



U.S. DISTRICT JUDGE MARINA GARCIA MARMOLEJO

United States Courthouse
1300 Victoria St., Ste. 2267
Laredo, TX 78040
Tel: (956) 726-2209

Angie Trevino, Case Manager
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COURT PROCEDURES IN CRIMINAL CASES

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The accompanying procedures are to be used in conjunction with the Local Rules for the Southern District of Texas and not as a substitute for them. The Local Rules of this District can be obtained on the District website at www.txs.uscourts.gov. The Court requires strict compliance with these Local Rules.

1. CONTACT WITH COURT PERSONNEL

- A. The Court requires that parties file documents through the District Court's Case Management/Electronic Case Filing (CM/ECF) System. *See* Southern District of Texas Local Rule 5.1 (LR5.1) and the District's Administrative Procedures for CM/ECF (as amended and available at www.txs.uscourts.gov).
- B. Case-related telephone, letter, and email inquiries **are strictly limited to procedural matters** and should be made only to the Case Manager. *See* addresses below. Inquiries should not be made to the Court's secretary or law clerks. The Court's caseload does not allow the Case Manager to respond to casual telephone inquiries about the status of motions or cases.
- C. Information about the status of documents, entry of orders, or docket entries should be obtained from the CM/ECF or PACER Systems, or if absolutely necessary, from the United States District Clerk's Office at (956) 723-3542.
- D. Correspondence with the Court must be delivered or sent to the Court's Chambers:
- 1) Case-related correspondence should be addressed to:

Angie Trevino
Case Manager to U.S. District Judge Marina Garcia Marmolejo
1300 Victoria St., Ste. 2267
Laredo, TX 78040

Or by email: **Angie_Trevino@txs.uscourts.gov**
 - 2) **Do not** address substantive issues in letter or email form. The parties must file copies of all letters. Email correspondence with the Court should copy all other counsel appearing in the case and will be docketed at the Court's discretion.
 - 3) Copies of urgent documents (including letters) may be sent by First Class Mail, emailed, or hand-delivered to Chambers (*see* Emergencies, § 3 below) or to the Court's Case Manager, with copies to all parties. Service copies must be transmitted to all counsel of record simultaneously with (or prior to) and in the same manner as the document is transmitted to the Court. The documents may **not** be faxed without express prior permission of the Court.

2. COURTESY COPIES OF DOCUMENTS

- A. Letters to the Court may be hand-delivered, sent by First Class Mail to Chambers, or transmitted by email, with copies to all parties served prior to or at the time of filing. *See* addresses above. Letters concerning discovery and scheduling matters must be filed in the docket.

- B. The parties **must** forward promptly to Chambers courtesy copies of (i) all documents that exceed ten (10) pages in length, including exhibits and attachments, and (ii) documents pertaining to matters to be heard by the Court within seven (7) days after the document is filed. Unless this rule is followed, the Court will not consider any documents filed within seven (7) days of any court appearance. **Do not fax or email** copies of documents to Chambers unless specifically authorized to do so by the Court.

3. EMERGENCIES

- A. Counsel should contact the Case Manager at (956) 790-1364 for matters requiring immediate attention.
- B. Counsel must send a copy of an emergency motion directly to Chambers after the motion's electronic filing. Counsel should promptly bring the matter to the Court's attention.

4. CONTINUANCES

- A. Motions for continuance **must be filed at least three (3) business days prior to date of the controlling deadline** and will be granted only at the Court's discretion. Motions for continuance that fail to comply with this rule, absent a showing of good cause, will not be granted.
- B. Agreements or joint motions among counsel for continuance are not binding on the Court. Parties must notify the Court of agreed continuances by submitting an agreed motion and proposed order.
- C. A trial will **not** be continued because of the unavailability of a witness.

