



JUDGE ANDREW S. HANEN

United States Courthouse
600 East Harrison, #301
Brownsville, Texas 78520-7114
(956) 548-2591

Cristina Sustaeta, Case Manager
United States District Clerk
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Brownsville, Texas 78520-7114
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CRIMINAL PROCEDURES

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Note: This is helpful information. Nothing in this packet supersedes formal rules or common sense.

1. **CONTACT WITH COURT PERSONNEL**

- A. Case-related telephone inquiries are to be made to the Case Manager only. **Inquiries should not be made to either the Court or the Court's assistant or law clerks.**
- B. Courtesy copies of documents filed less than three (3) days prior to a court setting **must** be delivered to Chambers after originals are filed via e-filing with the Clerk of the Court. Copies of urgent documents may also be sent to Chambers.

2. **EMERGENCIES**

- A. Counsel shall contact the Case Manager at (956) 548-2629 for matters requiring immediate attention.
- B. Motions for extension of deadlines in the Scheduling and Docket Control Order are not emergencies.
- C. Counsel shall send a courtesy copy of emergency motions directly to Chambers so that they quickly reach the Court's attention.

3. **ELECTRONIC FILINGS**

- A. The Southern District of Texas requires the electronic filing of all pleadings. This reduces the burden on the Clerk's Office and increases the efficiency of the Court.
- B. Electronic filings shall be in accordance with Administrative Procedures for Electronic Filing in Civil and Criminal Cases. Answers to frequently asked questions regarding electronic filing may be obtained at the Clerk's Office.
- C. Voluminous, double-sided or irregular documents:
 - 1) Leave of Court is required for the conventional filing of documents greater than 50 pages in length. Such documents should be filed electronically when possible.
 - 2) Leave of Court is required for the conventional filing of documents printed on both sides. Such documents should be filed electronically when possible.
 - 3) Leave of Court is required for the filing of over-sized or irregularly shaped documents which are not capable of being readily imaged by court personnel and equipment. Such documents should be filed electronically when possible.

- D. Generally, all pleadings in this District must be filed through the Electronic Case Filing System (ECF). The parties shall submit a courtesy hard copy to the **District Clerk's Office of all filings, including any attachments, that are 20 pages or longer**. Stated differently, any single submission containing a motion, brief, and attachments that *together* contain a total of 20 pages or more must be filed both electronically and in courtesy hard copy directly to the District Clerk's Office.
- E. While counsel should **NOT** attempt to avoid the above requirement by unnecessarily separating a motion, brief, and attachments or exhibits into separate submissions. *See 5.I*, the Court prefers that each motion be filed separately and not joined with other motions or responses.
- F. Both the courtesy hard copy and the electronic filing must be filed on the same day.

4. **COURT SETTINGS**

A. Docket Call and Trial:

- 1) Final Pretrial Conferences will be held on a monthly basis on designated days. Counsel should be prepared to discuss all matters related to the trial, including all matters related to jury selection, 404(b) matters, motions to suppress, and motions in limine.
- 2) Jury Selection will be held once a month pursuant to a designated schedule. Typically, the Court will pick twelve (12) jurors and two (2) alternates.

B. Re-arraignments, Sentencings, and Motion Hearings:

- 1) Re-arraignments will be held at the end of the Final Pretrial Conference unless other arrangements are made with the Case Manager. Once a plea agreement is reached, counsel should notify the Case Manager immediately. The Magistrate Judge may take guilty pleas in felony cases as requested by the Court.
- 2) Sentencings are routinely scheduled at 8:30 a.m. throughout the month as the Court's schedule permits.
- 3) Motion Hearings are set in the Scheduling Order. Counsel may request a hearing for emergencies and should notify the Case Manager of unusual motions or if an extended time period is anticipated by counsel.

5. **CONTINUANCES**

- A. Joint motions for continuances are not binding, and they will be granted only at the Court's discretion. All motions shall set out any applicable exception(s) to the Speedy Trial Act.
- B. Trial will not be continued because a witness, expert, or other party is unavailable. Counsel should anticipate such possibilities and be prepared to present testimony by written deposition, videotaped deposition, or counsel should arrange to settle necessary matters by stipulation.
- C. All motions shall set out the relevant exception(s) to the Speedy Trial Act, where applicable.
- D. All motions shall set out the length of time for which the continuance is requested.

