

**United
States
Sentencing
Commission**



Statistical Information Packet

Fiscal Year 2008

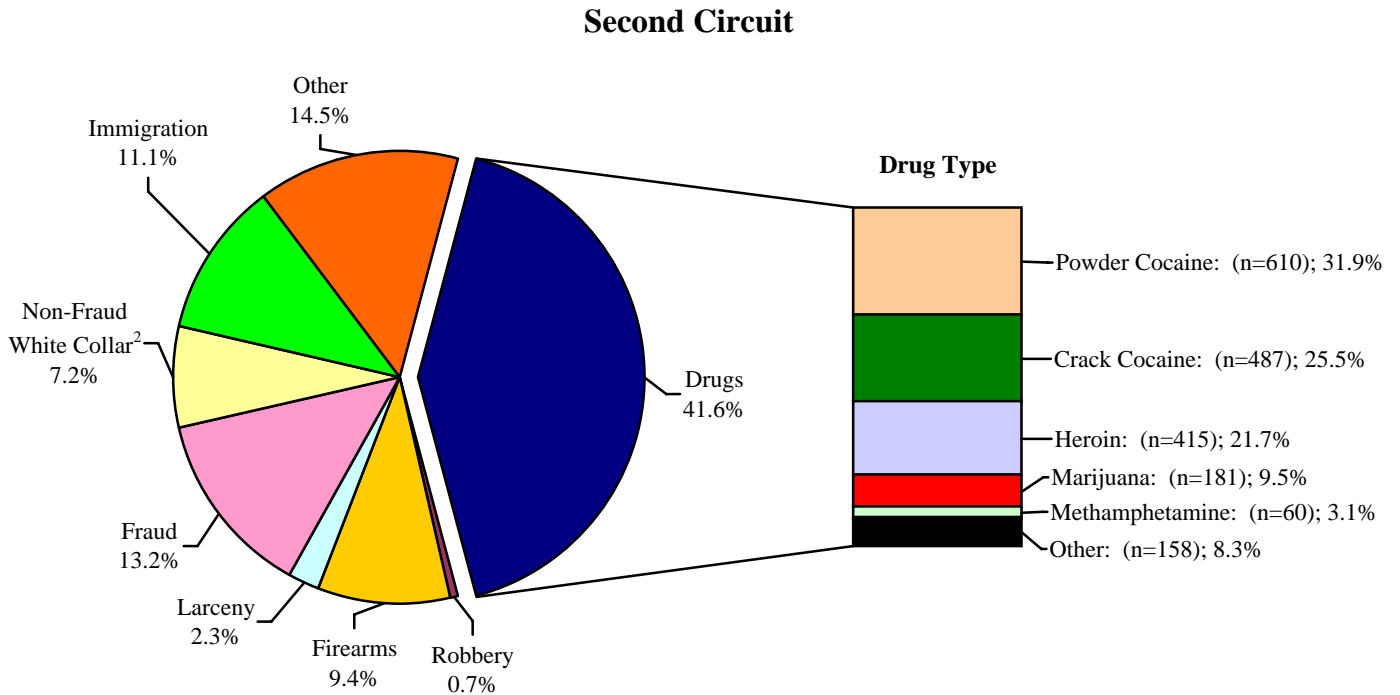
Second Circuit

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Figure A

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED BY SELECT PRIMARY OFFENSE CATEGORY¹
Fiscal Year 2008**



¹Of the 76,478 guideline cases, 467 cases were excluded due to one of the following reasons: missing primary offense category (50) or missing drug type (417). Of the 4,607 guideline cases from the Second Circuit, 16 cases were excluded due to missing drug type.

²The Non-Fraud White Collar category includes the following offense types: embezzlement, forgery/counterfeiting, bribery, money laundering, and tax.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 1

**DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008**

PRIMARY OFFENSE	National		Second Circuit	
	N	%	N	%
TOTAL	76,428	100.0	4,607	100.0
Murder	69	0.1	11	0.2
Manslaughter	54	0.1	0	0.0
Kidnapping/Hostage Taking	56	0.1	5	0.1
Sexual Abuse	486	0.6	19	0.4
Assault	676	0.9	21	0.5
Robbery	1,052	1.4	30	0.7
Arson	60	0.1	3	0.1
Drugs - Trafficking	24,306	31.8	1,821	39.5
Drugs - Communication Facility	355	0.5	41	0.9
Drugs - Simple Possession	515	0.7	65	1.4
Firearms	8,250	10.8	431	9.4
Burglary/B&E	45	0.1	0	0.0
Auto Theft	60	0.1	2	0.0
Larceny	1,683	2.2	105	2.3
Fraud	7,472	9.8	607	13.2
Embezzlement	495	0.6	33	0.7
Forgery/Counterfeiting	1,018	1.3	63	1.4
Bribery	219	0.3	27	0.6
Tax	588	0.8	38	0.8
Money Laundering	893	1.2	170	3.7
Racketeering/Extortion	740	1.0	188	4.1
Gambling/Lottery	127	0.2	41	0.9
Civil Rights	70	0.1	3	0.1
Immigration	21,429	28.0	510	11.1
Pornography/Prostitution	1,657	2.2	155	3.4
Prison Offenses	371	0.5	20	0.4
Administration of Justice Offenses	1,039	1.4	77	1.7
Environmental/Wildlife	204	0.3	9	0.2
National Defense	54	0.1	4	0.1
Antitrust	24	0.0	4	0.1
Food & Drug	76	0.1	3	0.1
Other Miscellaneous Offenses	2,285	3.0	101	2.2

Of the 76,478 guideline cases, 50 cases were excluded due to missing information on primary offense category.

Of the 4,607 guideline cases from the Second Circuit, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 2

**MODE OF CONVICTION BY CIRCUIT AND DISTRICT
Fiscal Year 2008**

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
TOTAL	76,427	73,617	96.3	2,810	3.7
D.C. CIRCUIT	409	376	91.9	33	8.1
District of Columbia	409	376	91.9	33	8.1
FIRST CIRCUIT	1,748	1,643	94.0	105	6.0
Maine	210	198	94.3	12	5.7
Massachusetts	472	436	92.4	36	7.6
New Hampshire	223	209	93.7	14	6.3
Puerto Rico	754	716	95.0	38	5.0
Rhode Island	89	84	94.4	5	5.6
SECOND CIRCUIT	4,607	4,418	95.9	189	4.1
Connecticut	419	408	97.4	11	2.6
New York					
Eastern	1,246	1,185	95.1	61	4.9
Northern	533	523	98.1	10	1.9
Southern	1,588	1,495	94.1	93	5.9
Western	657	644	98.0	13	2.0
Vermont	164	163	99.4	1	0.6
THIRD CIRCUIT	3,173	2,961	93.3	212	6.7
Delaware	146	135	92.5	11	7.5
New Jersey	1,000	955	95.5	45	4.5
Pennsylvania					
Eastern	752	655	87.1	97	12.9
Middle	649	638	98.3	11	1.7
Western	544	514	94.5	30	5.5
Virgin Islands	82	64	78.0	18	22.0
FOURTH CIRCUIT	7,025	6,723	95.7	302	4.3
Maryland	782	728	93.1	54	6.9
North Carolina					
Eastern	692	668	96.5	24	3.5
Middle	355	346	97.5	9	2.5
Western	807	771	95.5	36	4.5
South Carolina	1,212	1,174	96.9	38	3.1
Virginia					
Eastern	2,032	1,936	95.3	96	4.7
Western	404	381	94.3	23	5.7
West Virginia					
Northern	469	456	97.2	13	2.8
Southern	272	263	96.7	9	3.3

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
FIFTH CIRCUIT	17,509	17,175	98.1	334	1.9
Louisiana					
Eastern	480	470	97.9	10	2.1
Middle	204	198	97.1	6	2.9
Western	340	318	93.5	22	6.5
Mississippi					
Northern	185	180	97.3	5	2.7
Southern	453	431	95.1	22	4.9
Texas					
Eastern	1,016	983	96.8	33	3.2
Northern	1,083	1,028	94.9	55	5.1
Southern	6,516	6,427	98.6	89	1.4
Western	7,232	7,140	98.7	92	1.3
SIXTH CIRCUIT	5,409	5,190	96.0	219	4.0
Kentucky					
Eastern	681	652	95.7	29	4.3
Western	497	475	95.6	22	4.4
Michigan					
Eastern	737	699	94.8	38	5.2
Western	455	430	94.5	25	5.5
Ohio					
Northern	905	886	97.9	19	2.1
Southern	627	603	96.2	24	3.8
Tennessee					
Eastern	593	572	96.5	21	3.5
Middle	308	299	97.1	9	2.9
Western	606	574	94.7	32	5.3
SEVENTH CIRCUIT	3,068	2,856	93.1	212	6.9
Illinois					
Central	392	370	94.4	22	5.6
Northern	928	846	91.2	82	8.8
Southern	312	289	92.6	23	7.4
Indiana					
Northern	455	420	92.3	35	7.7
Southern	295	283	95.9	12	4.1
Wisconsin					
Eastern	492	468	95.1	24	4.9
Western	194	180	92.8	14	7.2
EIGHTH CIRCUIT	5,428	5,201	95.8	227	4.2
Arkansas					
Eastern	434	419	96.5	15	3.5
Western	209	206	98.6	3	1.4
Iowa					
Northern	590	567	96.1	23	3.9
Southern	472	442	93.6	30	6.4
Minnesota	579	546	94.3	33	5.7
Missouri					
Eastern	1,015	986	97.1	29	2.9
Western	779	743	95.4	36	4.6
Nebraska	642	626	97.5	16	2.5
North Dakota	254	239	94.1	15	5.9
South Dakota	454	427	94.1	27	5.9

