No. 08-4132
IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MITCHELL ROSIN,	)
	) **Appeal from the United Sates**
Plaintiff,	) **District Court for the**
	) **Northern District of Illinois**
v.	)
	) **No. 08 C 3541**
LARRY TRENT, Director, Office of Governmental Affairs, State Police, TRACY NEWTON, Supervisor, Sex Offender Registration, Illinois State Police,	)
	)
	) **Honorable Judge Samuel**
	) **Der-Yeghiayan Presiding**
	)
	)
Defendants.	)

PLAINTIFF'S BRIEF AND REQUIRED APPENDIX

Thomas Peters
Kevin Peters
Attorneys for Plaintiff
407 S. Dearborn, Suite 1675
Chicago, Illinois, 60605
312-697-0022

CIRCUIT RULE 26.1 DISCLOSURE AND CERTIFICATE OF INTEREST

1. Plaintiff, Mitchell Rosin, was represented in the District Court proceedings by Thomas Peters and Kevin Peters, Attorneys at Law, 407 S. Dearborn, Suite 1675, Chicago, Illinois, 60605, and Plaintiff is represented by the same counsel in the proceedings before this Honorable Court.

2. Plaintiffs is a private party, not a corporation.

Respectfully submitted,

s/ Thomas Peters
THOMAS PETERS
KEVIN PETERS
ATTORNEYS FOR PLAINTIFF
407 S. DEARBORN, SUITE 1675
CHICAGO, ILLINOIS, 60605
312-697-0022

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JURISDICTIONAL STATEMENT

The District Court had jurisdiction over Plaintiff's case pursuant to 28 U.S.C. 1331 and 28 U.S.C. 1343. The District Court had federal question jurisdiction (28 U.S.C.1331) because Plaintiffs' federal cause of action was brought pursuant to 42 U.S.C. 1983 for violations of Plaintiffs' constitutional rights, as guaranteed by the Full Faith and Credit Clause of the United States Constitution. U.S. Const., Article IV.

The District Court entered a final judgment disposing of all claims on November 19, 2008, and Plaintiff filed a timely Notice of Appeal on December 8, 2008. Therefore, this Honorable Court has jurisdiction pursuant to 28 U.S.C. 1291.

ISSUE PRESENTED FOR REVIEW

1. Whether the District Court erred when it granted Defendants' motion to dismiss, even though the guilty plea agreement that Plaintiff entered in New York is entitled to full, faith and credit in Illinois, and the plea agreement was based on the prosecution's promise and the New York court's agreement that Plaintiff would not have to register as a sex offender.

STATEMENT OF THE CASE

Plaintiff filed this action pursuant to 42 U.S.C. 1983 alleging a violation of for of his constitutional rights. Specifically, he maintained that Defendants were not giving full faith and credit to a final judgment entered in the state of New York. Defendants filed a Rule 12(b)(6) motion to dismiss, The District Court granted the motion, a final judgment was entered, and Plaintiff filed a timely Notice of Appeal**.**

STATEMENT OF FACTS

Plaintiff was charged with a sex offense in Westchester County, New York. (Case No. 00080708) (App. 12, at No.9) On or about March 27, 2003, he entered a plea of guilty to a Class B misdemeanor offense. See New York Criminal Code Section 130.55. (App. 12, at No.10) The plea was entered pursuant to an agreement with the prosecutor, and a material term of the agreement was that Plaintiff would not be required to register as a sex offender. (App. 13, at Nos. 11-16) The plea agreement between the New York prosecutor and Plaintiff was reduced to writing and was signed and approved by the New York Court on March 27, 2003. (Id.) As part of that written agreement, the New York court judge as well as the New York prosecutor specifically struck paragraph 29 of the standard plea form, which is the paragraph that otherwise would require sex offender registration. (Id.) That paragraph was stricken because the agreement among the parties was that Plaintiff would enter a plea to a misdemeanor offense, but only if the State promised that Plaintiff would never have to register as a sex offender. (Id.)