5. APPEARANCES

- A. An attorney who appears at a hearing or conference **must**:
 - 1) be familiar with the case,
 - 2) have authority to bind the client, and
 - 3) be in charge for that appearance.
- B. Motions for admission *pro hac vice* shall include the attorney-applicant's averment that he or she has familiarized him/herself with the Local Rules of the Southern District of Texas **and** these Procedures applicable to criminal cases before Judge Garcia Marmolejo. See attached form, also available at the Court's website.
- C. **Requirement for Experienced Local Counsel.** When an attorney does not

maintain a principal office in the Laredo Division, or when an attorney does not have a substantial history of federal criminal practice, or when the ends of justice so require, the Court may require the attorney appear with experienced local counsel.

“Experienced Local Counsel” Defined. A member of the bar of the Southern District of Texas who maintains a principal office in the Laredo Division may serve as local counsel. Local counsel must have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the United States Sentencing Guidelines, the Local Rules of the Southern District of Texas, and U.S. District Judge Marina Garcia Marmolejo Court’s Procedures in Criminal Cases. Local counsel must be authorized to act as attorney of record for all purposes, and must be authorized to present and argue the client’s position at any hearing called by the Court and to perform any duty required by the Local Rules of the Southern District of Texas and of this Court.

6. MOTION PRACTICE

- A. **General Guidelines.** The Court follows the written motion practice described in the Local Rules. In addition, the following procedures apply:
- 1) Counsel must make serious and timely efforts to confer with opposing counsel on all motions to try to reach agreement on the relief requested by the movant.
 - 2) Motions must conform with CrLR12.2 and contain a certificate verifying that opposing counsel was consulted but no agreement could be reached. An unopposed motion and its order must be indicated prominently in the caption.
 - 3) If the motion presents issues of fact, it shall be supported by affidavit or declaration that sets forth with particularity the material facts at issue.
 - 4) The Court will not grant a motion to adopt another party’s motion and such a motion should not be filed.
 - 5) Any pleadings filed with the Court, including exhibits thereto, containing personal data identifiers must comply with the S.D. Texas General Order #2004-11 (available at the District’s website) on protecting personal privacy in public case files.
- B. **Page Limits and Briefing Requirements.** The Court requires concise, pertinent, and well-organized memoranda of law. Without leave of Court, all memoranda of law are limited to 25 pages, 12-point font, double-spaced, with 1” margins. All memoranda of law must contain items 3, 4, 6, and 7 below. Any memorandum that has more than ten (10) pages of argument must contain the following eight (8) items.

- 1) A table of contents setting forth the page number of each section, including all headings designated in the body of the brief or memorandum.
 - 2) A table of citations of cases, statutes, rules, textbooks, and other authorities, alphabetically arranged.
 - 3) A short statement of the nature and stage of the proceeding.
 - 4) A statement of the issues to be ruled upon by the Court and, with respect to each issue, a short statement (supported by authority) of the standard of review.
 - 5) A short summary of the argument.
 - 6) Succinct headings dividing the argument into separate points.
 - 7) A short conclusion stating the precise relief sought.
 - 8) Proposed orders.
- C. If an evidentiary hearing is necessary, the Court will notify the parties in advance. Exhibit and witness lists (the originals and **THREE (3)** copies of each) shall be provided to the Court at the hearing.
- D. Motions to Suppress must be pleaded with specificity and not filed solely for discovery. They must also be in compliance with the Local Rules. Motions not in conformity therewith will be struck.
- E. All Motions to Dismiss, Motions to Sever, and Motions for Separate Trial must be specific and brought to the Court's attention at least thirty (30) days before jury selection.
- F. Dispositive motions in criminal cases will be considered by the United States District Judge or may be heard by the Magistrate Judge as requested by the Court.

