

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

TRIAL NOTICE

BY DIRECTION OF THE HONORABLE JUDITH C. HERRERA the cases listed on the attachment are hereby scheduled for jury selection and trial on a trailing docket commencing on the date and time listed below. Counsel shall adhere to all deadlines set forth herein as well as to the Instructions attached herewith.

JURY SELECTION/TRIAL DATE:

OCTOBER 30, 2006 at 1:30 P.M.

200 E. Griggs, Second Floor Courtroom, Las Cruces, NM
before the Honorable Judith C. Herrera

CERTAIN PRETRIAL DEADLINES:

To conserve judicial resources, the Court must be advised of all plea agreements and motions to continue no later than 12:00 p.m. on October 13, 2006. Inquiries and notices of change of plea should be directed to Lincoln Sorrell, Courtroom Deputy for Hon. Judith C. Herrera, at 505-348-2398.

Motions in Limine: October 16, 2006 (responses due October 23, 2006)
Proposed Jury Instructions: October 16, 2006
Calendar Call: October 19, 2006 at 1:15 p.m. via videoconference
(Firm trial dates given at this time. It is not unusual for most or all of the cases on a trial calendar to be resolved pretrial; therefore, counsel and parties in remaining cases shall be prepared to go to trial on the trial date of October 30, 2006. Las Cruces counsel shall report to the 2nd Floor Conference Room of the Las Cruces Courthouse at the appointed time.)

ATTACHMENTS:

1. List of cases set for jury selection/trial on October 30, 2006. This list does not necessarily reflect the order in which cases will be tried.
2. "Pretrial Deadlines Before the Honorable Judith C. Herrera" (includes guidelines for preparation of proposed jury instructions and all binding pretrial deadlines.)

MATTHEW J. DYKMAN, Clerk of Court



This Notice was electronically transmitted or mailed to all counsel of record as they are reflected on the Court's docket.

**October 30, 2006 at 1:30 p.m. trial trailing docket for Judge Judith C. Herrera.
Las Cruces - Second Floor Courtroom**

05cr02275 JH USA v. Carranza

Interpreter: **Chandler Thompson** Language: Spanish
plaintiff - USA Amanda Gould
defendant - Jesus Carranza Mario A. Esparza

06cr00092 JH USA v. Torres

plaintiff - USA Luis Martinez
defendant - Gary Torres Leon Schydlower

06cr00538 JH USA v. Quaintance

plaintiff - USA Luis Martinez
defendant - Joseph Allen Butts (In Custody) Bernadette Sedillo
defendant - Mary Helen Quaintance Mario A. Esparza
defendant - Danuel Dean Quaintance Marc H. Robert

06cr00551 JH USA v. Fonseca

Interpreter: **Chandler Thompson** Language: Spanish
plaintiff - USA Kelly H. Burnham
defendant - Jose Jesus Fonseca-Aguayo Herman E. Ortiz

06cr00712 JH USA v. Garza

plaintiff - USA Kelly H. Burnham
defendant - Rosalinda Garza Leon Schydlower

06cr01259 JH USA v. Guerrero-Abril

Interpreter: **Chandler Thompson** Language: Spanish
plaintiff - USA Mick I.R. Gutierrez
defendant - Jose De Jesus Guerrero-Abril Francisco M. Ortiz

06cr01260 JH USA v. Munoz, et al.

plaintiff - USA Kelly H. Burnham
defendant - Fernando Adame (fugitive)
defendant - Anita Gutierrez Carbajal Cesar Pierce-Varela
defendant - Frank Flores III Howard Anderson
defendant - Jose Flores Charles A. Harwood
defendant - Anthony Ray Flores David Kimmelman
defendant - Destiny Flores Anthony W. White
defendant - Estefana Yolanda Flores Herman E. Ortiz
defendant - Josefina Gutierrez Marcia Milner
defendant - Jose Luis Munoz Francisco M. Ortiz
defendant - Cindy Medina Rivera Bernadette Sedillo
defendant - Jesus Crespín Sanchez Jess R Lilley

06cr01269 JH USA v. Alire

Interpreter: **Chandler Thompson** Language: Spanish

plaintiff - USA Mick I.R. Gutierrez

defendant - Roy Adonais Alire Barbara A. Mandel

06cr01271 JH USA v. Pena

Interpreter: **Chandler Thompson** Language: Spanish

plaintiff - USA Luis Martinez

defendant - Julian Padilla Pena Jr. Paul J Rubino

PRETRIAL DEADLINES
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PLEASE NOTE:

- 1) Throughout these instructions, the term “trial” refers to commencement of the trailing docket. Therefore, all dates operate off of the current jury selection date or date upon which the trailing docket begins. **Counsel must seek leave of Court in the form of a written motion to extend any pretrial deadlines.**
- 2) Where a submission deadline falls on a weekend or a federal holiday, the deadline will be the next working day after the weekend or holiday.

