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Supreme Court looks at constitutionality of sex offender law

The Supreme Court Tuesday considers a law that allows the federal government to detain offenders it considers "sexually dangerous," even after completion of their sentences. Critics say the sex offender law intrudes on states' authority.

By Warren Richey Staff writer

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The US Supreme Court on Tuesday is set to review the constitutionality of a law that allows the government to continue to detain any person in federal custody the authorities suspect might engage in a future act of sexual violence.

The law applies to any federal detainee, including inmates who are about to complete their entire prison terms and regardless of whether the suspected future act is a federal crime.

At issue is a provision of the Adam Walsh Child Protection and Safety Act of 2006. Section 4248 of the law provides for the civil commitment of any individual deemed by the federal government to be "sexually dangerous."

Lawyers are challenging the law as a violation of due process. In addition, they argue that Congress exceeded the limits of its federal authority by attempting to prevent sex crimes.

It is the second issue of federalism that the Supreme Court has agreed to examine.

The civil commitment of individuals deemed dangerous to society is an area largely controlled by state governments, which are authorized in the Constitution to enforce broad police powers to protect state and local residents. In contrast, the federal government's powers are limited to specific areas of national concern such as interstate commerce.

The key question before the high court is whether congressional authority to enact legislation is broad enough to encompass prevention of future sex crimes.

Violation of federalism?

A federal judge in North Carolina and the Fourth US Circuit Court of Appeals in Richmond have ruled that Section 4248 violates principles of federalism and the structure of government as laid down in the Constitution.

"The power claimed by Section 4248 – forcible, indefinite civil commitment – is among the most severe wielded by any government," the Fourth Circuit declared in a January 2009 decision. "The Framers, distrustful of such authority, reposed such broad powers in the states, limiting the national government to specific and enumerated powers."

The Obama administration is asking the Supreme Court to overturn the appeals court decision and uphold the constitutionality of the law. In her brief to the court, Solicitor General Elena Kagan says Congress may pass laws related to the federal criminal justice and penal system. She says Section 4248 is a "necessary and proper" use of federal power to protect the public.

"Necessary and proper to the enforcement of federal criminal law and to the operation of a federal penal system are certain incidental

powers, including resort to civil commitment of ill and dangerous persons who could pose a threat to the public if released," Ms. Kagan writes in her brief.

Lawyers challenging the law say the government is engaging in an unconstitutional power grab. "The government characterizes Section 4248 as an exercise of Congress's powers to enact criminal laws and operate a prison system. Those powers are not enumerated anywhere in the Constitution," writes Jane Pearce, an assistant federal public defender in Raleigh, N.C.

Detainees certified as 'sexually dangerous'

Under the new law, mMore than 60 individuals have been certified as "sexually dangerous" and are being held in indefinite detention in a federal prison in North Carolina.

Among them is Ms. Pearce's client, Graydon Comstock.

Mr. Comstock was sentenced to three years in federal prison after pleading guilty to possessing child pornography. Six days before his scheduled release from prison, federal authorities moved to have him certified as a "sexually dangerous person." To date, Comstock has spent six years in federal custody.

He is one of five individuals who sued to overturn Section 4248.

There is no indication in public court files what precisely led federal authorities to conclude that Comstock was sexually dangerous. All five men "have an extensive history of sexually deviant behavior beyond the crimes for which they have been charged or convicted," a government filing says. It adds that "mental health professionals who have special expertise in sexual deviancy have certified that the respondents are 'sexually dangerous persons.' "

The government filing added: "Releasing such individuals would likely cause great danger to the communities into which they would be released."

The specific evaluations are not publicly available in court files.

A friend-of-the-court brief submitted on behalf of the libertarian Cato Institute argues that Section 4248 has nothing to do with running the federal penal system. "The true aim of the act is not to support the operation of the prison system at all, but to protect the public at large by continuing the confinement of potentially dangerous persons after the conclusion of their sentences," wrote Washington lawyer C. Allen Foster in the Cato brief. "However well intentioned Congress may have been, it has no power to legislate for the purpose of protecting the public from dangerous persons," he said.

Some states support federal position

Thirty state attorneys general submitted a friend-of-the-court brief supporting Section 4248. They said the provision does not intrude in any way on state police powers. "Section 4248 is a model of cooperative state and federal efforts; the statute neither imposes a federal mandate on unwilling states nor does it preempt any of the states' traditional police powers," wrote Kansas Attorney General Steve Six.

The decision in US v. Comstock is expected by late June.

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