No. 08-4132

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MITCHELL ROSIN, Plaintiff-Appellant, v. JONATHAN E. MONKEN, Director, Illinois State Police; and TRACY NEWTON, Supervisor, Sex Offender Registration, Illinois State Police, Defendants-Appellees.	) Appeal from the United States) District Court for the Northern) District of Illinois, Eastern) Division.))) No. 08–3541))) The Honorable) SAMUEL DER-YEGHIAYAN,) Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

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JURISDICTIONAL STATEMENT

Plaintiff's Jurisdictional Statement is not complete and correct.

Plaintiff's original complaint alleged that Defendants, who are Illinois officials sued only in the official capacities, violated the Full Faith and Credit Clause (U.S. Const. art. IV, § 1) and sought declaratory, injunctive, and monetary relief. Doc. 1. Plaintiff's amended complaint, against Defendants in their official capacities, sought only declaratory relief on the claim. Doc. 16. The district court had jurisdiction over Plaintiff's constitutional claim against Defendants pursuant to 28 U.S.C. § 1331.

On November 19, 2008, the district court entered an order dismissing Plaintiff's case for failure to state a claim. Doc. 30 (AT App. at A24-30). The same day, a Rule 58 judgment was entered. Doc. 31 (AT App. at A31). On December 8, 2008, Plaintiff filed a notice of appeal. Doc. 32. This Court therefore has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

ISSUE PRESENTED

Whether Plaintiff's claim — that the Full Faith and Credit Clause bars requiring him to register as a sex offender in Illinois because the probation order for his New York sex offense conviction did not require him to register as a sex offender in New York — was subject to dismissal for failure to state a claim.

STATEMENT OF THE CASE

Plaintiff Mitchell Rosin, who has lived in Illinois since 2000, was convicted in New York of sexual abuse in the third degree (Penal Law 130.55) in 2003. Pursuant to a plea agreement, his Order of Probation deleted a requirement that he comply with the New York Sex Offender Registration Act (Correction Law §168 et seq.), including registration as a sex offender with New York authorities. In 2008, Plaintiff was told that due to his New York conviction, the Illinois Sex Offender Registration Act (730 ILCS 150/1 et seq. (2006)) required him to register as a sex offender and to move. Plaintiff filed suit against Defendants, who establish (Monkton) and enforce (Newton) policies relating to sex offender registration in Illinois, alleging that the Full Faith and Credit Clause (U.S. Const. art. IV, §1) bars requiring him to comply with the Act. The district court dismissed Plaintiff's suit for failure to state a claim.

STATEMENT OF FACTS

Background[1]

Under the Illinois Sex Offender Registration Act (the Act) (730 ILCS 150/1 et seq. (2006)), a "sex offender," i.e., one who has been convicted of certain crimes under Illinois law or "substantially equivalent" offenses in other jurisdictions, must register with local law enforcement. 730 ILCS 150/3 (2008). Generally, crimes are deemed substantially equivalent if similar elements are required to prove the commission of the offenses. Rodimel v. Cook County Sheriff's Office, 354 Ill. App. 3d 744, 746, 822 N.E.2d 7 (5th Dist. 2004) (holding that "indecent assault" under Military Code was substantially equivalent to Illinois offense of "criminal sexual abuse"). Defendant Jonathon Monken, the Director of the Illinois State Police,[2] is responsible for establishing guidelines and procedures relating to the registration of sex offenders in Illinois. Doc. 16 at 1 (AT App. at A11). Defendant Tracy Newton, the supervisor of sex offender registration in Illinois, is responsible for enforcing those policies. Id. at 1-2 (AT App. at A11-12).

In 2003, Plaintiff Mitchell Rosin was convicted in New York of sexual abuse

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[1] On a motion to dismiss under Federal Rule of Civil Procedure 12(b), courts accept as true all well-pleaded factual allegations in the complaint and may take into account matters that may be judicially noticed (Tellabs, Inc. v. Macor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007)), but not a complaint's legal conclusions or unsupported conclusions of fact (County of McHenry v. Insur. Co. of the West, 438 F.3d 813, 818 (7th Cir. 2006)). This brief's Statement of Facts accepts as true the well-pleaded facts in the amended complaint, but not its legal conclusions or unsupported factual conclusions.