7. PRETRIAL CONFERENCES AND DOCKET CALLS

- A. The Court generally holds one trial docket call each month. This docket call is the final pretrial conference (FPTC). At the FPTC, the Court may rule on all pending motions and conduct re-arraignments. The Magistrate Judge may conduct re-arraignments in felony cases as requested by the Court.
- B. **The parties must engage in timely plea negotiations. Defense counsel should confer beforehand with the Government and their clients and review plea agreements prior to the FPTC. The FPTC date is NOT the date to secure a plea agreement and review it with the defendant-client. The parties must be ready to enter a plea of guilty or proceed to trial on announcement.**

8. REQUIRED TRIAL MATERIALS

A. For All Trials and Evidentiary Hearings:

- 1) **Exhibit List** (*see* attached form, also available on the Court's website). Original must be filed in accordance with Local Rules; **three (3)** courtesy copies must be provided to the Court at the trial and/or hearing for distribution to all parties.
- 2) **Witness List** for live witnesses (*see* attached form, also available on the Court's website). Original must be filed in accordance with Local Rules; **three (3)** courtesy copies must be provided to the Court at the trial and/or hearing for distribution to all parties.
- 3) **Objections to Exhibits**, if any, must be filed within seven (7) calendar days after the exhibit is listed and made available and at least seven (7) days before trial. Failure to object in advance of trial in writing concedes authenticity. *See* CrLR55.2(A) and (B).

B. For Jury Trials:

- 1) **Voir Dire.** The Court will conduct the principal examination of the venire. Counsel will be generally allowed fifteen (15) to thirty (30) minutes (depending on the complexity of the case) to conduct an examination of the venire, provided that the proposed *voir dire* questions are submitted in advance to the Court.

Each proposed *voir dire* question must be in question form. Counsel must file an original copy of any proposed *voir dire* questions according to Local Rules. Counsel must also provide **THREE (3)** courtesy copies of any proposed *voir dire* questions.

- 2) **Jury Instructions.** The Court utilizes the Fifth Circuit Pattern Jury Instructions, as modified by case law or statutory amendments, when composing its jury instructions. A party should file proposed jury instructions **only** to request the addition or substitution of unique and/or non-standard instructions. **Each** requested instruction must be numbered and supported by authority.
- 3) **Motions in limine** are **not** required but may be filed when a party seeks the Court's ruling on a unique or novel evidentiary dispute. The Court **strongly discourages and may strike** motions in limine that simply seek to have the Court admonish the other party to follow the Federal Rules of Evidence and Criminal Procedure or other well-known rules of jury trial practice, all of which counsel must understand and follow. *See* Attachment

A, which enumerates a non-exhaustive list of basic trial rules and expectations that should **not** be included in a motion in limine.

Additionally, if counsel harbors doubt as to whether his or her anticipated conduct at trial will violate the rules or expectations, counsel must seek permission to take that action in a motion in limine. Failure to ask permission prior to taking a potentially prohibited action may result in sanctions.

C. For **Non-Jury Trials**, each party must file:

- 1) **Proposed Findings of Fact** (electronically in Corel WordPerfect X3 or higher, or Microsoft Word). The Court strongly encourages counsel to reference testimony and exhibits that support each proposed finding of fact;
- 2) **Proposed Conclusions of Law** (electronically in Corel WordPerfect X3 or higher, or Microsoft Word). Each proposed conclusion of law will contain citation to legal authority supporting the conclusions.

9. PROCEDURES FOR JURY TRIALS

A. Jury selection is generally scheduled to occur during the third week of each month. Unless an attorney has commenced trial in another court, prior trial settings will not cause a case to be continued.

B. **Voir Dire.** The Court will conduct the principal examination of the venire. Counsel will be generally allowed fifteen (15) to thirty (30) minutes (depending on the complexity of the case) to conduct an examination of the venire, provided that the proposed *voir dire* questions are submitted in advance to the Court. *See* § 8.B above. The Magistrate Judge may conduct *voir dire* as requested by the Court with the consent of the parties.

C. **Exhibits.**

- 1) **JERS.** The Court will use the Jury Evidence Recording System (JERS) to capture evidence electronically during the trial. This is the only method by which evidence may be submitted, and the parties must submit all files on a single storage device to the Case Manager by noon on the day before trial. For further instructions on the proper use of JERS, including the acceptable storage devices, file formats, and naming conventions, refer to the Court's JERS information page on the Court's website.
- 2) Counsel must be familiar with CrLR55.2 regarding authentication of, objections to, and disposition of exhibits at criminal trials.
- 3) Any exhibits containing personal data identifiers must comply with S.D. Texas General Order #2004-11 (available at the District website).

