

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 8 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-50310

Plaintiff-Appellee,

D.C. No.

v.

3:18-cr-03066-JLS-1

SHAWN JAMES SOLEIMANI,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the Southern District of California  
Janis L. Sammartino, District Judge, Presiding

Submitted April 3, 2020\*\*  
Pasadena, California

Before: WARDLAW, MURGUIA, and MILLER, Circuit Judges.

Shawn James Soleimani appeals the district court's order committing him to the Attorney General's custody for competency restoration under 18 U.S.C. § 4241(d). Soleimani argues that the commitment order violates his constitutional right to equal protection because other defendants on pre-trial release who

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

are not in competency proceedings but who require mental health services are allowed to obtain those services on an outpatient basis. We have jurisdiction under the collateral order doctrine, *United States v. Friedman*, 366 F.3d 975, 980 (9th Cir. 2004), and we affirm.

“The construction or interpretation of a statute is a question of law that we review de novo.” *United States v. Cabaccang*, 332 F.3d 622, 624–25 (9th Cir. 2003) (en banc) (citing *United States v. Carranza*, 289 F.3d 634, 642 (9th Cir. 2002)). We also review de novo the constitutionality of a statute. *United States v. Vongxay*, 594 F.3d 1111, 1114 (9th Cir. 2010).

To succeed on his equal protection claim, Soleimani must first show that the government treats him differently from similarly situated persons. *Pimentel v. Dreyfus*, 670 F.3d 1096, 1106 (9th Cir. 2012) (per curiam); *United States v. Lopez-Flores*, 63 F.3d 1468, 1472 (9th Cir. 1995). If this showing is made, we must then evaluate “under the appropriate level of scrutiny whether the distinction made between the groups is justified.” *Lopez-Flores*, 63 F.3d at 1472 (citing *Plyler v. Doe*, 457 U.S. 202, 217–18 (1982)).

A defendant who is incompetent to stand trial is not similarly situated to a competent defendant with mental health issues on pre-trial release. A finding of incompetency amounts to a legal determination that the defendant “is unable to understand the nature and consequences of the proceedings against him or to assist

properly in his defense,” 18 U.S.C. § 4241(d), such that if trial were to proceed, it would constitute a violation of due process, *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996). Therefore, an incompetent defendant such as Soleimani is not similarly situated to defendants on pre-trial release whose mental health issues do not affect competency to stand trial. Because Soleimani has not identified two similarly situated groups of people, his equal protection claim fails. *Pimentel*, 670 F.3d at 1106 (noting that a finding that plaintiff was treated differently than similarly situated individuals is a threshold showing in the equal protection analysis).

**AFFIRMED.**