

Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2006

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	474	100.0	28.5
18 U.S.C. §3553(a) Factors	73	15.4	23.3
2D1.1 (Drug Trafficking)	51	10.8	17.6
2K2.1 (Firearms)	19	4.0	31.6
2B1.1 (Larceny, Embezzlement, and Theft)	17	3.6	35.3
5K2.0 (Departures)	17	3.6	52.9
4B1.1 (Career Offender)	13	2.7	7.7
2L1.2 (Unlawfully Entering or Remaining in the United States)	9	1.9	33.3
5K1.1 (Substantial Assistance to Authorities)	9	1.9	22.2
3C1.1 (Obstruction of Justice)	7	1.5	42.9
2F1.1 (Fraud)	6	1.3	16.7
4B1.4 (Armed Career Criminal)	5	1.0	20.0
3B1.1 (Aggravating Role)	4	0.8	0.0
4A1.3 (Adequacy of Criminal History)	4	0.8	50.0
5B1.1 (Imposition of a Term of Probation)	4	0.8	50.0
5C1.2 (Limitations on Applicability of Statutory Minimum Sentences)	4	0.8	25.0
5E1.1 (Restitution)	4	0.8	0.0
Constitutional Issues	114	24.0	24.6
Other Guidelines	80	16.9	33.8
Other Non-guideline Issues	34	7.2	50.0

¹Based on 8,283 appeals with sentencing as at least one of the reasons for appeal. Often more than one issue was appealed; consequently, the number of issues is more than the number of defendants. The "Other" category includes all issues appealed fewer than four times among relevant cases. An additional five cases were appealed by the District Court: "Constitutional issues" was appealed twice with a 0.0 percent affirmance rate; 18 U.S.C. §3553(a) factors were appealed once and the issue was affirmed; and 2K2.1 (Firearms) and 2L1.1 (Smuggling, Transporting or Harboring and Unlawful Alien) were appealed once and the issue was not affirmed.

²Affirmance Rate includes all appeals cases not reversed or directly remanded by the circuit court.