- 4) All exhibits must be marked and exchanged among counsel prior to trial. The offering party will mark each of his/her own exhibits with the party's name, case number, and exhibit number.
- 5) The Court will admit all exhibits without objection into evidence as the first order of business. Sensitive exhibits (*e.g.*, weapons, drugs, and money) will remain in the custody of the government agent throughout the proceedings.
- 6) Counsel will not pass exhibits to the jury during trial without obtaining permission in advance from the Court. All admitted exhibits will go to the jury during its deliberations.
- 7) Counsel for each party is required to provide the Court with **two (2) copies** of that party's exhibits in a properly tabbed and indexed notebook.
- 8) **Disposition of Exhibits Following Trial.**
 - a. Exhibits that are not easily stored in a file folder (*e.g.*, posters, parts, or models) must be withdrawn after the completion of the trial and substituted with reduced reproductions or photographs.
 - b. If there is no appeal, exhibits will be removed by the offering party within thirty (30) days after the time for appeal has elapsed. When there is an appeal, exhibits returned by the Court of Appeals will be removed by the offering party within ten (10) days after written notice from the clerk.
 - c. Exhibits not removed will be disposed of by the clerk, and the expenses incurred will be taxed against the offering party.

D. Equipment.

- 1) Sound and Video Equipment: The Court has projection, document camera, sound, and video equipment in the courtroom. Counsel are invited to use that equipment during trial. Counsel who seek to test the equipment prior to trial shall contact the Case Manager to make arrangements to test the equipment. Parties also may provide their own equipment, but special arrangements must be made with the Case Manager **prior** to the day of trial.
- 2) Internet service is available for attorneys.
- 3) The Court will not provide a printer.
- 4) Devices for auditory assistance are available for the hearing impaired.

10. COURTROOM PROCEDURES

- A. **Hours.** The Court will generally convene for trial at 8:30 a.m. and adjourn at 5:30 p.m., recessing for lunch between 12:00 p.m. and 1:30 p.m.
- B. **Access at Other Times.** Counsel requesting access to the courtroom to set up equipment or exhibits before or after normal hours of Court must make arrangements in advance with the Case Manager.
- C. **Telephones.** Telephone messages for counsel will **not** be taken by the Court's staff, and counsel shall refrain from requesting use of telephones in chambers.
- C. **Filing of Documents.** Handing documents to the Court or Case Manager does **not** constitute the filing of the documents in the CM/ECF system.
 - 1) All original documents must be filed through the CM/ECF system.
 - 2) Copies of documents filed within two (2) days prior to and during trial should be submitted to the Case Manager **in duplicate**.
- D. **Decorum.**
 - 1) Attorneys are required to wear standard business attire. Counsel and parties will comply with CrLR 57.2 and Appendix C regarding courtroom behavior. These procedures will be strictly enforced.
 - 2) Counsel will ensure that all parties and witnesses refrain from chewing gum, drinking, eating, smoking, or reading newspapers, books, etc., in the courtroom. No cellular telephones, pagers, or iPads are allowed in the courtroom. Attorneys needing to use computers or iPads during trial must seek prior approval. Recording equipment and photographic mechanisms are strictly prohibited.
- F. **Witnesses.**
 - 1) Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum and attire. Counsel may question witnesses while standing at the podium or seated at Counsel table.
 - 2) Counsel must obtain the Court's permission before approaching a witness.
 - 3) Counsel shall make every effort to elicit from the witnesses only information relevant to the issues in the case and to avoid cumulative testimony.

- 4) Counsel should bear in mind the Court's hours and arrange for witnesses accordingly. The Court will not recess to permit counsel to call a missing witness unless he or she has been subpoenaed and has failed to appear.
- 5) **Mode and Order of Examination:** A party will be allowed to conduct a direct examination of its witnesses to be followed by cross-examination by opposing counsel. Interrogation will conclude with a re-direct examination, which is limited by the scope of cross-examination.

Absent extraordinary circumstances, the Court will not allow any "re-cross" or "re-re-direct."