EVENT	DEADLINE	COMMENT
PERTAINING TO CIVIL CASES		
Witness Identification	Fifteen (15) working days before trial	Witnesses shall be identified in accordance with the Pretrial Order but, in any event, no later than fifteen (15) working days before trial.
Exchange of Exhibits	Fifteen (15) working days before trial	Exhibits shall be marked and identified prior to trial, with plaintiff’s exhibits identified on yellow labels by number and defendant’s exhibits identified blue labels by letter.
Objections to Exhibits	Ten (10) working days before trial	You should specify the Rule of Evidence or other legal authority upon which your objection is based. In most cases, the Court will consider objections and admit exhibits prior to trial.
Motions in <i>Limine</i> and Other Admissibility Issues	Fifteen (15) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made by the <u>dispositive</u> motions deadline as set forth in the Initial Pretrial Report.
Responses to Motions in <i>Limine</i> and Other Admissibility Issues	Eight (8) working days before trial	

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EVENT	DEADLINE	COMMENT
Witness and Exhibit Lists	Five (5) working days before trial	<p>Complete lists of witnesses to be called at trial with a brief summary of their testimony are to be filed. The order of the witnesses is not binding, but known witnesses not listed in accordance with this procedure will not be allowed to testify.</p> <p>An original plus three copies of the following shall be filed by the deadline: (a) a consolidated exhibit list identifying all exhibits the parties have stipulated to being admissible; (b) a consolidated exhibit list identifying all exhibits the parties have stipulated to being authentic, but to which there are other objections; and (c) a separate contested exhibit list on which the parties could not reach a stipulation.</p>
Statement of Case	Five (5) working days before trial	The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection.
Expert Reports	In accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure	When calling an expert witness, it is the responsibility of counsel to establish his/her qualifications to express an opinion under Rule 702 after which counsel must move his/her acceptance by the court as an expert. In that connection, counsel must inform the Court the particular field in which counsel offers the witness as an expert. As in other areas, cumulative expert testimony will not be permitted.
Depositions	Fifteen (15) working days before trial	Notify opposing counsel and the court of such intended use of deposition. If a deposition is used in part, counsel shall highlight the parts to be used for the Court. Plaintiff will use a yellow marker and defendant a blue marker. This does not apply to cross-examination or rebuttal.
Deposition Objections	Ten (10) working days before trial	Opposing counsel shall file with the Clerk objections to any material.

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EVENT	DEADLINE	COMMENT
Memoranda of Law	Five (5) working days before trial	Trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes are encouraged and should be filed with the Clerk.
Non-Jury Trials - Findings of Fact	Ten (10) working days before trial	Findings of fact and conclusions of law shall be filed with the Clerk, with references to exhibits and proposed testimony. Each party shall also submit the proposed findings and conclusions on a 3.5" WordPerfect diskette.
PERTAINING TO CIVIL <u>and</u> CRIMINAL CASES		
Jury Instructions	Ten (10) working days before jury selection	Please refer to the attached "Preparation of Jury Instructions".
<i>Voir Dire</i> Exchange	Five (5) working days before jury selection	In the average case, each counsel will be permitted ten (10) minutes to <i>voir dire</i> the venire panel. Do not argue the case or cite legal principles in your voir dire. Requested <i>voir dire</i> shall be exchanged between counsel and submitted to the Court by the deadline contained herein. If counsel cannot agree on proposed <i>voir dire</i> , any objections must be brought to the Court's attention at least two (2) working days prior to trial.
Objections to Opponent's <i>Voir Dire</i>	Two (2) working days before trial	
Courtesy Copies of Exhibits for the Court	Beginning of Trial	Parties shall submit two (2) courtesy copies of exhibits, in notebooks, to the Court at the beginning of the trial.

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PERTAINING TO CRIMINAL CASES		
Witness and Exhibit Lists	Five (5) working days before trial	It will facilitate an orderly and efficient trial for counsel to exchange witness and exhibit lists five (5) working days prior to trial so that evidentiary problems can be anticipated and resolved correctly. In the event this requirement poses a danger to potential witnesses or for other good cause, the parties should approach the Court to seek relief from this requirement prior to the deadline.
Governments Notice of Rule 40(b) or 609(b) Evidence	Ten (10) working days before trial	Counsel will not get into possible areas of reversible error without prior Court approval, whether in opening statements or questioning witnesses. (e.g., commenting on a defendant's silence, invoking constitutional rights, raising Rule 404(b), 608 or 609 material, etc.)
Motions in <i>Limine</i> and Other Admissibility Issues	Ten (10) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made prior to the dispositive motions deadline usually established at arraignment.
Responses to Motions in <i>Limine</i> and Other Admissibility Issues	Five (5) working days before trial	
Motion(s) for Continuance	Motion(s) for continuance should be filed in accordance with 18 U.S.C. §3161(h)(8)(a), specifically setting forth the factual grounds justifying the continuance.	

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PREPARATION OF JURY INSTRUCTIONS

Before the Honorable Judith C. Herrera

1. File a numbered original set of instructions with citations with the Clerk of Court. A copy should be submitted to chambers. The instructions shall list authority at the bottom of each instruction (Fig. 1.)
2. Submit an unnumbered original set of instructions without citations to chambers. (Fig. 2.)
3. Submit no more than one instruction per page.
4. Carefully proofread each instruction for errors in spelling, grammar, punctuation, citations, and for unintended deviations from pattern instructions used as sources.
5. Submit a cover sheet on all sets of instructions.
6. Submit a 3.5" diskette of all your instructions to chambers in a form compatible with WordPerfect 5.1 or higher.
7. If the New Mexico Uniform Jury Instructions are not applicable, Judge Herrera prefers that instructions, to the extent possible, follow the pattern jury instructions for the Tenth Circuit.

Instruction No. _____
Members of the Jury:
In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . .
Citation . . .

Fig. 1: With Citation

Instruction No. _____
Members of the Jury:
In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . .

Fig. 2: Without Citation