6. **MOTION PRACTICE**

- A. Motions must contain a certificate of conference, certificates of service, and an appropriate Order. The Certificate of Conference must truthfully indicate that counsel have attempted to work out all disputes in advance. Merely placing a call is not the equivalent of actually discussing the topic.
- B. The Court (or the Magistrate Judge) will consider all pending motions at the motion hearing or as the Court's schedule permits.
- C. If an evidentiary hearing is necessary, counsel should notify the Case Manager in advance. Exhibit and witness lists must be electronically filed at least 24 hours prior to the hearing. Appropriate notice should be given to opposing counsel.
- D. Motions to Suppress must be specific and must be in compliance with the local rules. Motions not in conformity therewith will be struck. (*see* the attached Order—Appendix “A”)
- 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. (*see* the attached Order—Attached as Appendix “B”).
- F. The pages of all pleadings (including plea agreements) are to be numbered so as to ease the review of the same by the Court and opposing counsel.
- G. The Court will not grant a motion to blankly adopt another party's motions and such should not be filed.

7. **REQUIRED PRETRIAL MATERIALS**

- A. Counsel must provide electronically filed copies of their exhibit and witness lists with notice to opposing counsel.
- B. **Jury Trials:**
 - 1) Prior to final pretrial, Counsel must file proposed voir dire questions and proposed jury instructions. Each proposed voir dire question must be in question form. The Court will conduct the examination of the panel.
 - 2) Jury instructions must be short, simple, and concise. Each should be numbered and presented on a separate sheet of paper with the citation of authority upon which counsel rely.
 - 3) Failure to timely file is a waiver of the right to file.

8. **EXHIBITS**

- A. The offering party will mark its exhibits with the party's identity, case number, and exhibit number on each exhibit to be offered. Each exhibit must be marked prior to final pretrial.
- B. The Court will admit all exhibits that have not been objected to or those whose objections were overruled into evidence as the first order of business. Sensitive exhibits (such as weapons, drugs, and money) will remain in the custody of the government agent throughout the proceedings. Photographs may be introduced in place of the real item when the jury retires for deliberations.
- C. 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. It is the duty of counsel to make sure all the admitted exhibits and only the admitted exhibits are in the possession of the Case Manager for delivery to the jury. It is also the duty of the offering party to make sure the Court has available the means for the jury access all exhibits.
- D. Counsel for each party is required to provide the Court with a copy of that party's exhibits in a properly tabbed and indexed notebook.
- E. **Disposition of Exhibits Following Trial:**
 - 1) Exhibits that are not easily stored in a file folder (such as posters, parts, or models) must be withdrawn after the completion of the trial and substituted with reduced reproductions or photographs.

- 2) If there is no appeal, exhibits will be removed by the offering party within thirty (30) days after disposition of the case.
 - 3) When there is an appeal, exhibits returned by the Court of Appeals will be removed by the offering party within fourteen (14) days after written notice from the Clerk.
 - 4) Exhibits not removed will be disposed of by the Clerk, and the expenses incurred will be taxed against the offering party.
- F. All counsel are expected to agree to admissibility when possible so that the jury is not burdened with witnesses called to prove up mere formalities in situations in which all counsel are aware that there is no question concerning authenticity.
- G. Boilerplate, multifarious, and/or non-specific objections will not be considered. Objections should be specific and tailored to the instant case and to the exhibit or matter at issue.

9. **EQUIPMENT**

- A. Counsel are responsible for providing any equipment necessary to facilitate opening/closing arguments and presentation of the case (i.e. PowerPoint, etc.). Counsel must inform the Case Manager/Court Reporter prior to trial so arrangements can be made to accommodate building security. This includes providing the Court with the means for the jury to access all exhibits during its deliberations.
- B. Easels with writing pads and drawing boards are available for use in the courtroom. A DVD/VCR is available for videos.
- C. A Document Camera is available for projecting documents, including pictures, which are letter-sized or smaller.
- D. Real-time reporting is not provided by the Court Reporter. Any requests for a transcript or portions thereof should be arranged directly with the Court Reporter.
- E. Any special needs for parties or witnesses should also be brought to the Court's attention well in advance of the trial.

10. **COURTROOM PROCEDURES**

- A. **Hours:** The Court's hours during trial vary depending upon the type of case and the needs of the parties, counsel, witnesses, and the Court. Court will normally convene trial at 9:00 a.m. and adjourn at 5:00 p.m., recessing for lunch between 12:00 noon and 1:30 p.m.

