IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

EDUARDO RIVERO-PROENZA,

Petitioner,

v. **CASE NO. 04-3407-RDR**

ATTORNEY GENERAL, et al.,

Respondents.

O R D E R

This matter is before the court on respondents' motion to dismiss this habeas corpus petition filed pursuant to 28 U.S.C. 2241.

Petitioner, a Cuban national, was detained at the United States Penitentiary, Leavenworth, Kansas, at the time he commenced this action. He was released from confinement on March 4, 2005, and he has not provided the court with a current address. Respondents assert this matter is now moot.

Pursuant to 28 U.S.C. 2241(c)(1), habeas corpus "shall not extend to a prisoner unless he is in custody." Petitioner commenced this action while in custody, and that provision was met. Riley v. INS, 310 F.3d 1253, 1256 (10th Cir. 2002). Because petitioner has since been released, however, he must demonstrate that collateral consequences of his detention exist

and present "some concrete and continuing injury." Spencer v. Kemna, 523 U.S. 1, 7 (1998).

The United States Court of Appeals for the Tenth Circuit has dismissed an appeal from the denial of an application for habeas corpus on the ground of mootness. Suarez-Tejeda v. United States, 85 Fed. Appx. 711, 2994 WL 68758 (10th Cir. 2004).[1] Like petitioner, Suarez-Tejeda arrived in the United States during the Mariel boatlift of 1980, in which approximately 120,000 undocumented Cubans reached the United States.

Following his service of a criminal sentence imposed for convictions after his arrival, Suarez-Tejeda was detained in INS custody in a federal correctional facility. His request for habeas corpus relief was denied, and he was released on parole during the pendency of his appeal.

In that action, the Tenth Circuit determined that the appeal was moot based the petitioner's release from detention, the absence of any evidence that his immigration parole would be revoked or that such revocation would be so brief as to deny him the opportunity to seek review, and the absence of any evidence that he was released to avoid review. Suarez-Tejeda, 2004 WL 68758, **4-5.

After considering that decision, this court concludes the same analysis applies in the present case. First, not only has

[1]A copy of this unpublished decision is attached.

the petitioner in this action been released, he has made no contact with the court since his release and has not contested respondents' motion to dismiss. Next, there is no basis to conclude that related future confinement will occur or would be too brief to allow petitioner to pursue legal remedies. See S. Utah Wilderness Alliance v. Smith, 110 F.3d 724, 729 (10th Cir. 1997)(discussing exception to mootness principles where circumstances create a case "capable of repetition, yet evading review.") Finally, there is no evidence of bad faith by the government in petitioner's release. See ARW Exploration Corp. v. Aguirre, 947 F.2d 450, 452 (10th Cir. 1991)(discussing exception to mootness where party interrupts allegedly illegal activity to render a legal proceeding moot). The court agrees this matter is moot due to petitioner's release and grants respondents' motion to dismiss.

IT IS THEREFORE ORDERED respondents' motion to dismiss (Doc. 21) is granted. This matter is dismissed and all relief is denied.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

DATED: This 7th day of June, 2005, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS

United States District Judge