they suggest.” *Id.* (citation and quotation marks
9 omitted).

10 I. Law Governing the Mootness of a Habeas Petition

11 To satisfy the Constitution’s case-or-controversy requirement, a party
12 must, at each stage of the litigation, have an actual injury which is likely to be
13 redressed by a favorable judicial decision. *See Mercurris*, 192 F.3d at 293. If, as
14 a result of changed circumstances, a case that presented an actual redressable
15 injury at the time it was filed ceases to involve such an injury, it ceases to fall
16 within a federal court’s Article III subject matter jurisdiction and must be
17 dismissed for mootness.

1 A habeas petition is generally not moot so long as the petitioner
2 continues to be held in the custody that he alleges is unlawful. *See Dhinsa v.*
3 *Krueger*, 917 F.3d 70, 77 n.5 (2d Cir. 2019). That is so whether the petitioner is
4 experiencing direct physical custody (e.g., incarceration), or is subject to
5 restraints on his liberty, such as parole. *See Spencer v. Kemna*, 523 U.S. 1, 7
6 (1998) (“An incarcerated convict’s (or a parolee’s) challenge to the validity of
7 his conviction *always satisfies* the case-or-controversy requirement, because the
8 incarceration (or the restriction imposed by the terms of the parole)
9 constitutes a concrete injury, caused by the conviction and redressable by
10 invalidation of the conviction.” (emphasis added)); *Jones v. Cunningham*, 371
11 U.S. 236, 243 (1963) (habeas petition was not mooted by petitioner’s release on
12 parole because “[w]hile petitioner’s parole releases him from immediate
13 physical imprisonment, it imposes conditions which significantly confine and
14 restrain his freedom”). Moreover, a habeas petition “does not necessarily
15 become moot” when the order it challenges is no longer in effect, so long as
16 the petitioner suffers “some concrete and continuing injury” or “collateral
17 consequence” resulting from the challenged order. *Mercurris*, 192 F.3d at 293
18 (citation omitted).

1 Finally, even if a habeas petitioner can show that he continues to suffer
2 an injury, his injuries must be “likely to be redressed by a favorable judicial
3 decision.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation and quotation
4 marks omitted). A case is moot when the prospect of judicial redress is “so
5 remote and speculative that any decision on the merits” could not “affect the
6 matter in issue in the case.” *United States v. Blackburn*, 461 F.3d 259, 262 (2d
7 Cir. 2006) (citation and quotation marks omitted). The availability of a “partial
8 remedy,” however, is sufficient to render a case not moot. *Church of*
9 *Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992). A case is “moot only
10 when it is impossible for a court to grant any effectual relief whatever to the
11 prevailing party.” *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307
12 (2012) (citation and quotation marks omitted).

13 **II. Janakievski Continues to Suffer a Redressable Injury Resulting**
14 **From the Confinement Orders Challenged by the Petition**
15

16 Notwithstanding that the 2009-2012 orders challenged in his habeas
17 petition are no longer in effect, Janakievski contends that he faces continuing
18 consequences from them such that a favorable decision vacating them would
19 provide him meaningful relief. One such continuing consequence, he asserts,
20 is the “order of conditions” to which he remains subject, which requires him

1 to receive outpatient treatment and also leaves him vulnerable to
2 recommitment. The order of conditions is not set to expire until June 2021 at
3 the earliest, and Janakievski argues that were a court to grant the relief sought
4 in his habeas petition, he could be rid of these restrictions sooner.

5 Respondent argues that the petition is moot because it attacks
6 confinement orders that have expired and that do not themselves continue to
7 impose a burden. Respondent concedes that the 2018 order of conditions
8 constitutes an injury for Janakievski. But Respondent notes that the habeas
9 petition does not challenge the 2018 order itself and argues that the
10 restrictions imposed by the 2018 order were not “lingering effect[s]” of the
11 expired 2009-2012 confinement orders challenged in the habeas petition, but
12 rather were conditions “implemented to further his mental fitness as assessed
13 in 2018.” Resp. Br. at 33. Accordingly, Respondent argues, even if Janakievski
14 were to prevail on the merits of his petition and the district court were to
15 nullify the challenged orders, he “would not be entitled to unconditional
16 discharge” from his 2018 order of conditions. *Id.* at 24.

