

Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2009

GUIDELINE	N	%	Affirmance Rate²
TOTAL	102	100.0	27.4
18 U.S.C. § 3553(a) Factors	18	17.6	33.3
2D1.1 (Drug Trafficking)	16	15.7	31.2
1B1.10 (Retroactivity of Amended Guideline Ranges)	9	8.8	0.0
2G2.2 (Trafficking in Material Involving Sexual Exploitation of a Minor)	3	2.9	66.7
4B1.2 (Definitions for Career Offender)	3	2.9	0.0
5E1.1 (Restitution)	3	2.9	33.3
5K1.1 (Substantial Assistance to Authorities)	3	2.9	33.3
2B1.1 (Larceny, Embezzlement and Theft)	2	2.0	50.0
2G1.3 (Transportation of a Minor to Engage in Prohibited Sexual Conduct)	2	2.0	50.0
2K2.1 (Firearms)	2	2.0	0.0
2L1.2 (Unlawfully Entering or Remaining in the United States)	2	2.0	0.0
4B1.4 (Armed Career Criminal)	2	2.0	50.0
Constitutional Issues	16	15.7	43.8
Other Guidelines	13	12.7	15.4
Other Non-guideline Issues	8	7.8	12.5

¹Based on 64 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 Guidelines" category includes all issues appealed one time.

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