

 UNITED STATES ATTORNEY'S OFFICE DISTRICT OF KANSAS	8 U.S.C. §1326 OFFENSE FAST-TRACK POLICY	
	Effective Date:	October 2, 2024
	Last Updated:	October 16, 2025
	POC:	Criminal Chief

Statement of Purpose

The 8 U.S.C. § 1326 fast-track program is based on the premise that a defendant who promptly agrees to participate in the program saves the United States significant and scarce resources that can be used to prosecute other defendants. Thus, those defendants who choose to take advantage of this program are recommended for a shorter incarceration sentence. Questions about the fast-track program and its implementation should be directed to the Criminal Chief.

The ultimate decision about whether a particular defendant may participate in the program rests with the United States Attorney.

The Program

The fast-track program allows the defendant to receive either a 2-point or 4-point downward departure in exchange for a speedy resolution of the case. These points are given in addition to acceptance of responsibility points in the standard plea agreement. If the defendant qualifies, the plea agreement will specify the government will move for the two or four-level downward departure pursuant to U.S.S.G. § 5K3.1.

I. Eligibility

To initially be eligible for the fast-track program, the following must occur:

- A. the defendant must waive any detention and preliminary hearing;
- B. the defendant must agree to enter into a plea agreement consistent with the requirements set forth herein; this must occur within 30-days of arraignment, absent exceptional circumstances such as the denial of adequate assistance of counsel or a substantial delay in necessary administrative procedures; and
- C. the defendant must have never previously received the benefits of fast-track program in a § 1326(a) case in the District of Kansas.

The 30-day notice is extended automatically if the defendant has yet to receive routine discovery in the case, including the criminal history information available to the United States Attorney's Office. The United States will provide discovery in these cases as early in the process as possible. When in doubt about whether a defendant has met the 30-day deadline, the USAO-

KS will err on the side of allowing defendants to participate if they otherwise qualify.

The following categories more specifically describe the limitations of qualification:

II. Criminal History

Defendants **do not** qualify for the District of Kansas Fast-Track Program if they have:

- A. A prior conviction for murder, kidnapping, voluntary manslaughter, national security or terrorism offense, a human trafficking offense, an alien smuggling offense, aggravated battery, DUI involuntary manslaughter, rape or other forcible sex offense, a sex offense involving a child, including child pornography, an offense involving the possession or use of a firearm or destructive device, or an offense under State law involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802)), for which a minimum term of imprisonment of five (5) years or more was imposed, (a defendant with a single drug trafficking conviction for which a sentence of less than five (5) years was imposed is limited to a two level reduction); or
- B. A criminal record with a serious violent crime and/or a controlled substance offense as determined solely by the U.S. Attorney's office.

III. Deportations/Removals/Voluntary Returns

A Defendant's fast-track eligibility is further limited as follows:

- A. If the defendant has a combination of three or more prior deportations, removals, and/or voluntary returns, the departure is limited to two levels.
- B. If the defendant has a combination of two or more prior deportations, removals, and/or voluntary returns within the year preceding the defendant being "found in" the United States, the departure is limited to **two levels**.
- C. A defendant with 10 or more criminal history points, or less than 10 criminal history points but is still a Criminal History Category V or VI, the departure is limited to **two levels**.
- D. If the defendant has a combination of five or more prior deportations, removals, and/or voluntary returns, the defendant is **ineligible** for the program.
- E. If the defendant has a prior deportation, removal, and/or voluntary return within the six months preceding being "found in" the United States, the defendant is **ineligible** for the program.

IV. Supervised Release, Probation or Parole Status:

- A. A defendant under a “criminal justice sentence” as defined in U.S.S.G. § 4A1.1 limits the departure to **two levels**. In these cases, the plea agreement can include a promise by the defendant to stipulate to a violation of supervised release, probation, or parole based on the new conviction in this case.
- B. A defendant under a “criminal justice sentence” as defined in U.S.S.G. § 4A1.1 is **ineligible** for the program if on escape status.

V. Terms of Plea Agreement

All defendants eligible for the fast-track program must agree to the following in a plea agreement:

- A. A factual basis that accurately reflects the defendant’s offense conduct and relevant prior criminal history and an admission that the defendant was the subject of a previous order of removal, deportation, or exclusion from the United States;
- B. The defendant must admit that the defendant has no fear of returning to the country designated in the previous order;
- C. The defendant must agree to submit no argument asserting an application of the Convention Against Torture or any claim for asylum;
- D. The defendant must agree that the defendant will not contest, either directly or by collateral attack, the reinstatement of the prior order of removal, deportation, or exclusion;
- E. The defendant must agree not to file any motions described in Fed.R.Crim.P. Rule 12(b)(3), and must further waive the right to argue for a variance under 18 U.S.C. § 3553(e); and
- F. The defendant must waive any right to appeal or collaterally attack any matter in connection with the prosecution, conviction, or the components of the sentence imposed, including the length and conditions of supervised release, except on the issue of ineffective assistance of counsel. This waiver is in accord with what is contained in the standard plea agreements utilized by this District.