- B. Access at Other Times: Counsel needing access to the courtroom to set up equipment or exhibits outside the normal hours of court must arrange in advance with the Case Manager to have the courtroom open.
- C. Telephones: Telephone messages for counsel will **not** be taken by the judge's staff, and counsel should refrain from requesting use of telephones in chambers.
- D. Filing Documents: Two copies of documents filed immediately prior to and during the trial should be submitted to the Case Manager.
- E. Decorum:
- 1) Counsel and parties will comply with the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed and the Local Rules adopted by the Southern District of Texas regarding courtroom behavior described in Appendix "C". These procedures are strictly enforced.
 - 2) Counsel will ensure that all parties and witnesses (and their family and guests) maintain proper decorum and refrain from chewing gum, drinking, eating, smoking, or reading newspapers, books, etc., in the courtroom. No electronic devices are allowed in the courtroom. If counsel anticipates a need for any electronic item, arrangements should be made in advance with the Case Manager.
- F. Witnesses:
- 1) Counsel are responsible for summoning witnesses into the courtroom and instructing them on courtroom decorum. If "the Rule" has been invoked, counsel are also responsible for instructing their witnesses as to their duties thereunder. Witnesses shall be questioned while the attorney is standing at the podium unless otherwise instructed by the Court.
 - 2) Counsel must obtain permission from the Court to approach 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) Speaking objections or those with long narratives should be avoided. Side Bar comments are similarly prohibited.

G. Seating:

- 1) The table nearer to the jury is to be used by the prosecution, and the defense is to use the one sitting farther from the jury.
- 2) Once counsel have determined their seating arrangement, the Case Manager will note their position on a chart for the Court and there will be no change once trial has begun, except at the Court's direction.
- 3) Enter and leave the courtroom only by the front doors; do not use the Court's or jury's entrances.
- 4) Stand to make objections and remain standing until the judge has ruled.

H. Deliberations: While the jury is deliberating, unless given permission by the Court, counsel should remain in or near the courtroom to be available for jury notes or a verdict.

I. Ex-juror contact: After the jury and counsel have been excused, neither counsel, nor the parties, nor their representatives, may contact jurors without permission of the Court.

[ATTACHMENTS]

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA § **CRIMINAL NO. B-**
 §
VS. § **Judge Andrew S. Hanen**
 § **United States District Judge**
 §

SCHEDULING ORDER

1. Depositions in the United States Magistrate’s Jury Room _____ at _____

2. Deadlines Motions: _____
 Any motions filed must comply with the Local Rules for the Southern District of Texas, in particular SDTX CrLR 12.2.

 Response: _____
 If discovery is opposed, opposition must be filed immediately and response(s) must comply with the Local Rules for the Southern District of Texas, in particular, SDTX CrLR 12.3.

*** Request(s) and objection(s) must be based on substance, not form.**

3. Motion hearing before Magistrate Judge _____ at 9:00 a.m.

4. Docket call and Final Pretrial Conference: _____ at 8:30 a.m.

***Proposed voir dire questions and jury instructions due at Docket Call/Final Pretrial Conference.**
****A courtesy copy must be made available to the Court if it exceeds 25 pages.**

Parties must engage in timely plea negotiations. The FPTC date is NOT a 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.

5. Jury Selection: _____ at 9:00 a.m.

6. Estimate Trial Time: (5.5 hours/day) _____ day(s)

7. Motions for continuance must be filed at least three (3) business days prior to the date of the court setting and will be granted only at the Court’s discretion. Motions for continuance made on the day the matter is set will not be granted absent a showing of good cause.

8. This Court's criminal docket is extremely crowded, and for purposes of docket management, this Court must be informed as to possible pre-trial disposition of cases on its docket. Therefore, pursuant to Federal Rule of Criminal Procedure 11(e)(5) and the holding of the Fifth Circuit Court of Appeals in *United States v. Ellis*, 47 F.2d 863 (5th Cir. 1977), any plea bargain or plea agreement entered into by the parties in this cause must be made known to the Court **three (3) days before FPTC**. No plea bargain agreement entered into after this date will be honored by the Court without good cause shown for the delay.

The defendant and his/her attorney must appear for the Court settings. Failure to appear may result in additional charges being brought against the defendant.