Plaintiff would not have agreed to plead guilty to any charge, unless the sex offender registration requirement was expressly excluded as part of the New York court's sentencing order. (Id.) . As a direct and proximate result of the plea agreement, and specifically the New York Court's order striking sex offender registration, Plaintiff is not required to register as a sex offender in New York. (Id.) Under the laws of New York, Plaintiff cannot be required to register as a sex offender, and the State of New York has at all times honored Plaintiff's guilty plea agreement and never requested that Plaintiff register as a sex offender. (Id.)

After entering his plea, Plaintiff resided in Oak Park, Illinois from 2000 until March, 2008, and he did not at any time violate any Illinois law that would require him to register as a sex offender. (App.13, at Nos. 19-23) In February, 2008, Plaintiff was informed by R. Scianna, then a Commander of the Oak Park Police Department, that a) Plaintiff would have to move from his residence of many years, and b) Plaintiff now was required to register as a sex offender for life. Plaintiff also was informed that these new requirements were based solely on his plea to the New York misdemeanor offense. (App. 13, at Nos. 21-23) To avoid arrest, Plaintiff complied with the orders given to him by R. Scianna and by Commander Harbor, also of the Oak Park Police Department. (App. 14, at Nos 23-25) They were acting under color of state law and in accordance with the policies set by the Defendants. (App. 12, at No. 4-6) Plaintiff remains under threat of arrest, if he fails to register as a sex offender in Illinois. (App. 14, at No. 24)

Plaintiff filed this case pursuant to 42 U.S.C. 1983 for violation of his constitutional rights as guaranteed by the Full Faith & Credit Clause of the United States Constitution. U.S. Const., Article IV. (App. 12, at 4-6) Defendant, Larry Trent, was the Director of the Illinois State Police and, in that capacity, he was responsible for establishing guidelines and procedures relating to the registration of Illinois sex offenders. (App. 11, at 2) Tracy Newton is the Supervisor of Sex Offender Registration for Illinois and, in that capacity, she enforces the rules, guidelines, and policies of Defendant Trent. (App.12, at 3) As alleged in the Complaint, Defendants were acting in their official capacities and within the course and scope of their employment when they established the rules, policies, and procedures that were applied to Plaintiff. (App. 12, at 3-5)

Defendants filed a motion to dismiss maintaining that they were not bond by the New York court's judgment. (App. 15-23) They also maintained they could compel Plaintiff to register as a sex offender based solely on his New York conviction, even though that judgment precluded sex offender registration. (Id.)

The District Court granted the motion on November 19, 2008. (App. 24-30) According to the District Court, Illinois is not bound by the final judgment in New York because the New York order does not expressly reference Illinois.(App. 28, 29) A final judgment was entered on November 19, 2008, and a Notice of Appeal was filed on December 8, 2008. (App. 4, at Doc. No. 34 and App. 32)

SUMMARY OF THE ARGUMENT

The Full Faith and Credit Clause requires Illinois to honor final judgments entered in other states. *Matsushita Electric v. Epstein*, 516 U.S. 367, 373, 134 L.Ed.2d 6 (1996)) Plaintiff was induced to plead guilty in New York based on the express promise of the New York prosecutor. (App. 11-14) The New York court agreed with and approved the terms of Plaintiff's plea, and those terms were made part of a final judgment order. (Id.) That final judgment must be given full faith and credit in Illinois. *Kremer v. Chemical Construction Corp*., 456 U.S. 461, 481-82, 72 L.Ed.2d 202 (1982) One of the material terms of the New York court's order precluded sex offender registration so Illinois must honor that material term of the New York judgment. Therefore, the District Court erred when it granted the motion to dismiss.

ARGUMENT

I.