17 We conclude that at least one of the ongoing restrictions on
18 Janakievski’s liberty embodied in the June 2018 order of conditions — in

1 particular, the fact that under state law he remains more vulnerable to
2 recommitment — constitutes “an actual injury traceable to the [orders
3 challenged by his petition] and likely to be redressed by a favorable judicial
4 decision.” *Spencer*, 523 U.S. at 7. A decision by the habeas court to grant
5 Janakievski’s petition and vacate the challenged orders would give him the
6 chance to be immediately rid of the burdens imposed by the order of
7 conditions, rather than having to wait until its expiration.

8 As an initial matter, although it is true that Janakievski’s habeas
9 petition does not challenge the 2018 order of conditions itself, the district
10 court should have, before dismissing the petition as moot, given Janakievski
11 the opportunity to amend his habeas petition to raise such a claim. A
12 *pro se* plaintiff should be granted leave to amend if “a liberal reading of the
13 complaint gives any indication that a valid claim might be stated.” *Cuoco v.*
14 *Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (citation and quotation marks
15 omitted). We have said that this rule applies with special force to habeas
16 corpus petitions, since *pro se* habeas petitioners “ordinarily lack legal
17 knowledge and resources.” *Garcia v. Superintendent of Great Meadow Corr.*
18 *Facility*, 841 F.3d 581, 583 (2d Cir. 2016). Here, the district court should have

1 taken note of the restrictions imposed on Janakievski's liberty by the 2018
2 order of conditions and afforded him the opportunity to amend his petition to
3 challenge them directly, instead of dismissing the petition as moot for having
4 challenged only the expired orders. On remand, Janakievski must be given
5 such a chance.³

6 The district court also erred in concluding that Janakievski no longer
7 suffers, as a continuing consequence of the challenged 2009 to 2012 orders, an
8 actual injury redressable by a favorable decision. The 2018 order of conditions
9 to which Janakievski remains subject today constitutes a "concrete and
10 continuing injury" traceable to the challenged orders. *Mercurris*, 192 F.3d at
11 294. Although Respondent is correct that the 2018 order of conditions is a
12 separate order from the expired commitment and retention orders challenged
13 by Janakievski, its imposition was a direct and necessary consequence of the
14 expired orders. The April 2009 commitment order found Janakievski to be

³ In the event that Janakievski chooses to challenge on remand the 2018 order of conditions directly, whether such a claim would be procedurally viable or meritorious is a question for the district court to address in the first instance, and on which we express no view. *See Dorsey v. Irvin*, 56 F.3d 425, 427 (2d Cir. 1995) (remanding the denial of a *pro se* habeas petition to give petitioner the opportunity to amend to include new claims, but expressing no views as to the merits or procedural viability of those claims).

1 dangerously mentally ill and accordingly assigned him to “track one,” a
2 finding that not only required his commitment but also determined the
3 procedures that would govern any future “retention, conditional release or
4 discharge.” *Jamie R. v. Consilvio*, 6 N.Y.3d 138, 143 (2006). Of relevance here,
5 CPL § 330.20 provides that a track one defendant can be released from
6 confinement in a secure facility either (1) by an order *transferring* the
7 defendant to a non-secure facility upon a finding that the defendant no longer
8 has a “dangerous mental disorder,” CPL § 330.20(11), or (2) through an order
9 *releasing* the defendant from state custody upon a finding that the defendant
10 is no longer mentally ill, *see id.* § 330.20(12). Under either option, the court
11 must issue an order of conditions along with the transfer or release order. *See*
12 *id.* § 330.20(11) (providing that the court “must also issue an order of
13 conditions” along with the transfer order); *id.* § 330.20(12) (providing that “[i]f
14 the court finds that [a track one defendant] does not have a dangerous mental
15 disorder and is not mentally ill,” it must nonetheless issue an order of
16 conditions along with a release order); *In re Oswald N.*, 87 N.Y.2d 98, 102
17 (1995) (“Whenever a court issues either a release order or a transfer order
18 . . . it must also issue an order of conditions.”); *see also Jamie R.*, 6 N.Y.3d at