Direct your questions about this schedule to Cristina Sustaeta, Case Manager, United States Clerk, 600 East Harrison Street, Brownsville, Texas 78520, telephone (956)548-2629.

Signed on _____, at Brownsville, Texas.

United States Magistrate Judge

UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
United States of America v.		BROWNSVILLE DIVISION	
		Criminal No. B-	
		EXHIBIT LIST	
List of: Type of Hearing:		AUSA:	
Judge: ANDREW S. HANEN	Clerk: Cristina Sustaeta	Reporter: Sheila Perales	

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UNITED STATES DISTRICT COURT		SOUTHERN DISTRICT OF TEXAS	
UNITED STATES OF AMERICA		BROWNSVILLE DIVISION	
v.		CRIMINAL NO. B-	
		WITNESS LIST	
LIST OF: TYPE OF HEARING:		AUSA:	
JUDGE: ANDREW S. HANEN	CLERK: CRISTINA SUSTAETA	REPORTER: SHEILA PERALES	

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

FOR INFORMATION REGARDING THE FOLLOWING:

U.S. DISTRICT CLERK.....	548-2500
CRIMINAL CASES.....	548-2528
CIVIL CASES.....	548-2500
JURY.....	548-2508
ADMISSION OF ATTORNEYS.....	548-2500
APPEALS.....	548-2500
BAIL BONDS, DISBURSEMENT.....	548-2500
BILL OF COSTS, CERTIFICATION OF JUDGMENT, ABSTRACTS.....	548-2500
CASE MANAGERS TO DISTRICT JUDGES	
CRISTINA SUSTAETA, HONORABLE ANDREW S. HANEN.....	548-2629
STELLA CAVAZOS, HONORABLE HILDA G. TAGLE.....	548-2628
SANDRA ESPINOZA, HONORABLE ROLANDO OLVERA.....	982-9685
CASE MANAGERS TO UNITED STATES MAGISTRATES	
BERTHA VASQUEZ, HONORABLE RONALD G. MORGAN.....	982-9657
SALLY GARCIA, HONORABLE IGNACIO TORTEYA, III.....	982-9659
INTERPRETERS.....	548-2500
UNITED STATES ATTORNEY'S OFFICE.....	548-2554
UNITED STATES PROBATION OFFICE.....	548-2522
UNITED STATES PUBLIC DEFENDER'S OFFICE.....	548-2573
UNITED STATES MARSHAL'S OFFICE.....	548-2519

[APPENDICES]

APPENDIX “A”

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ORDER

In this division, a practice has developed of filing motions to suppress without alleging specific facts that form the basis for the motion. All pretrial motions, including motions to suppress, must comply with Local Criminal Rule 12 (Criminal Pretrial Motion Practice). Motions to suppress not complying with Local Rule 12 will be considered waived. The Court will not entertain unsupported pretrial motions.

Local Rule 12.1 instructs counsel to follow Federal Rules of Criminal Procedure Rule 12 “to ensure consistent and efficient practice before this Court. Local Rule 12.2 outlines the form of a pretrial motion. Most importantly, the rule specifies that:

A pretrial motion shall be in writing and state specifically the basis for the motion. The motion shall be supported by a statement of authority....If the motion presents issues of fact, it shall be supported by affidavit or declaration which sets forth with particularity the material facts at issue.

The rule is sufficiently clear and needs no further explanation. All motions to suppress not complying with the requirements of form will be considered waived pursuant to Rule 12.1.

Local Rule 12 is supported by Fifth Circuit precedent. In *United States v. Harrelson*, 705 F.2d. 733, 737 (5th Cir. 1983), the Fifth Circuit addressed this issue and declared that “[e]videntiary hearings are not granted as a matter of course, but are held only when the defendant alleges sufficient facts which, if proven, would justify relief.” (citations omitted). “Factual allegations set forth in the defendant's motion, including any accompanying affidavits, must be sufficiently definite, specific, detailed, and

nonconjectural, to enable the court to conclude that a substantial claim is presented.” *Id.* (quotations omitted). “General or conclusionary assertions, founded upon mere suspicion or conjecture, will not suffice.” *Id.* (citing 3 C. WRIGHT, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL 2D, § 675 (1982)).