CIRCUIT District	TOTAL	PLEA		TRIAL	
		N	%	N	%
NINTH CIRCUIT	14,621	14,251	97.5	370	2.5
Alaska	169	156	92.3	13	7.7
Arizona	3,869	3,810	98.5	59	1.5
California					
Central	1,848	1,808	97.8	40	2.2
Eastern	891	870	97.6	21	2.4
Northern	717	701	97.8	16	2.2
Southern	3,822	3,744	98.0	78	2.0
Guam	68	66	97.1	2	2.9
Hawaii	279	265	95.0	14	5.0
Idaho	267	251	94.0	16	6.0
Montana	420	384	91.4	36	8.6
Nevada	433	418	96.5	15	3.5
Northern Mariana Islands	18	16	88.9	2	11.1
Oregon	644	625	97.0	19	3.0
Washington					
Eastern	338	326	96.4	12	3.6
Western	838	811	96.8	27	3.2
TENTH CIRCUIT	6,140	5,977	97.3	163	2.7
Colorado	488	473	96.9	15	3.1
Kansas	679	652	96.0	27	4.0
New Mexico	2,905	2,893	99.6	12	0.4
Oklahoma					
Eastern	89	86	96.6	3	3.4
Northern	214	194	90.7	20	9.3
Western	556	518	93.2	38	6.8
Utah	870	833	95.7	37	4.3
Wyoming	339	328	96.8	11	3.2
ELEVENTH CIRCUIT	7,290	6,846	93.9	444	6.1
Alabama					
Middle	269	252	93.7	17	6.3
Northern	493	458	92.9	35	7.1
Southern	556	533	95.9	23	4.1
Florida					
Middle	1,669	1,570	94.1	99	5.9
Northern	351	314	89.5	37	10.5
Southern	2,272	2,156	94.9	116	5.1
Georgia					
Middle	443	431	97.3	12	2.7
Northern	720	638	88.6	82	11.4
Southern	517	494	95.6	23	4.4

Of the 76,478 guideline cases, 51 cases were excluded due to missing information on mode of conviction.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 3

**MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		PLEA		TRIAL		PLEA		TRIAL	
		N	%	N	%	N	%	N	%
TOTAL	76,426	73,616	96.3	2,810	3.7	4,418	95.9	189	4.1
Murder	69	55	79.7	14	20.3	6	54.5	5	45.5
Manslaughter	54	50	92.6	4	7.4	0	--	0	--
Kidnapping/Hostage Taking	56	45	80.4	11	19.6	3	60.0	2	40.0
Sexual Abuse	486	429	88.3	57	11.7	19	100.0	0	0.0
Assault	676	601	88.9	75	11.1	18	85.7	3	14.3
Robbery	1,052	1,022	97.1	30	2.9	29	96.7	1	3.3
Arson	60	53	88.3	7	11.7	3	100.0	0	0.0
Drugs - Trafficking	24,306	23,368	96.1	938	3.9	1,761	96.7	60	3.3
Drugs - Communication Facility	355	352	99.2	3	0.8	41	100.0	0	0.0
Drugs - Simple Possession	515	503	97.7	12	2.3	65	100.0	0	0.0
Firearms	8,250	7,641	92.6	609	7.4	387	89.8	44	10.2
Burglary/B&E	45	44	97.8	1	2.2	0	--	0	--
Auto Theft	60	57	95.0	3	5.0	2	100.0	0	0.0
Larceny	1,683	1,636	97.2	47	2.8	105	100.0	0	0.0
Fraud	7,471	7,082	94.8	389	5.2	583	96.0	24	4.0
Embezzlement	495	483	97.6	12	2.4	33	100.0	0	0.0
Forgery/Counterfeiting	1,018	1,001	98.3	17	1.7	63	100.0	0	0.0
Bribery	219	210	95.9	9	4.1	27	100.0	0	0.0
Tax	588	532	90.5	56	9.5	37	97.4	1	2.6
Money Laundering	893	844	94.5	49	5.5	164	96.5	6	3.5
Racketeering/Extortion	740	682	92.2	58	7.8	175	93.1	13	6.9
Gambling/Lottery	127	123	96.9	4	3.1	40	97.6	1	2.4
Civil Rights	70	59	84.3	11	15.7	2	66.7	1	33.3
Immigration	21,429	21,270	99.3	159	0.7	505	99.0	5	1.0
Pornography/Prostitution	1,657	1,592	96.1	65	3.9	147	94.8	8	5.2
Prison Offenses	371	363	97.8	8	2.2	20	100.0	0	0.0
Administration of Justice Offenses	1,039	984	94.7	55	5.3	69	89.6	8	10.4
Environmental/Wildlife	204	195	95.6	9	4.4	9	100.0	0	0.0
National Defense	54	49	90.7	5	9.3	3	75.0	1	25.0
Antitrust	24	23	95.8	1	4.2	4	100.0	0	0.0
Food & Drug	76	73	96.1	3	3.9	3	100.0	0	0.0
Other Miscellaneous Offenses	2,284	2,195	96.1	89	3.9	95	94.1	6	5.9