1 143 (“[E]ven a track one patient who improves sufficiently to be transferred to
2 a nonsecure facility continues to be subject to the procedural restrictions
3 in CPL [§] 330.20.” (citation omitted)). Put another way, once the state court
4 declared Janakievski to be dangerously mentally ill in 2009 — a finding he
5 directly challenges in his petition — it was inevitable that, once released from
6 confinement, he would be subject to an order of conditions.⁴

7 It is true, as Respondent asserts, that even if an order of conditions was
8 a necessary consequence of the expired orders, specific conditions contained
9 in Janakievski’s 2018 order of conditions — such as mandatory outpatient
10 treatment, drug screenings, and limits on his mobility — were *not* the
11 inevitable result of Janakievski’s earlier confinement orders. These restrictions
12 were imposed on the basis of a new assessment of Janakievski’s mental fitness
13 in 2018. Resp. Br. at 33; *see also* CPL § 330.20(12) (authorizing the state court to

⁴ Such an order of conditions would remain in effect until the issuance of a “discharge order” terminating the order of conditions, *see* CPL § 330.20(1)(n); *Matter of Ramon M.*, 294 A.D.2d 59, 64 (1st Dep’t 2002), which the court may issue only after finding that the defendant has been continuously on outpatient status for three years or more, that the defendant is not mentally ill, and that the discharge order is “consistent with the public safety and welfare of the community and the defendant,” CPL § 330.20(13); *see also* Resp. Br. at 9, 29–30.

1 include in an order of conditions “any conditions that the court determines to
2 be reasonably necessary or appropriate”).

3 Crucially, however, as to two aspects of the order of conditions, the
4 state court had no discretion. First, under the governing law, Janakievski
5 could not be eligible for a discharge order terminating the order of conditions
6 until he had spent three years as an outpatient following his conditional
7 release from confinement. *See* CPL § 330.20(13).⁵ Second, under CPL
8 § 330.20(14), at any time while an order of conditions remains in effect, the
9 person affected remains subject to recommitment if, upon the application of
10 the state, a court finds by a preponderance of the evidence that the defendant
11 has a “dangerous mental disorder.” *See* CPL § 330.20(14) (“At any time during
12 the period covered by an order of conditions an application may be made by
13 the commissioner or the district attorney . . . for a recommitment order when
14 the applicant is of the view that the defendant has a dangerous mental

⁵ Although CPL § 330.20(13) does not explicitly state that the subject is ineligible for a discharge order terminating the order of conditions until the passage of three years, that is implicit in its provision that “[t]he commissioner may apply for a discharge order . . . when a defendant has been continuously on an out-patient status for three years or more pursuant to a release order.” Indeed, Respondent relies on CPL § 330.20(13) for the proposition that Janakievski is ineligible for a discharge order until June 2021 — three years after the issuance of his order of conditions — in support of its argument that his injury is not redressable. Resp. Br. at 41–42.

disorder.”); *Ernst J.*, 452 F.3d at 187 (2d Cir. 2006) (“Those defendants who are
[] released subject to an ‘order of conditions’ may, if their condition
deteriorates, be ‘recommitted’ involuntarily to a secure psychiatric facility
upon a finding — by a preponderance of the evidence — that they have
developed a ‘dangerous mental disorder.’”). Merely upon the application of
the state, Janakievski would be ordered to appear for a hearing, and if he
failed to appear, he could be subject to a warrant to be taken into custody and
confined pending the hearing. *See* CPL § 330.20(14).

Because Janakievski is subject to an order of conditions, the burden on
the state to cause his recommitment would be less than the burden to cause
his commitment by reason of mental disease if he had previously been
unconditionally discharged. “New York statutes . . . distinguish between the
procedures to be followed for the involuntary civil commitment of persons
suffering from mental illness and the procedures that apply to persons
charged with a crime and determined, by a plea or a verdict, to be ‘not
responsible by reason of mental disease or defect.’” *Francis S. v. Stone*, 221
F.3d 100, 101 (2d Cir. 2000) (quoting CPL § 220.15). Whereas involuntarily
committing an individual for mental illness normally requires a showing by

1 “clear and convincing evidence” that the person is mentally ill and poses a
2 danger to himself or others, recommitment pursuant to CPL § 330.20(14)
3 requires a lesser showing by a preponderance of the evidence. *Ernst J.*, 452
4 F.3d at 188–90.