[2] Plaintiff originally named the former Director, Larry Trent, as a defendant in his official capacity, but Monken has been substituted for him pursuant to Federal Rule of Appellate Procedure 43(c)(2) and Circuit Rule 43.

in the third degree, i.e., non-consensual sexual contact (N.Y. Penal Law §130.55), which was a misdemeanor. Doc. 16 at 2 (AT App. at A12). Pursuant to a plea agreement, under which Plaintiff pled guilty to that offense, the requirement that he comply with the New York Sex Offender Registration Act (N.Y. Correction Law §168 et seq.), including the duty to register as a sex offender with the New York State Division of Criminal Justice Services, was crossed off the standard form on his Order of Probation.[3] Id. at 2-3 (AT App. 12-13); id. at Ex. 1 (AE App. at A4-5). Plaintiff would not have pled guilty unless the sex offender registration requirement was deleted from his sentence, and he has never been required to register in New York. Id. at 3 (AT App. at A13).

In 2008, Plaintiff, who had lived in Oak Park, Illinois, since 2000 but had never been required to register as a sex offender, was informed by local police that due to his New York sexual abuse conviction, he was required to comply with the Act by registering for life as a sex offender and moving. Id. at 3-4 (AT App. at A13-14). Plaintiff moved and is registered. Id. at 4 (AT App. at A14).

The District Court Proceedings

Plaintiff filed suit against Defendants, alleging that his plea agreement did not require him to comply with the New York Sex Offender Registration Act by registering as a sex offender with New York authorities. Doc. 1 (AT App. at A6-10).

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[3] The complaint does not indicate whether Plaintiff's conviction for sexual abuse in the third degree, standing alone, would have constituted a "sex offense" that triggered the New York law's registration requirement. See People v. Vasquez, 853 N.Y.S.2d 767 (App. Div. 2008) (holding that conviction of sexual abuse in third degree did not trigger registration).

Given this term in his plea agreement, he claimed, the Full Faith and Credit Clause (U.S. Const. art. IV, §1) bars requiring him to comply with the Illinois Sex Offender Registration Act by registering as a sex offender with Illinois authorities. Id. Defendants moved for a more definite statement, asking Plaintiff to specify the offense for which he was convicted so that they could verify whether Illinois law required him to register (Doc. 13), and Plaintiff filed an amended complaint that included this information (Doc. 16 (AT App. at A11-14)), attaching the Order as an exhibit (id. at Ex. 1 (AE App. at A1)). Plaintiff sought a declaration that his New York conviction was entitled to full faith and credit in Illinois and thus he was not required to comply with the Act. Id. at 4 (AT App. at A14). He also sought damages. Id.

Defendants moved to dismiss the amended complaint pursuant to Federal Rule of Procedure 12(b)(6), arguing (among other things) that Plaintiff had failed to state a claim under the Full Faith and Credit Clause. Doc. 17 (AT App. at A15-23). Defendants also argued that Plaintiff was not entitled to damages because he was suing them only in their official capacities, but that if he were suing them in their individual capacities as well, they were entitled to qualified immunity. Id. at 2-5 (AT App. at A16-19). In addition, Defendants contended that to the extent that Plaintiff was arguing that they were misconstruing the Act, that was a state claim that did not entitle him to seek relief in federal court. Id. at 8 (AT App. at A22). Plaintiff responded, stating that he was seeking only declaratory and injunctive relief against Defendants, for which he had stated a claim. Doc. 26. Defendants

replied. Doc. 28.

The district court granted Defendants' motion and dismissed Plaintiff's complaint for failure to state a claim. Docs. 29, 30 (AT App. at A24-30). The court found that "there is no language in the Order [that] must be given full-faith and credit that would bar the State of Illinois from forcing [Plaintiff] to register as a sex offender in Illinois," adding that Plaintiff "failed to cite any controlling precedent on point to support his position." Id. at 6 (AT App. at A29). The court also dismissed Plaintiff's claim for damages against Defendants in their official capacities, noting that he had indicated that he was pursuing only declaratory and injunctive relief. Doc. 30 at 4 (AT App. at A27).

A Rule 58 judgment was entered (Doc. 31 (AT App. at A31)), and Plaintiff filed a timely notice of appeal (Doc. 32 (AT App. at A32)).

SUMMARY OF ARGUMENT

The question Plaintiff's appeal presents is whether his complaint stated a cause of action under the Full Faith and Credit Clause. The answer is no.