Fifth Circuit precedent and the Local Rules establish that motions to suppress must allege specific facts. Cursory motions filed to “test” the constitutionality of statements which may or may not have been made do not allege sufficient facts to warrant an evidentiary hearing. A motion to suppress is not the proper vehicle for determining whether a defendant made statements to law enforcement; what statements may have been made; or the circumstances under which they may have been made. “Hearings on motions to suppress are not discovery proceedings, but are instead designed for the presentation of evidence in support of factual allegations which, if proved, would justify the relief sought.” *Id.* at 738. There are other more efficient methods of obtaining the relevant information for discovery purposes.

The Federal Rules of Criminal Procedure provide methods of obtaining discoverable information. Defense counsel and the United States Attorney's Office alike should follow the letter and the spirit of the Federal Rules of Criminal Procedure, particularly Rules 12 and 16. Should the government fail to meet its obligations under the applicable discovery rules, defendants and defense counsel will address the matter with the Magistrate Judge in the form of a motion to compel discovery.

To recap, the Court will not entertain conjectural or conclusionary motions to suppress. The Court will hold evidentiary hearings on motions to suppress conforming with Local Rule 12 and Fifth Circuit precedent; all other motions will be considered waived, and an evidentiary hearing will not be held. Moreover, the United States Attorney's Office will comply with the Federal Rules of Criminal Procedure, so that defendants will have access to all files containing the statements made by a defendant. Via such access, defendants will have the ability to articulate a motion to suppress conforming with Fifth

Circuit precedent, the Local Rules, and this memorandum. All motions should include certificates of conference, certificates of service, and a proposed order.

Signed this 3rd day of June, 2004.

Andrew S. Hanen
United States District Judge

APPENDIX "B"

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ORDER

All Motions to Dismiss the Indictment, Motions to Sever or for Separate Trials, and any other motions, regardless of how styled, which challenge and/or collaterally attack a prior order of deportation [for example, those made pursuant to 28 U.S.C. § 2241] shall be filed together with a request for a hearing at least thirty (30) days before jury selection. Each motion shall specifically state the grounds, therefore, and the alleged facts supporting those grounds. Non-specific form motions, multifarious motions or objections, and ambiguous or unsupported challenges shall not be acceptable, and all such motions will be denied. The motion shall be accompanied with a request for a hearing, certificate of conference, certificate of service, and proposed order. Failure to timely file such a motion, to request a hearing, or to comply with the requirement of specific and supported objections shall be considered a waiver of those claims.

Signed this 3rd day of June, 2004.

Andrew S. Hanen
United States District Judge

APPENDIX “C”

UNITED STATES DISTRICT COURT



SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Courtroom Etiquette

People who appear in court must observe these and other conventions of courteous, orderly behavior.

- A. Be punctual.
- B. Remain in attendance until excused. All persons sitting before the bar shall remain there during each session and return after each recess. Parties and counsel must remain in attendance during jury deliberations; absence waives the right to attend the return of the verdict.
- C. Dress with dignity.
- D. Address others only by their titles, if applicable, and/or surnames, including lawyers, witnesses, and court personnel.
- E. Unless instructed otherwise, stand when the Court speaks to you; stand when you speak to the Court. Speak only to the Court, except for questioning witnesses and, in opening and closing, addressing the jury. Do not argue with opposing counsel.
- F. Avoid approaching the bench. Counsel should anticipate the necessity for rulings and discuss them when the jury is not seated. When a bench conference is unavoidable, get permission first.
- G. Hand to the Case Manager, not the judge or reporter, all documents or items tendered for examination by the judge.
- H. Stand when the judge or jury enters or leaves the courtroom.
- I. Contact with the law clerks is *ex parte* contact with the Court. Contact must only be through the Case Manager.
- J. Assist in the summoning of witnesses from outside the courtroom. Furnish the Case Manager, marshal, and court reporter with a list of witnesses showing the order in which they are likely to be called.
- K. Question witnesses while standing at the lectern unless instructed otherwise by the Court. When it is necessary to question a witness about an exhibit, ask permission to approach the witness.

- L. Conduct no experiment or demonstration without permission.
- M. Do not participate in a trial as an attorney if you expect you may be called as a witness unless given prior permission by the Court.
- N. Avoid disparaging remarks and acrimony toward counsel and discourage ill will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities.
- O. Make no side-bar remarks or speaking objections.
- P. Counsel are responsible for advising their clients, witnesses, and associate counsel about proper courtroom behavior and about pertinent rulings of the Court such as rulings on motions in limine.
- Q. Request the use of easels, light boxes, and other equipment well in advance so that they may be set up while the Court is not in session.