5 Accordingly, even though other conditions imposed by the 2018 order
6 did not flow from the earlier orders challenged in Janakievski’s petition, but
7 were instead newly justified at the time based on a current assessment of
8 Janakievski’s treatment needs, the earlier orders did have the inevitable
9 consequence of requiring that he eventually be subject to an order of
10 conditions, and thus of making him vulnerable for a minimum of three years
11 to recommitment in a state psychiatric facility without the same protections
12 that he would enjoy if he had previously been released from custody
13 unconditionally. The district court thus erred in concluding that Janakievski’s
14 release from inpatient treatment meant that he was no longer suffering a
15 continuing injury from the expired orders.

16 The only remaining question, then, is whether the burden imposed on
17 Janakievski by the order of conditions might be redressed by a favorable
18 judicial decision vacating either the 2009 commitment order or the

1 subsequent retention orders issued in 2010 and 2012. Respondent argues that
2 any injuries Janakievski suffers are not redressable, asserting that a favorable
3 decision by the habeas court nullifying the challenged orders would not
4 relieve Janakievski of his order of conditions. Respondent argues that under
5 CPL § 330.20(1)(n) and (13), a discharge order is necessary to unconditionally
6 release a defendant and terminate his order of conditions, and a discharge
7 order may issue only “if the court finds that the defendant has been
8 continuously on an out-patient status for three years or more, that he does not
9 have a dangerous mental disorder and is not mentally ill, and that the
10 issuance of the discharge order is consistent with the public safety and
11 welfare of the community and the defendant.” *Id.* § 330.20(13). According to
12 Respondent, no matter the outcome of Janakievski’s habeas proceedings, he
13 would still need to wait three years and demonstrate that his release would
14 comport with public safety before being eligible for an order terminating his
15 order of conditions.

16 We reject this argument. As noted above, the state court’s imposition of
17 an order of conditions was a direct and mandated consequence of the prior
18 confinement orders that Janakievski challenges in his habeas petition. A

1 “track one” defendant such as Janakievski cannot achieve unconditional
2 release without first being subjected to an order of conditions, and cannot
3 obtain a discharge order terminating that order of conditions without having
4 been on outpatient status for at least three years. *See* CPL § 330.20(13). By
5 contrast, had the state court never found Janakievski to be dangerous or
6 mentally ill — that is, had he been placed in “track three” instead of “track
7 one” — then Janakievski could have been discharged unconditionally in 2009
8 and the court would not have been compelled to impose an order of
9 conditions. *See* CPL § 330.20(7); *see also Richard S. v. Carpinello*, 589 F.3d 75, 77
10 (2d Cir. 2009). Today, if Janakievski were to prevail on the merits of his
11 habeas petition by demonstrating that he should have been unconditionally
12 discharged in 2009, that showing would negate Respondent’s argument that
13 Janakievski is subject to CPL § 330.20(13)’s three-year outpatient requirement
14 for terminating an order of conditions, because no order of conditions should
15 have issued in the first place. If, for example, a federal court were to
16 determine on a habeas petition that a petitioner’s initial confinement, based
17 on a state judge’s finding of dangerous mental illness, should be voided
18 because it was procured by hostile relatives through bribery, the state could

1 not, consistent with federal law, continue to subject the petitioner to an order
2 of conditions for three years merely because such a waiting period is
3 mandated by state law for one who, in the initial instance, was properly
4 confined on the basis of a dangerous mental illness. Just as a term of parole
5 stemming from a criminal conviction is an injury redressable by the vacatur
6 of that conviction, *see Spencer*, 523 U.S. at 7, the parole-like order of conditions
7 here could, at least in some circumstances, be invalidated on a showing that
8 Janakievski's initial commitment to the psychiatric institution violated federal
9 law.⁶