- G. **Deliberations.** While the jury is deliberating, Counsel are to remain near the courtroom to be available for jury notes or a verdict.

11. SENTENCING PROCEDURES

- A. The purpose of these sentencing procedures is to promote thorough research and robust, intelligent discussion about the legal issues raised by the parties. The procedures below are meant to raise the quality of advocacy on behalf of those being sentenced and by the Government in order to assist the Court in reaching decisions based on a fair and impartial application of the law to the facts of each case.
- B. **PSI Report Completion Deadline.** The Court will set a deadline for completion of the Presentence Investigation ("PSI") Report by the U.S. Probation Office. It is the responsibility of counsel to obtain the PSI Report. The U.S. Probation Office is not required to further advise counsel of the completion of the PSI Report.
- C. **Statements of Acceptance of Responsibility.** Pursuant to U.S.S.G. § 3E1.1, a defendant who truthfully admits the conduct comprising the offense of conviction at the plea colloquy may adopt and submit the factual basis statement to the Court for consideration in determining whether the defendant qualifies for adjustment under subsection (a).
- D. **Responses to PSI Report.**
 - 1) **Objections or Statements of Non-Opposition.** The attorney for the Defendant and the attorney for the Government shall submit either written objections or a written statement of non-opposition to the U.S. Probation Office and serve the same on opposing counsel within **fourteen (14) days** of receiving the PSI Report. *See* FED. R. CRIM. P. 32(f); S.D. Tex. CrLR 32.6; U.S. SENTENCING GUIDELINES MANUAL § 6A1.2 (2013).

Legal objections to the PSI Report require citations to supporting and contrary authority. When filing objections, counsel must note if the issue has been decided by binding or non-binding precedent and/or if the objection is being filed merely to preserve the issue for further appellate review.

- 2) **Responding to Objections.** No later than **fourteen (14)** calendar days after receiving a party's objections to the PSI Report, opposing counsel **shall** file a written response to the objections. **Absent a clear demonstration of good cause, a party's failure to timely respond and dispute the objections filed by opposing counsel concedes the issue so long as the objection is non-frivolous.** An objection is frivolous, for example, if it is foreclosed by binding precedent, unless it is merely filed to preserve the issue for further review. A party is not required to respond to objections foreclosed by binding precedent and filed to preserve the issue.
- 3) **Extensions.** If additional time is required, counsel may request up to five (5) business days from the U.S. Probation Office without filing a formal motion with the Court. If more than five (5) business days are needed, a motion to extend time to file objections should be **immediately** filed. A sample proposed order is attached and is available on the Court's website.

The Court admonishes counsel that the failure to timely file objections will result in a show cause hearing where counsel will be asked to explain why the Court's deadline could not be met and why a motion to extend time to file objections was not filed. While late-filed objections will not be held against the Defendant(s), the Court may impose monetary sanctions against counsel for not complying with the rules.

- 4) No later than fourteen (14) calendar days after receiving the responses from the parties, the U.S. Probation Office shall complete and submit to the Sentencing Judge the final report, together with an addendum describing any objections that have not been resolved, and the officer's comments thereon.
- E. **Sentencing Memorandum.** Counsel shall also file, within fourteen (14) calendar days of receiving the PSI Report, any sentencing memorandum with any pertinent attachments—such as letters and photographs—for consideration of grounds for departures under the Sentencing Guidelines or variances under 18 U.S.C. §3553(a). Requests for departures and/or variances must be supported by a factual basis and cite supporting legal authority.
- F. **“Safety Valve” Debriefs** in applicable drug offenses pursuant to 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2, must be completed no later than one week prior to the PSI Report disclosure date. The attorney for the Government shall timely

notify the U.S. Probation Office of any recommendations prior to the disclosure deadline.

