

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8229  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES H. ARNOLD,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-91-CR-163  
- - - - -  
(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Arnold claims that it was a violation of the Tenth Amendment to prosecute him in the federal courts for violations of 21 U.S.C. §§ 841(a)(1) and 846. Arnold contends that there was no constitutionally acceptable basis for the federal prosecution and that he should have been brought to trial in state court. In United States v. Lopez, 459 F.2d 949, 952-53 (5th Cir.), cert. denied, 409 U.S. 878 (1972), this Court held that Congress was able to regulate controlled substances under the Commerce Clause

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

because "controlled substances manufactured and distributed on an intrastate basis could not be differentiated from those manufactured and distributed on an interstate basis." Further, the Court held that such a valid exercise of Congressional power under the Commerce Clause was not a violation of the Tenth Amendment. Id., 459 F.2d at 951.

In addition to the Tenth Amendment challenge, Arnold has suggested that he was prosecuted in federal court because he is black. Other than making the bald assertion that federal prosecutions are inherently suspect, Arnold has not alleged any specific facts supporting his claim of racially motivated prosecution. Without such specific facts of "purposeful discrimination," Arnold cannot prevail on his equal protection claim. McCleskey v. Kemp, 481 U.S. 279, 292-97, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987).

AFFIRMED.