10 Vacatur of the 2010 and 2012 retention orders that extended the
11 duration of Janakievski's confinement could also serve to partially redress
12 Janakievski's injuries. Janakievski contends that, even if he failed to show that
13 he was entitled to an unconditional discharge in April 2009, but nonetheless
14 showed entitlement to an *earlier* conditional release at the time of one of the
15 court's prior retention orders — *e.g.*, in August 2012 — “then the three-year

⁶ *Cf. Carty v. Nelson*, 426 F.3d 1064, 1072 (9th Cir. 2005) (sex offender's release from civil confinement did not moot his habeas petition because a finding that his initial confinement had been invalid would allow the court to vacate his post-release reporting requirements, where the habeas petition challenged only the initial confinement).

1 post-release period specified in [] CPL § 330.20(13) would be backdated” and
2 he would not necessarily have to wait until July 2021 to become eligible for a
3 discharge order terminating his order of conditions. Supp. Br. of Petitioner at
4 19. Respondent argues that no such “back-dating” would occur, because the
5 requirement that a defendant spend at least three years in outpatient
6 treatment before final discharge serves the important goal of protecting the
7 public from the release of potentially dangerous patients. Resp. Br. at 42
8 (citing *Matter of Ramon M.*, 294 A.D.2d 59, 65 (1st Dep’t 2002)). Accordingly,
9 Respondent asserts that “a habeas determination that Janakievski should
10 have been released in 2010 or 2012 would not *in itself* entitle him to a
11 discharge order today,” because “[h]e would still have to show that the
12 issuance of such an order was ‘consistent with the public safety and welfare
13 of the community and [himself].’” Resp. Br. at 42–43 (quoting CPL
14 § 330.20(13) (emphasis added)).

15 However, even if Janakievski would need to affirmatively demonstrate
16 that he was fit for immediate release, the opportunity to do so would still
17 constitute a “partial remedy” sufficient to support a finding of redressability.
18 *Church of Scientology*, 506 U.S. at 13. The chance to make that showing *now*

1 versus in 2021 would provide Janakievski with “*some* form of meaningful
2 relief,” *id.* at 12 (emphasis in original), as it would give Janakievski the
3 possibility of obtaining a discharge order releasing him from the restrictions
4 mandated by his order of conditions without having to live under them for
5 another year or more. *See Mantena v. Johnson*, 809 F.3d 721, 731 (2d Cir. 2015)
6 (“[I]n the context of multi-part proceedings,” redressability should be based
7 on the “availability of relief at a given step, rather than the likelihood of
8 achieving the ultimate goal.” (citation omitted)). Given that the state court
9 found in 2018 that Janakievski “does not currently suffer from a dangerous
10 mental disorder and is not mentally ill,” Supp. App’x at 247, it is not too
11 remote or speculative to think that Janakievski might be able to demonstrate
12 that his release would be consistent with public safety.

13 We accordingly conclude that Janakievski’s habeas petition is not moot
14 because the restrictions on his liberty mandated by the June 2018 order of
15 conditions constitute a concrete and continuing injury, traceable to the 2009–
16 2012 confinement orders he attacks, which can be redressed by a favorable
17 decision.

1 III. Alternate Grounds for Affirmance

Respondent asserts that, even if we reject the district court’s mootness finding, we can nonetheless affirm on independent grounds, at least as to several of Janakievski’s claims. Respondent argues that Janakievski’s challenges to the 2009 and 2010 orders “are untimely and were not exhausted in state court,” and, because they “cannot be exhausted at this juncture,” are “procedurally barred from habeas review.” Resp. Br. at 24.

8 In habeas cases, we generally do not address a claim outside the scope
9 of the certificate of appealability. *See Valverde v. Stinson*, 224 F.3d 129, 136 (2d
10 Cir. 2000). Here, as the certificate of appealability is limited to the question of
11 mootness, and as the district court did not address the state's timeliness,
12 exhaustion, and procedural default arguments, we decline to address those
13 arguments and express no view as to whether they are meritorious.

14 CONCLUSION

For the foregoing reasons, we VACATE the district court's judgment
dismissing Janakievski's habeas petition as moot and REMAND for further
proceedings.