The Full Faith and Credit Clause requires that a state court judgment be given the same effect by every State that it has in the rendering State. Plaintiff contends that the effect of the Order in New York is to bind all 50 States from enforcing their sex offender registration laws, but he is mistaken. Instead, the effect of the Order's unambiguous language is that Plaintiff was not required to comply with New York law by registering as a sex offender in New York. Indeed, New York courts have refused to give effect, despite the Full Faith and Credit Clause, to another State's order if doing so would prevent enforcement of New York sex offender registration laws. Thus, New York courts would not find that the Full Faith and Credit Clause bars Illinois authorities from enforcing Illinois sex offender registration law in Illinois. And in any event, the Full Faith and Credit Clause does not require Illinois to give effect to the Order if to do so would contravene the legitimate public policy in Illinois of requiring registration by certain sex offenders.

Plaintiff's wrongful inducement claim also fails. Such claims may be brought only in the criminal proceeding itself (or in a post-conviction proceeding) against the prosecutor who made the promise, and only for certain remedies, such as specific performance by the prosecutor or the defendant's withdrawal of the plea. Thus, this inducement claim should have been brought in a New York court against the New York prosecutor. It cannot be brought in this federal suit against these Defendants.

ARGUMENT

I. The District Court's Dismissal Order Should Be Affirmed.

Plaintiff's arguments on appeal differ little from those in his unsuccessful response to Defendants' motion to dismiss. Compare Doc. 26 at 3-10 with AT Brf. at 16-23. His arguments are no more persuasive now than they were in the district court.

A. The Dismissal of a Claim Should Be Affirmed Unless a Plaintiff Alleges Facts That, If True, Raise a Right to Relief Above the Speculative Level and Enter the Realm of Plausible Liability.

On a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, courts accept as true all well-pleaded factual allegations in the complaint. Tellabs, Inc. v. Macor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). A plaintiff's legal conclusions or unsupported conclusions of fact, however, need not be deemed true. County of McHenry v. Insur. Co. of the West, 438 F.3d 813, 818 (7th Cir. 2006). Recently, in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), the Supreme Court fleshed out the standards for pleading under Federal Rule of Civil Procedure 8. In describing those standards, the Court warned that although a complaint need not contain "detailed" factual allegations, "labels and conclusions" are insufficient, for Rule 8 "requires a 'showing,' rather than a blanket assertion, of entitlement to relief," and a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . ." Bell Atlantic, 550 U.S. at 555 & n.3.

A dismissal under Rule 12(b)(6) is reviewed de novo. Brooks v. Ross, ___ F.3d

___, 2009 WL 2535731, *2 (7th Cir., Aug. 20, 2009). Furthermore, a judgment may be affirmed on any ground in the record, regardless of the district court's actual reasoning. Id. at *2.

The dismissal order here should be affirmed.

B. The Full Faith and Credit Clause Requires That a Judgment Be Given the Same Effect That It Has in the Rendering State.

The Full Faith and Credit Clause states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., art. IV, § 1. As Plaintiff agrees (AT Brf. at 16), this means that "the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." Underwriters Assur. v. N.C. Life & Accident & Health Ins. Guaranty Ass'n, 455 U.S. 691, 704 (1982) (internal quotation marks omitted); see also 28 U.S.C. § 1738 (requiring that "judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken"). Accordingly, the central question for a Full Faith and Credit claim is how the courts in the rendering State would give effect to the judgment.

As the district court here found (Doc. 30 at 6 (AT App. at A29)), the Order contains no language that New York courts would construe as barring Illinois from requiring Plaintiff to register as a sex offender under the Act.

C. The Complaint Fails to Allege a Violation of the Full Faith and Credit Clause.

The district court properly dismissed Plaintiff's Full Faith and Credit claim for failure to state a claim. Although Plaintiff alleged that his plea agreement "included an express provision that [he] would not be required to register as a sex offender" (Doc. 16 at 2 (AT App. at A12)), he also admitted that the New York prosecutor and the New York court merely struck a paragraph that would have required Plaintiff to comply with New York law by registering as a sex offender in New York (id. at 3 (AT App. at A13)); see also id. at Ex. 1 (AE App. at A4-5). But to strike this paragraph meant only that Plaintiff would not be required to comply with New York law (i.e., the New York Sex Offender Registration Act), including registration as a sex offender with New York authorities (i.e., the New York State Division of Criminal Justice Services). As the district court correctly observed, the Order is silent as to sex offender registration in any other State (Doc. 30 at 5-6 (AT App. at A28-29)), and Plaintiff has provided no authority for the notion that New York courts would construe that silence to mean that Plaintiff cannot be required to comply with the laws of the other States, including registration as a sex offender with the other States' authorities.