THE FINAL JUDGMENT ENTERED IN NEW YORK WAS BASED ON THE EXPRESS PROMISE OF THE NEW YORK PROSECUTOR, AND APPROVED BY THE NEW YORK COURT, SO IT IS ENTITLED TO FULL FAITH AND CREDIT IN ILLINOIS

INTRODUCTION

The facts are not in dispute (*Conley v. Gibson*, 355 U.S. 41, 47, 2 L.Ed.2d 80 (1957)), and notice pleading does not require Plaintiff to recite chapter and verse of the facts or the legal issues. See *McDonald v. Household Intern, Inc.,* 425 F.3d 424, 426 (7th Cir. 2005) Because the facts are not in dispute and the case comes t this Court following a Motion to Dismiss, review is de novo. *United States v. Farmer*, 543 F.3d 363, 373 (7th Cir. 2008)

A.
THE UNDISPUTED FACTS

Plaintiff was arrested in New York and charged with a sex offense. (App. 11-14, at No. 9) He eventually entered a plea of guilty to a misdemeanor. (Id., at No.. 10) As part of that agreement, it was expressly guaranteed by the prosecution and the New York Court "that Plaintiff would not be required to register as a sex offender." (Id., at No.s. 11-13) It likewise is undisputed that, "Plaintiff would not have agreed to plead guilty to

any charge, unless the sex offender registration requirement was expressly excluded" from his sentence. (Id., at No.. 15) As a result of those agreements, Plaintiff never has been, and cannot be, required to register as a sex offender in New York. (Id., at 17)

The relevant, undisputed facts also establish that Plaintiff has resided in Illinois for the last eight years. (Id., at No.. 19) For most of that time, the Illinois authorities did not require Plaintiff to register as a sex offender (Id., at 19-22), probably because Plaintiff never has committed a crime, let alone a sex offense, in Illinois. (Id., at 20) Nonetheless, in February 2008, almost five years after the New York plea, Plaintiff was forced to move from his home and register, life time, as a sex offender in Illinois. (Id., at 21,22) The sole basis for those recent and imposing demands is the New York plea that expressly excluded sex offender registration. (Id., at No. 22) The plea agreement in New York is entitled to full faith and credit in Illinois so the District Court's judgment must be reversed.

B.

PLEA AGREEMENTS PLAY AN IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE AND MUST BE HONORED BY THE STATE.

The Government cannot induce a defendant to plead guilty and then withdraw the inducements. *Machibroda v. United States*, 368 U.S. 487, 7 L.Ed.2d 473 (l962). A deal is a deal, even when one of the parties is admitting guilt. *Id.* Plea bargains are an "essential component of the administration of justice." *Santobello v. New York*, 404 U.S. 257, 260, 30 L.Ed.2d 427 (l97l). Without them, the wheels of justice would turn but at a

greatly reduced speed. Crowded dockets would become more crowded. Pretrial delays would lengthen.

Plea agreements account for the vast majority of all federal and state dispositions and there is no reason to believe that trend will, or should, end. "Properly administered, (plea bargaining) is to be encouraged." *Santobello*, 404 U.S. at 260. Plea agreements lead "to prompt and largely final dispositions", reduce "much of the corrosive impact of enforced idleness during pretrial confinement", and shorten "the time between charge and disposition", thereby enhancing "whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned." *Santobello*, 404 U.S. at 26l.

However, "all of these considerations presuppose fairness in securing agreement between an accused and a prosecutor." *Santobello*, 404 U.S. at 26l. In *Santobello*, one prosecutor promised to make “no sentencing recommendation,” if the defendant pled guilty. By the time the plea was to be entered, a new prosecutor, unaware of the original promise, was handling the case. The new prosecutor recommended a one year prison sentence and the trial court concurred. The prosecutor's sentencing recommendation breached the original agreement which called for "no recommendation." But that breach was "inadvertent", (*Santobello*, 404 U.S. at 262) and the trial court noted that it was "not at all influenced by what the District Attorney said... " and recommendation did not "make a particle of difference" to the sentencing judge. *Santobello*, 404 U.S. at 259.

Nonetheless, the Supreme Court reversed. The Court concluded "that the

interests of justice and appropriate recognition of the duties of the prosecutor in relation to promises made in the negotiations of pleas of guilty will be best served by remanding the case". *Santobello*, 404 U.S. at 262. The holding in *Santobello* is significant because the Supreme Court assumed a) the Government's breach of the plea agreement was inadvertent and b) that breach did not affect the sentencing judge ("The judge stated that the prosecutor's recommendation did not influence her and we have no reason to doubt that." *Santobello*, 404 U.S. at 262).

