

Pair still held in offender test case

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U.S. District Judge Lawrence K. Karlton of Sacramento ruled Wednesday that two sexual offenders must remain in jail while the government appeals his orders last week dismissing the charges against them.

In only the third such ruling in the nation, Karlton found to be unconstitutional the statute the pair were charged under, which makes it a federal crime for someone to fail to register as a sex offender and relocate from one state to another.

The law depends on a nexus between an individual's relocation and interstate commerce, and there is none, the judge wrote in a 25-page order.

In enacting the 2006 Sex Offender Registration and Notification Act, "Congress overstepped its authority under the (Constitution's) commerce clause, he wrote.

The statute does not fit the Supreme Court's delineation of congressional power emanating from the commerce clause, he wrote. He cited a 1995 high court opinion - *United States v. Lopez*.

"Were this a sufficient jurisdictional element, there would be no limit to Congress' ability to penalize any crime whatsoever, so long as the defendant at some point in the course of his life traveled across state lines," the judge wrote.

"This appears to be a plain usurpation of the state's police power."

In dismissing the charges against Mark Anthony Valverde, 50, and Nedde Max Murphy Jr., 41, Karlton

wrote that "those subject to the law at issue have frequently committed the most heinous of crimes, making it difficult to give their claims the dispassionate analysis the law requires. Nonetheless, it is the sworn duty of judges to do so ..."

Valverde pleaded guilty in 2002 in Solano County to sexual abuse of a child.

After his Jan. 6, 2008, parole, he fled to his grandmother's house in Liberty, Mo., without having registered in California as a sex offender.

Murphy was convicted in Reno in 1989 of lewdness with a child.

He registered as a sex offender in Nevada and later in Burley, Idaho, but dropped off the grid in May.

He was traced through Social Security Administration records to Yuba County, but had not registered in California.

In granting prosecutors' motions to keep them locked up until the appeal is resolved, the judge reiterated how inherently difficult the cases are for him, but, he said, it would be "inappropriate" to release them at this stage.

"I don't want to be misunderstood," Karlton said.

"I think I'm right. But the law is not clear, and so many of my colleagues have gone the other way I think there is a substantial chance the appeals court may see it differently."

At least 18 district judges have upheld the statute, while only two others made rulings similar to Karlton's.

Of the 12 federal appellate circuits, only two - the 8th and 10th - have addressed the issue, and both upheld the statute.