Indeed, New York courts have indicated how they treat court orders concerning sex offender registration in the context of the Full Faith and Credit Clause. In People v. Arotin, 796 N.Y.S.2d 743 (App. Div. 2005), the defendant argued that the Full Faith and Credit Clause prohibited New York from classifying him as a level III offender because, he claimed, the Ohio sentencing court had

determined his sex offender classification was lower. 796 N.Y.S.2d at 745. The New York court, however, rejected this argument, holding that "[t]he administrative manner in which a state chooses to exercise the registration requirements for a sex offender who moves into its jurisdiction falls squarely within the power of that state and is not governed by the procedures in effect in the state where the offender" was convicted. Id. (emphasis added). The New York court's reasoning is instructive here: "[t]he purpose of the Full Faith and Credit Clause is to avoid conflicts between States in adjudicating the same matters, [and t]hat purpose is not violated by requiring a convicted sex offender moving into New York to be governed by this state's registration requirements." Id. (emphasis added, internal quotation marks and citation omitted). Arotin thus instructs that New York courts would treat Plaintiff's conviction the same way that Illinois does: they would recognize that the Full Faith and Credit Clause is not violated by requiring a convicted sex offender who lives in Illinois to be governed by Illinois registration requirements, even if the rendering State's order imposed lesser registration requirements. See also North v. Bd. of Examiners of Sex Offenders of State of New York, 871 N.E.2d 1133, 1139 (N.Y. 2007) (holding that "the 'essential elements' provision in [the New York Sex Offender Registration Act] requires registration whenever an individual is convicted of criminal conduct in a foreign jurisdiction that, if committed in New York, would have amounted to a registrable New York offense").

This is because, as the district court here explained, a criminal conviction in

one State does not necessarily have the same collateral civil effect in another State. Doc. 30 at 6 (AT App. at A29 (citing Burgess v. Ryan, 996 F.2d 180, 182 (7th Cir. 1993), which held that Illinois could revoke Illinois driver's license based on Colorado conviction even though that conviction would not justify license revocation in Colorado)). Moreover, to the extent that Plaintiff might have argued that Defendants have misconstrued Illinois law by equating his New York offense with an Illinois crime that requires registration (a claim he has never raised), Burgess teaches that his remedy for that mistake of state law lies in Illinois courts, not in a federal lawsuit. 996 F.2d at 184.

None of Plaintiff's many authorities (AT Brf. at 16-18, 20-22) requires reversal of the district court's judgment. Most of them concern preclusion under the Full Faith and Credit Act (28 U.S.C. § 1738), which is not at issue here. For example, Matsushita Elec. Indus. Co., Ltd. v. Epstein, 516 U.S. 367, 375-86 (1996), unremarkably states that federal courts must treat a rendering State's judgment the same way that State would under 28 U.S.C. § 1738. Thus, the Court held, Section 1738 merely required the federal court to give preclusive effect to the plaintiffs' settlement of their state court action, even though they could not have raised their federal claims in their state case. Id. at 375-86. Citing the settlement at issue in Matsushita, Majeske v. Fraternal Order of Police, Local Lodge No. 7, 94 F.3d 307, 312 (7th Cir. 1996), held merely that "[t]he fact that a judgment incorporates the results of a settlement, rather than being the result of full litigation on the merits, makes no difference for the application of § 1738." And in

any event, Majeske concluded only that because Illinois courts would find that preclusion would bar a suit analogous to the plaintiff's Title VII action, Section 1738 required preclusion as well. Id. at 314. In Kremer v. Chem. Constr. Corp., 456 U.S. 461, 481-85 (1982), the Court held only that Section 1738 required the federal court to give preclusive effect in a Title VII case to a New York judgment affirming an agency's rejection of the plaintiff's similar state claim, because the New York courts would do so. And McDonald v. City of West Branch, Mich., 466 U.S. 284, 287-92 (1984), held that neither Section 1738 nor federal preclusion principles required a federal court to give preclusive effect to an arbitration award, where the plaintiff was asserting a right independent of the arbitration process and the award was not issued in a "judicial proceeding." Likewise, Remer v. Burlington Area Sch. Dist., 205 F.3d 990, 998-1000 (7th Cir. 2000), also concerned preclusion under Section 1738, but it held only that a mother's claim that the defendant school board violated her son's due process rights when expelling him was not barred, because the state court's injunction merely banned the son from school property.