Santobello was not concerned with prosecutorial vindictiveness or proof of bad faith. Good faith was assumed. It was further assumed that the trial court would have imposed a one year sentence, even if the prosecutor had stood by the original agreement and made no sentencing recommendation. *Santobello*, 404 U.S. at 260-262. *Santobello*, therefore, stands for the proposition that a plea that is induced by a government promise can be specifically enforced by the defendant, even if the prosecution acted in good faith. See also *United States v. Eliason*, 3 F.3d 1149, 1152 (7th Cir. 1993); *United States v. Smith,* 953 F.2d 1060, 1066 (7th Cir. 1992).

Contract law principles apply to plea agreements and those principles dictate that "where the prosecutor has promised to make a motion, and the defendant has relied on that promise, the Defendant will have recourse in the court if the government breaks that promise." *United States v. Lewis*, 890 F.2d 246, 249 (7th Cir. 1990); See also, *United States v. Coleman,* 895 F.2d 501, 505 (8th Cir 1990). While plea agreements are

contracts, they are contracts with "special due process concerns for fairness and the adequacy of procedural safeguards... ." *United States v. Ataya*, 864 F.2d 1324, 1329 (7th Cir. 1988). This tempering of traditional contract law has caused courts to hold the government to "the most meticulous standards of both promise and performance... (when) engaging in plea bargaining. " *United States v. Bowler*, 585 F.2d 851, 857 (7th Cir. 1978) *United States v. Fields*, 760 F.2d 1161, 1168 (7th Cir. 1985); *United States v. De Michael*, 692 F.2d 1059, 1002 (7th Cir. 1982)) and to give the benefit to the accused rather than the government. *United States v. Ingram*, 979 F.2d ll79 (7th Cir. l990). Specific performance of the plea agreement is the preferred remedy. *United States v. Marsalli Olvera*, 43 F.3d 345 (8th Cir. 1994).

These principles are of concern here because one state promised Plaintiff that if he pled guilty to a misdemeanor offense, he would not have to register as a sex offender. He relied on that promise and entered the plea. He paid the penalty imposed by New York, so he is entitled to the benefit of the contract he entered with that state. That is especially true since the contract took the form of a final judgment entered in a court of law. Plaintiff had no reason to suspect that another state would use part of the agreement - the plea of guilty - against him, and then ignore another material element of the agreement - the promise that he would not have to register as a sex offender. The agreement was not divisible; it was one contract with material elements that benefitted each side.

New York has honored its part of the bargain, so Plaintiff has no recourse in New York. The Full Faith and Credit Clause, in effect makes Illinois a party to that agreement, Moreover, Illinois does not have the right to pick and choose among the material provisions of the New York Court's order. Illinois cannot use the Plaintiff's admission, which was induced by the prosecutors promise, as grounds for registration in Illinois, but ignore the other material terms of the New York court's order.

C.
THE FULL FAITH AND CREDIT CLAUSE REQUIRES ILLINOIS TO HONOR THE JUDGMENT ENTERED IN NEW YORK

The Full Faith and Credit Clause mandates that judicial proceedings and orders in one state must be given the same effect in every other state and by the federal government. *Matsushita Electric v. Epstein*, 516 U.S. 367, 373, 134 L.Ed.2d 6 (1996) Illinois must "treat a state court judgment with the same respect that [the judgment] would receive in the courts of the rendering state." *Matsushita*, 516 U.S. at 373. The focus must be on the rendering state's order, not how Illinois or some other state might handle the same issue. *Kremer v. Chemical Construction Corp*., 456 U.S. 461, 481-82, 72 L.Ed.2d 202 (1982)

Nor does it matter whether the rendering state's judgment was issued in a civil or a criminal case or a personal or class action suit. *McDonald v. West Branch*, 466 U.S. 284, 287-88, 80 L.Ed.2d 302 (1984) All other states and the federal government must treat the rendering state court's order "with the same respect it would receive in the courts of the rendering state." *Majeske v. Fraternal Order of Police*, 94 F.3d 307, 312 (7th Cir.

