

Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2008

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	291	100.0	39.2
18 U.S.C. § 3553(a) Factors	49	16.8	44.9
2D1.1 (Drug Trafficking)	27	9.3	25.9
2B1.1 (Larceny, Embezzlement and Theft)	15	5.2	33.3
5K2.0 (Departures)	12	4.1	41.7
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	8	2.7	100.0
5K1.1 (Substantial Assistance to Authorities)	6	2.1	0.0
3B1.2 (Mitigating Role)	5	1.7	0.0
2B1.5 (Theft or Damage to Cultural Heritage Resource)	4	1.4	100.0
2F1.1 (Fraud)	4	1.4	0.0
2S1.1 (Laundering of Monetary Instruments)	4	1.4	25.0
3B1.1 (Aggravating Role)	4	1.4	0.0
3C1.1 (Obstruction of Justice)	4	1.4	0.0
5B1.1 (Imposition of a Term of Probation)	4	1.4	0.0
5C1.2 (Limitation of Applicability of Statutory Minimum Sentences in Certain Cases)	4	1.4	0.0
5E1.1 (Restitution)	4	1.4	0.0
2K2.1 (Firearms)	3	1.0	66.7
2K2.4 (Use of Firearms During or in Relation to Certain Crimes)	3	1.0	0.0
3B1.3 (Abuse of a Position of Trust or Use of Special Skill)	3	1.0	0.0
3E1.1 (Acceptance of Responsibility)	3	1.0	66.7
4B1.4 (Armed Career Criminal)	3	1.0	66.7
Constitutional Issues	57	19.6	56.1
Other Guidelines	46	15.8	34.8
Other Non-guideline Issues	19	6.5	52.6

¹Based on 150 appeals by the Government 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 three times among relevant cases.

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