Plaintiff's non-preclusion authorities are of no more help to him. Contrary to his view that the penal nature of the Order is irrelevant for purposes of the Clause (AT Brf. at 16 (citing McDonald, 466 U.S. at 287-88)), this Court observed (in one of Plaintiff's other authorities) that penal judgments do not appear to fall within the Clause's "seemingly absolute language . . . ." Lowery v. McCaughtry, 954 F.2d 422, 424 (7th Cir. 1992) (citing Huntington v. Attrill, 146 U.S. 657, 666-69 (1892)). Although Plaintiff stresses Lowery's caution against giving only "lip service" to the

validity of another State's judgment (AT Brf. at 17), Lowery did not even address the Clause's effect because the parties had not (id. at 424). In Sun Oil Co. v. Wortman, 486 U.S. 717, 722-23 (1988), the Court noted that the Clause does not prohibit a State from applying its own procedural rules in its own courts, even when another State's substantive law necessarily applies, and it reiterated that a limitations statute is "procedural" for purposes of the Clause.

Plaintiff's insistence that Nevada v. Hall, 440 U.S. 410 (1979), must be distinguished as "a choice of law question more than a full faith and credit issue" (AT Brf. at 20-21) is puzzling. The district court did not mention Hall, which held that although the Clause requires each State to give effect to the official acts of other States, it "does not require a State to apply another State's law in violation of its own legitimate public policy." 440 U.S. at 421-27(emphasis added). Thus, a California court was not required to extend full faith and credit to Nevada's $25,000 limit on certain claims pursuant to Nevada sovereign immunity law, which conflicted with California's policy of fully compensating those who are injured on its highways by another's negligence. Id.; see also Franchise Tax Bd. of Cal. v. Hyatt, 538 U.S. 488, 497-99 (2003) (holding that Nevada court was not required to extend full faith and credit to California statute conferring complete immunity on California agencies).

Despite Plaintiff's implication (AT Brf. at 20-21), nothing in Hall or Hyatt indicates that their reasoning applies only to statutes and not to judgments. And although the Court has stated that its "decisions support no roving 'public policy

exception' to the full faith and credit due judgments," distinguishing enforcement of those judgments (Baker by Thomas v. General Motors Corp., 522 U.S. 222, 233-36 (1998) (emphasis in original)), it has long acknowledged that judgments will be denied full faith and credit when enforcement would contravene the non-rendering State's policy. See Estin v. Estin, 334 U.S. 541, 545 (1948) (citing (among other cases) Sherrer v. Sherrer, 334 U.S. 343 (1948), and Williams v. North Carolina, 317 U.S. 287, 294 (1942)). Indeed, Hall noted that "'there are some limitations upon the extent to which a state may be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy.'" 440 U.S. at 422 (emphasis added) (quoting Pac. Ins. Co. v. Indus. Accident Comm'n, 306 U.S. 493, 502 (1939), which cited cases). And in yet another of Plaintiff's own authorities (AT Brf. at 22), the Court held that the Clause did not preclude a second worker's compensation award in another State. See Thomas v. Washington Gas Light Co., 448 U.S. 261, 286 (1980). Thus, Plaintiff's own authorities indicate that the Clause does not require Illinois to give effect to the Order in violation of its own legitimate public policy of requiring registration by certain sex offenders.[4]

In sum, the Clause requires Illinois to treat the Order the same way New York courts would, and New York courts would not treat the Order as waiving compliance with the sex offender registration requirements for the State in which an offender resides if different from the rendering State. And even if New York

[4] Significantly, Plaintiff did not allege that the crime for which he was convicted in New York is not "substantially similar" to an Illinois sex offense for which the Act requires registration.

courts would do so, the Full Faith and Credit Clause does not require Illinois to give effect to a court order that violates Illinois public policy. Thus, Defendants do not violate the Full Faith and Credit Clause by requiring Plaintiff to comply with the Illinois sex offender registration requirements. Indeed, as Plaintiff admits, "New York cannot prescribe what th[e Illinois sex offender registration] system is or how Illinois judges enforce that system." AT Brf. at 19.