1996) That Plaintiff's plea agreement was essentially a settlement is of no consequence; it was reduced to a judicial order that must be enforced everywhere. "The fact that a judgment incorporates the results of a settlement, rather than being the result of full litigation on the merits, makes no difference..." *Id.* New York's judicial judgments have "the same preclusive effect these judgments would have in the rendering state's courts." *Remer v. Burlington Apece School District*, 205 F.3d 990, 998 (7th Cir. 2000)

Furthermore, full faith and credit means more than a nod of the head or a superficial gesture acknowledging the existence of the other state's judgment, without actually enforcing it. "[W]e do not suppose that a state could say it may deny registration and enforcement to another state's judgment as long as it gives lip service to the 'validity' of the judgment." *Lowery v. McCaughtry*, 954 F.2d 422, 424 (7th Cir. 1992) The state of New York entered a judgment following Plaintiff's plea agreement with the local prosecutor. That plea agreement represents an enforceable contract that included certain contractually guaranteed rights. *Santobello v. New York*, 404 U.S. 257, 30 L.Ed.2d 427 (1971) One of those rights was the right not to register as a sex offender. That right, as embodied in the New York court judgment, is entitled to full faith and credit, not "lip service." *Lowery*, 954 F.2d at 424.

New York cannot force Plaintiff to register as a sex offender because his plea agreement is enforceable against the State of New York. *Blackledge v. Allison*, 431 U.S. 63, 75, 52 L.Ed.2d 136(1977) Defendants do not deny that. Nor do they question the

jurisdiction of the New York court or the constitutionality of the plea agreement. That being the case, Illinois must treat the New York judgment, all of its material terms, in the same manner as New York must respect the plea agreement. *Blackledge*, 431 U.S., at 75. Plaintiff cannot be compelled to register as a sex offender in Illinois for precisely the same reason he cannot be compelled to register in New York.

D.
ILLINOIS' REGISTRATION RULES ARE SUBJECT TO THE FULL FAITH AND CREDIT CLAUSE.

Defendants nonetheless claimed that the Illinois Sex Offender Act establishes the grounds for mandatory registration. (App. 15-19). Plaintiff agrees that Illinois has the right as an independent state to legislate as it sees fit, but New York is not imposing its legislative scheme on Illinois. By the same logic, Illinois cannot ignore the judgment of a New York court. Illinois law requires a conviction for one of the enumerated offenses in the Sex Offender Registration Act. Plaintiff never was charged with, let alone convicted of, an Illinois sex offense. The sole basis for registration in Illinois is the New York court judgment, but the New York Court that entered judgment on the plea also ordered that the plea could not be used as grounds for sex offender registration. That agreement precludes sex offender registration in New York, and the Full Faith and Credit Clause requires Illinois to apply the plea in the same manner as New York must apply it. *Matshushita*, 516 U.S. at 373-74. Plaintiff therefore cannot be required to register in Illinois because he cannot be required to register in New York. *Id*.

Plaintiff is not challenging the constitutionality of the Illinois Sex Offender

Registration Act. The Act is constitutional on its face and can be applied constitutionally in a myriad of scenarios. For example, if Plaintiff had pled guilty in New York without an express agreement precluding sex registration, Illinois could use the New York conviction to force him to register in Illinois. But the devil is in the details, and the critical detail is that a New York Court has ordered that Plaintiff is not subject to sex offender registration there. That final judgment is binding in Illinois as if Illinois were New York. *Majeske*, 94 F.3d at 312.

Nor can Illinois circumvent the New York judgment and order by cavalierly claiming that Illinois did not require him to register in New York, only that he is required to register with the appropriate Illinois agency. Illinois could not order Plaintiff to register in New York, even if the plea agreement were silent on the issue of registration. When a crime is committed in New York, that state's legislative branch decides whether that category of crime warrants sex offender registration. Once that legislative determination is made the New York judicial system decides whether registration is mandatory or discretionary. If discretionary, the New York court may enter a judgment excusing registration. But all of the decisions are made in New York.

