

DEC 26 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURILIO MORALES-ZARATE,

Defendant - Appellant.

No. 14-50089

D.C. No. 3:13-cr-00956-BEN-1

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURILIO MORALES-ZARATE,

Defendant - Appellant.

No. 14-50150

D.C. No. 3:13-cr-00956-BEN-1

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted November 20, 2014**
Pasadena, California

Before: WARDLAW and PAEZ, Circuit Judges, and KENNELLY, District Judge.***

Maurilio Morales-Zarate was charged with illegal reentry following deportation in violation of 8 U.S.C. § 1326. He was found incompetent to stand trial and was ordered hospitalized pursuant to 18 U.S.C. § 4241(d). He later moved to dismiss the indictment on the ground that the time limit in § 4241(d)(1) had expired four months after the district court's commitment order. The district court denied the motion. Morales-Zarate appealed from that ruling.

After that appeal was filed, the government moved to dismiss the charge against Morales-Zarate. The district court granted the motion to dismiss, but stayed dismissal until Morales-Zarate was returned to the custody of the U.S. Attorney General for a dangerousness evaluation pursuant to 18 U.S.C. § 4246. Morales-Zarate appealed from that commitment order, as well.

Because the charge against Morales-Zarate has been dismissed and he has been released from custody and removed to Mexico, his appeals are moot.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Matthew F. Kennelly, District Judge for the U.S. District Court for the Northern District of Illinois, sitting by designation.

Morales-Zarate has already obtained the relief he seeks in his appeal, namely dismissal of the charge against him and release from custody. *See Foster v. Carson*, 347 F.3d 742, 746 (9th Cir. 2003). The alleged violations are not “capable of repetition yet evading review,” because Morales-Zarate is not likely to face the same injury again. *See United States v. Howard*, 480 F.3d 1005, 1009–10 (9th Cir. 2007). Morales-Zarate has not challenged an established government policy on behalf of others who might be subject to similar violations. *See United States v. Brandau*, 578 F.3d 1064, 1067–68 (9th Cir. 2009).

DISMISSED.