D. Plaintiff's Other Challenges to the Dismissal Order Are Unpersuasive.

Plaintiff raises several challenges to the district court's decision, similar to his challenges to Defendants' motion in the district court. Compare AT Brf. at 10-23 with Doc. 26 at 3-10. As the district court indicated, none has merit. In fact, one of Plaintiff's authorities is completely irrelevant. United States v. Eliason, 3 F.3d 1149, 1152 (7th Cir. 1993) (concerning federal immunity statute (18 U.S.C. § 6002), self-incrimination, and right to hearing on use of immunized or compelled statements in preparing charges). Others actually undermine his position.

For example, in United States v. DeMichael, 692 F.2d 1059, 1062-63 (7th Cir. 1982), this Court held that a plea agreement that barred additional charges against the defendant in a case in the Northern District of Illinois did not bar bringing other charges against that defendant in federal court in another State. Similarly, United States v. Ingram, 979 F.2d 1179, 1183-85 (7th Cir. 1992), held that the defendant's plea agreement with an Assistant United States Attorney in Colorado did not bar a federal prosecution against him in Wisconsin on related federal offenses. Like the plea agreements in DeMichael and Ingram, the Order here

unambiguously bars only New York authorities from enforcing New York law against Plaintiff; it did not promise Plaintiff that no other State would require him to comply with that State's sex offender registration requirements.

Plaintiff's other arguments and their supporting authorities are similarly unavailing. For example, he stresses the unremarkable proposition that plea agreements are important and thus must be honored by the States. AT Brf. at 12-16. He further contends that "[t]he Government cannot induce a defendant to plead guilty and then withdraw the inducements" and that if the government nevertheless does so, a defendant has recourse (id. at 12-14), apparently augmenting his complaint with allegations that the New York prosecutor induced him to plead guilty by promising (despite the Order's unambiguous terms) that every other State would be barred from enforcing its sex offender registration laws. None of Plaintiff's authorities, however, supports the notion that he can seek recourse for that inducement against anyone other than the New York prosecutor or in any forum other than his New York criminal case.

In United States v. Lewis, 896 F.2d 246, 249 (7th Cir. 1990), this Court held only that the requirements for motions for downward departure from the sentencing guidelines (for a defendant's "substantial assistance," pursuant to 18 U.S.C. §§ 5K1.1, 3553(e)) do not violate due process, adding that if the prosecutor breaks a promise to make such a motion, the defendant can seek relief. But as some of Plaintiff's other authorities indicate, the forms of that relief are limited: the criminal defendant may either withdraw the plea (if a prosecutor's promise was

material thereto) or seek specific performance against that prosecutor, within the same criminal proceeding. See United States v. Coleman, 895 F.2d 501, 505 (8th Cir. 1990); United States v. Smith, 953 F.2d 1060, 1066 (7th Cir. 1992) (same). United States v. Bowler, 585 F.2d 851, 856 (7th Cir. 1978), provides a third form, for cases in which the other two remedies "would be either meaningless or infeasible" under the circumstances: an order imposing a specific sentence. And Blackledge v. Allison, 431 U.S. 63, 75 (1977), adds post-conviction and habeas relief as possible remedies for a claim that a guilty plea was constitutionally infirm.

As for United States v. Fields, 766 F.2d 1161, 1167 (7th Cir. 1985), it quotes Bowler, as Plaintiff does (AT Brf. at 15), but Fields concerns the principles governing interpretation and enforcement (within the criminal proceeding itself) of a facially ambiguous promise in a plea agreement. Here, by contrast, the Order, which merely deleted a provision that would have permitted New York authorities to enforce New York law, is unambiguous about other States' enforcement of their own laws. And even if the Order were ambiguous, the cases cited above make plain that the only proper party against whom relief may be sought by Plaintiff for wrongful inducement of the plea agreement is the New York prosecutor, not Illinois officials such as Defendants, and the only proper setting for a hearing on whether Plaintiff was improperly induced to plead guilty is his New York criminal case, not a federal suit in Illinois.