For the same reason, Illinois is entitled to have a different sex offender registration system, and New York cannot prescribe what that system is or how Illinois judges enforce that system. But that is not what happened here. In this case the judgment was entered in New York based on promises that were made by the State of New yOrk to

Plaintiff. Illinois cannot dictate the terms of the plea agreement Nor can Illinois pick and choose among the material elements of that order. Illinois cannot say, "Well we like the guilty plea but not the promise that sex offender registration is off limits."

E.
COURT JUDGMENTS ARE AFFORDED MORE PROTECTION THAN ARE STATUTES.

Defendants relied on *Nevada v. Hall,* 440 U.S. 410, 59 L.Ed.2d 416 (1979) and maintained that Illinois' policy considerations trump the New York court's orders. (Def. Mot., at 7, 8) Defendants' argument, however, misses the point made in *Hall* and in other relevant Supreme Court decisions.

In *Hall*, the Plaintiffs resided in California and they were seriously injured "in an automobile collision on a California highway..." *Hall*, 410 U.S. at 412. Ordinarily the laws of California govern accidents that occur within that state. However, the person who caused the accident was an employee of the state of Nevada and most states, including Nevada, have immunity laws that limit the state's liability for accidents caused by state employees. *Id*. The trial proceeded to verdict based on California law without reference to Nevada's sovereign immunity. Under California law, the jury's verdict of more than a million dollars was authorized. Nevada, however, insisted that California was bound by a Nevada's sovereign immunity statute that limited liability to $25,000 dollars. *Id.*

The issue that went to the Supreme Court was which state's law applied - a choice of law question more than a full faith and credit issue. Nonetheless, the Supreme Court also explained why the Full Faith and Credit Clause favored California law over a Nevada

statute that limited liability.

The crucial distinction in *Hall* was between court judgments and statutes. "A judgment entered in one State **must be respected** in another," whereas the statutes of another state only "apply in certain limited situations..." The reason for the distinction is that states, as independent sovereigns, legislate across a vast array of issues. The same issue might be handled very differently from one state to the next, and each state is an independent sovereign in that respect. But legislation generally is confined to the state where it was passed and is not binding elsewhere.

For example, Iowa has posted speed limits of 70 miles per hour, even though its neighboring state, Illinois, only allows a maximum of 65 miles per hour. Iowa citizens cannot avoid the Illinois maximum by pointing to a different statutory scheme in Iowa. But when an Iowa court enters a judgment that one of its citizens was not liable for an accident involving an Illinois citizen, Illinois must respect that judgment. There is no room for doubt on that point. *Hall*, 440 U.S. at 421.

In other cases involving the same distinction - judgments versus statutes - the Supreme Court has stood solidly behind judgments, while allowing for wiggle room with respect to conflicting statutes. The "full faith and credit command is exacting with respect to a final judgment... rendered by a court with adjudicating authority..." *Baker v. General Motors Corp*., 522 U.S. 222, 232, 139 L.Ed.2d 580 (1998) A state, however, is not required to "substitute the statutes of other states for its own statutes..." *Sun Oil Co.*

v. Wortman, 486 U.S. 717, 722, 100 L.Ed.2d 743 (1988) See also *Franchise Tax Board of California v. Hyatt*, 538 U.S. 488, 496, 155 L.Ed.2d 702.

The result in *Hall* is a by-product of the distinction between judgments and statutes. *Thomas v. Washington Gas Light Company*, 448 U.S. 261, 267, 65 L.Ed.2d 757 (1980) California was not bound by the Nevada immunity statute, but would have been bound by a Nevada court judgment. *Baker*, 522 U.S. at 233. The Supreme Court "differentiates the credit owed to laws (legislative measures and common law) and to judgments." *Id.* A valid judgment from one state court must be honored in all other states, but conflicts between the statutes of two states do not require the same full faith and credit. *Baker*, 522 U.S. at 232-35.

