

FILED
At Albuquerque NM

JUL 13 2011 *pd*

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ANTHONY GARCIA,)
)
Defendant.)

CRIMINAL NO. 11-1865

Count 1: 21 U.S.C. §§ 331(b) and (k),
333(a)(2): Adulteration of Food;

Count 2: 18 U.S.C. § 1001(a)(2): Statements
or entries generally.

INDICTMENT

The Grand Jury charges that at all times relevant and material to this Indictment:

The Federal Food, Drug, and Cosmetic Act

1. The U.S. Food and Drug Administration (FDA) was a federal agency charged with the responsibility of protecting the health and safety of the American public by enforcing the Federal Food, Drug, and Cosmetic Act (FDCA) and related statutes and regulations. One of the purposes of the FDCA was to ensure that food sold for consumption by humans was safe and fit for consumption. The FDA's responsibilities under the FDCA include regulating the manufacturing, labeling, and distribution of food shipped or received in interstate commerce.

2. The FDCA defined a "food" as "articles used for food or drink for man or other animals, chewing gum, and articles used for components of any such article." 21 U.S.C. § 321(f).

3. A food was adulterated if it consisted in whole or in part of any filthy, putrid, or decomposed substance, or if it was otherwise unfit for food. 21 U.S.C. § 342(a)(3).

Count 1

4. Paragraphs 1- 3 above are incorporated by reference as though set forth fully herein.

5. On or about January 25, 2011, in Bernalillo County, in the District of New Mexico, Defendant **ANTHONY GARCIA**, with the intent to defraud and mislead, caused food – namely, yogurt – while it was in interstate commerce and held for sale after shipment in interstate commerce, to become adulterated within the meaning of 21 U.S.C. § 342(a)(3) in that the yogurt was otherwise unfit for food because it contained semen.

In violation of 21 U.S.C. §§ 331(b) and (k) and 333(a)(2).

Count 2

On or about March 8, 2011, in Bernalillo County, in the State and District of New Mexico, Defendant **ANTHONY GARCIA**, in a matter within the jurisdiction of the Executive Branch of Government of the United States, that is, the U.S. Food and Drug Administration, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation, knowing such statement and representation to be false, fictitious, and fraudulent. Specifically, during the course of a criminal investigation that was being conducted by the U.S. Food and Drug Administration, Office of Criminal Investigations, Defendant **ANTHONY GARCIA**, when talking about what a spoon had contained that he had provided to a customer to whom he had offered a taste sample of yogurt at a grocery store where he was working on January 25, 2011, did falsely state and represent that he did not know what the spoon had contained, when in truth and fact Defendant **ANTHONY GARCIA** knew that the spoon had