Although Plaintiff recognizes that his inducement theory rests in contract, he insists that the relief he seeks in this suit is proper because "a plea that is induced

by a government promise can be specifically enforced by the [criminal] defendant" and he is seeking specific performance. AT Brf. at 14-15. Plaintiff, however, is seeking that relief against Defendants, rather than the New York prosecutor, arguing that specific performance of the New York prosecutor's promise that New York authorities would not enforce New York law against him in New York necessarily includes barring Defendants, who are strangers to the contract, from enforcing Illinois law against him in Illinois. Yet Plaintiff provides no authority to support his implicit assumption that the New York prosecutor could (much less did) bind the other 49 States, and Arotin indicates that no reasonable New York prosecutor would believe that a New York judgment could prevent another State from enforcing its sex offender registration law. Plaintiff's summary assertion that "[t]he Full Faith and Credit Clause, in effect[,] makes Illinois a party to th[e plea] agreement" (AT Brf. at 15) should be rejected.

None of Plaintiff's other case law is apposite. See AT Brf. at 12-15. In Machibroda v. United States, 368 U.S. 487, 494-96 (1962), for example, the Court merely held that the defendant was entitled to a hearing on his motion to vacate his sentence, based on his allegation that his guilty pleas had been induced by the prosecutor's promises about the length of the sentence that the court would impose. Santobello v. New York, 404 U.S. 257, 261-63 (1971), an appeal from a state court sentence, merely remanded the matter to permit the state courts to determine if specific performance of a plea agreement were required or if the defendant would be permitted to withdraw his guilty plea as induced and thus involuntary. As for

Margalli-Olvera v. I.N.S., 43 F.3d 345, 351-56 (8th Cir. 1994), that court held only that the ambiguous term "United States" included the I.N.S., and that the I.N.S.'s failure to remain silent regarding deportation broke the United States' promise to do so, so "the preferred and only realistic remedy" there was specific performance against the United States because the immigration judge could not vacate the plea. And in United States v. Ataya, 864 F.2d 1324, 1329-38 (7th Cir. 1988), which concerned specific performance of a plea agreement by the criminal defendant, this Court vacated the dismissal of his indictment and remanded the matter because he broke his promise to cooperate in the prosecution of his co-defendant, by refusing to testify at the co-defendant's retrial despite having testified at the initial trial.

Lastly, Plaintiff argues that whether registration is punishment is irrelevant, a point the district court did not reach but was addressed in Defendants' motion to dismiss. AT Brf. at 22 (citing Doc. 17 at 6-8 (AT App. at A20-22)). If this Court chooses to address this issue — and it need not — it should find that Plaintiff misreads Defendants' argument, which asserted only that Plaintiff was mistaken to challenge the sex registration requirement as a "policy" made by Defendants, given that registration is required by the Act itself. Doc. 17 at 6-8 (AT App. at A20-22). Indeed, the Illinois General Assembly's purpose in requiring registration for sex offenders was "to aid law enforcement by facilitating ready access to information about sex offenders and, therefore, to protect the public," including children. People v. Johnson, 225 Ill. 2d 573, 585, 870 N.E.2d 415 (2007). As the Supreme Court observed, "[s]ex offenders are a serious threat in this Nation. . . . [W]hen convicted

sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault." Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1, 4 (2003) (internal citations and quotation marks omitted).

In sum, although the district court warned Plaintiff that he had "failed to cite any controlling precedent on point to support his position" (Doc. 30 at 6 (AT App. at A29)), he did not heed that warning on appeal. The dismissal order should be affirmed, for Plaintiff failed to state a claim under the Full Faith and Credit Clause.

CONCLUSION

For the reasons stated above, Defendants-Appellees respectfully request that this Court affirm the judgment in their favor.

September 22, 2009

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, and TYPE STYLE REQUIREMENTS

The undersigned attorney hereby certifies that the attached brief complies with

1. the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), because the brief contains, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), no more than 30 pages of text.

2. the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. P. 32(a)(6), because the brief has been prepared in a proportionally spaced typeface using WordPerfect 11.0, in 12-point Century Schoolbook.

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MARY E. WELSH

APPENDIX

CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 31(e)(1)

The undersigned certifies that, to her knowledge, the materials contained in this Appendix are not available to her electronically in non-scanned versions.

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MARY E. WELSH

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

PROOF OF SERVICE

The undersigned, being first duly sworn upon oath, deposes and states that two (2) copies of the foregoing Brief of Defendants-Appellees were served upon the below-named party by depositing such copy in the United States mail at 100 West Randolph Street, Chicago, Illinois, in an envelope bearing sufficient postage on September 22, 2009 before 5:00 p.m.

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SUBSCRIBED and SWORN to before me
this 22nd day of September, 2009.

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