Since the issue here is the application of a New York court order, the result is governed by the Full Faith and Credit Clause. Illinois must honor the New York court's order in precisely the same manner as the order is, and must be, applied in New York. Because Defendants are not honoring the New York court's order as it must be honored in New York, Plaintiff has stated a constitutional claim and the Motion to dismiss must be denied.

F.

WHETHER REGISTRATION IS PUNISHMENT IN ILLINOIS IS IRRELEVANT

Defendants' final argument in the District Court was that registration is not punishment, as defined by Illinois law so Plaintiff is not harmed. (Def. Mot., at 6-8) The word "punishment" does not appear in the Full Faith and Credit Clause, nor is it a

relevant concern. Civil judgments are governed by the Full Faith and Credit Clause, even though they do not impose criminal sanctions. *Matsushita*, 516 U.S. at 373. If a New York court orders that a contract between Illinois and New York residents is binding on the Illinois resident, Illinois must honor that court order, irrespective of whether the order imposes a "punishment." *Id*.

The issue in a Full Faith and Credit case is what the rendering state's order means, not whether another state considers the consequences of the order a form of punishment. *Majeske,* 94 F.3d at 312. New York must honor its plea agreement with Plaintiff regardless of whether sex offender registration is deemed a punishment. *Santobello,* 404 U.S. at 261-63. Therefore, Illinois must honor the judicial order irrespective of whether registration is punishment.

CONCLUSION

For all of these reasons, the judgment of the District Court must be reversed.

Respectfully submitted,

s/ Thomas Peters

THOMAS PETERS
KEVIN PETERS
ATTORNEYS FOR PLAINTIFF
407 S. Dearborn St., Suite 1675
Chicago, IL 60605
(312) 697-0022

CIRCUIT RULE 30 (d) STATEMENT

All materials required by Circuit Rule 30 (a) and (b) are included in the Circuit Rule 30 (a) Appendix, which is bound with the main brief of the Plaintiff-Appellant.

s/ Thomas Peters
THOMAS PETERS
KEVIN PETERS
407 S. DEARBORN
SUITE 1675
CHICAGO, ILLINOIS 60605
312-697-0022

CIRCUIT RULE 31 (e) CERTIFICATION

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 31(e), versions of the brief and all of the appendix items that are available in non-scanned PDF format.

s/ Thomas Peters
Counsel for Plaintiffs
THOMAS PETERS
KEVIN PETERS
407 S. DEARBORN
SUITE 1675
CHICAGO, ILLINOIS, 60605
312-697-0022

CIRCUIT RULE 32 (a) (7) (c) CERTIFICATE

In accordance with Fed. R. App. P. 32 (a) (7) (c), I certify that the foregoing brief complies with the type volume limitation provided by Fed. R. App. P. 32 (a) (7) (B). The brief contains 5,513 words that count toward the word count in Rule 32, beginning with the word "JURISDICTIONAL" and ending with the last word of the "CONCLUSION" section, as recorded by the word count of the word-processing system used to prepare this brief.

S/ Thomas Peters
THOMAS PETERS
KEVIN PETERS
407 S. DEARBORN
SUITE 1675
CHICAGO, ILLINOIS 60605
312-697-0022

CERTIFICATE OF SERVICE

I certify that I served the foregoing Brief and Circuit Rule 30 (a) Appendix of Plaintiff-Appellant by placing two bound copies of it, as well as a computer disk containing a digital version of the brief, in an envelope, addressed to the persons named below, affixing proper first-class postage to the envelope, and depositing the envelope in the United States mail at 407 S. Dearborn Street, Chicago, Illinois on July 20, 2009.

s/ Thomas Peters
THOMAS PETERS
KEVIN PETERS
ATTORNEYS FOR PLAINTIFFS
407 S. DEARBORN, SUITE 1675
CHICAGO, ILLINOIS 60605
312-697-0022

SERVICE LIST

Mary E. Welsh
Assistant Attorney General
Civil Appeals Division
100 W. Randolph
Sate of Illinois Center
Chicago, Illinois
60601

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