12. ATTACHMENTS

- A. Non-Exhaustive List of Basic Trial Rules and Expectations
- B. Template Exhibit List
- C. Template Witness List
- D. Motion and Order for Admission *Pro Hac Vice*
- E. Template Proposed Order Extending Deadline for Objections to the PSI Report and Sentencing Memorandum

Non-Exhaustive List of Basic Trial Rules and Expectations

1. The Government shall not comment on a defendant's right to remain silent, *see Griffin v. California*, 380 U.S. 609, 615 (1965), or attempt to improperly shift its burden of proof to a defendant.
2. The Government shall not introduce prior bad acts without giving the Defendant proper notice and obtaining a ruling from the Court. *See Fed. R. Evid. 404(b)(3)*.
3. The Defendant shall not elicit improper self-serving hearsay statements made by the Defendant. *See Fed. R. Evid. 801*.
4. The Defendant shall not allude to information that could only come to the jury's attention through the sworn testimony of the Defendant unless Defendant informs the Court that he or she will testify and does in fact testify.
5. The Defendant must provide the Government proper notice of the affirmative defenses he or she wishes to raise. *See, e.g., Fed. R. Crim. P. 12.1-12.3*.
6. Neither party shall elicit an opinion about whether the Defendant had a mental state or condition that constitutes an element of the crime or defense. *Fed. R. Evid. 704*.
7. Neither party shall improperly vouch for the credibility of their witnesses. *See Fifth Circuit Pattern Jury Instructions (Criminal Cases) § 1.09 (2019)*.
8. Neither party shall make personal attacks against the other. *S.D. Tex. L.R., App'x C*.
9. Neither party shall divulge any plea, plea discussion, or any related statement prohibited by *Fed. R. Evid. 410*.
10. Neither party shall, during opening statements, comment on any exhibit not previously furnished to opposing counsel and admitted as evidence.
11. Neither party shall admit or reference extrinsic evidence of specific instances of a witness's conduct that may be used to attack or bolster the witness's character for truthfulness, except for a criminal conviction as permitted by *Fed. R. Evid. 608(b)*.
12. Neither party shall introduce statements that violate the rule against hearsay. *Fed. R. Evid. 802*.
13. Neither party shall comment on punishment or make arguments designed to elicit sympathy or jury nullification. *See Fifth Circuit Pattern Jury Instructions (Criminal Cases) § 1.04 (2019)*.
14. All parties must provide proper notice of expert witness testimony. *See Fed. R. Crim. P. 16*. Expert testimony is appropriate when the expert's specialized knowledge will help the trier of fact understand the evidence or make a factual finding. *Fed. R. Evid. 702*.

UNITED STATES OF AMERICA VERSUS - - - - -	CRIMINAL ACTION NO. <div style="text-align: center; font-weight: bold; font-size: 1.2em;">EXHIBIT LIST</div>
JUDGE MARINA GARCIA MARMOLEJO	CASE MANAGER: Angie Trevino
LIST OF <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> DEFENDANT	PROCEEDING: DATE (S):

No.	DESCRIPTION	OBJ	ADM	NOT ADM	DATE
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UNITED STATES OF AMERICA <i>VERSUS</i> - - - - -	CRIMINAL ACTION NO.
	WITNESS LIST
JUDGE MARINA GARCIA MARMOLEJO	CASE MANAGER: Angie Trevino
LIST OF <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> DEFENDANT	PROCEEDING: DATE (S):

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Motion and Order for Admission *Pro Hac Vice*

Division		Case Number	
vs.			
Lawyer's Name Firm Street City & Zip Code Telephone & Email Licensed: State & Number Federal Bar & Number			
Name of party applicant seeks to appear for:			
Has applicant been sanctioned by any bar association or court? Yes _____ No _____ On a separate sheet for each sanction, please supply the full particulars.			
Dated:	Signed*:		

*I understand that the Court requires strict compliance with the Local Rules for the Southern District of Texas and the Court Procedures for District Judge Garcia Marmolejo, which are applicable to cases assigned to Judge Garcia Marmolejo. The rules are available by visiting the Court's website.

The state bar reports that the applicant's status is:	
Dated:	Clerk's signature

Order Granting Motion for Admission *Pro Hac Vice*

This lawyer is admitted *pro hac vice*.

Dated: _____

 Marina Garcia Marmolejo
 United States District Judge

