

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-50125  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARRY DAVID GALLARDO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 93-CA-530  
- - - - -

(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,  
Circuit Judges.

PER CURIAM:\*

The Commerce Clause permits Congress to regulate activity affecting interstate commerce outside of federally owned land. See Perez v. United States, 402 U.S. 146, 150-51, 91 S. Ct. 1357, 28 L. Ed. 2d 686 (1971). That Congress enacted § 2252 pursuant to its authority under the Commerce Clause is apparent from the statute's prohibition of the transportation of child pornography in interstate commerce. See 18 U.S.C. § 2252(a)(1). When Congress has the power to enact laws under the Constitution, such

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

as the Commerce Clause, the federal courts have jurisdiction to hear cases arising under such laws. See U.S. Const. art. III, § 2; 18 U.S.C. § 3231.

Gallardo was indicted for violating federal law prohibiting the shipment of child pornography in interstate commerce. Thus, the district court had jurisdiction over the prosecution of the charged offense.

Gallardo's appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. See 5th Cir. R. 42.2.