Of the 76,478 guideline cases, 52 cases were excluded due to one or both of the following reasons: missing primary offense category (50) or missing mode of conviction (51).

Of the 4,607 guideline cases from the Second Circuit, no case was excluded.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 4
TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%
TOTAL	75,657	65,376	86.4	1,978	2.6	2,707	3.6	5,596	7.4
Murder	69	68	98.6	1	1.4	0	0.0	0	0.0
Manslaughter	54	49	90.7	2	3.7	0	0.0	3	5.6
Kidnapping/Hostage Taking	56	56	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	484	462	95.5	11	2.3	8	1.7	3	0.6
Assault	667	548	82.2	28	4.2	22	3.3	69	10.3
Robbery	1,051	1,002	95.3	22	2.1	8	0.8	19	1.8
Arson	60	57	95.0	1	1.7	0	0.0	2	3.3
Drugs - Trafficking	24,282	22,939	94.5	521	2.1	376	1.5	446	1.8
Drugs - Communication Facility	354	281	79.4	8	2.3	28	7.9	37	10.5
Drugs - Simple Possession	457	178	38.9	3	0.7	18	3.9	258	56.5
Firearms	8,235	7,577	92.0	182	2.2	224	2.7	252	3.1
Burglary/B&E	45	36	80.0	4	8.9	5	11.1	0	0.0
Auto Theft	60	49	81.7	2	3.3	4	6.7	5	8.3
Larceny	1,570	608	38.7	70	4.5	216	13.8	676	43.1
Fraud	7,445	5,082	68.3	491	6.6	706	9.5	1,166	15.7
Embezzlement	491	195	39.7	58	11.8	69	14.1	169	34.4
Forgery/Counterfeiting	1,015	646	63.6	64	6.3	146	14.4	159	15.7
Bribery	219	155	70.8	10	4.6	29	13.2	25	11.4
Tax	585	295	50.4	49	8.4	123	21.0	118	20.2
Money Laundering	889	660	74.2	31	3.5	72	8.1	126	14.2
Racketeering/Extortion	738	648	87.8	22	3.0	27	3.7	41	5.6
Gambling/Lottery	127	39	30.7	8	6.3	45	35.4	35	27.6
Civil Rights	70	43	61.4	4	5.7	10	14.3	13	18.6
Immigration	21,404	20,419	95.4	241	1.1	196	0.9	548	2.6
Pornography/Prostitution	1,656	1,604	96.9	20	1.2	16	1.0	16	1.0
Prison Offenses	370	337	91.1	10	2.7	9	2.4	14	3.8
Administration of Justice Offenses	1,016	606	59.6	41	4.0	105	10.3	264	26.0
Environmental/Wildlife	188	30	16.0	5	2.7	27	14.4	126	67.0
National Defense	53	41	77.4	4	7.5	4	7.5	4	7.5
Antitrust	21	8	38.1	3	14.3	6	28.6	4	19.0
Food & Drug	66	16	24.2	6	9.1	12	18.2	32	48.5
Other Miscellaneous Offenses	1,860	642	34.5	56	3.0	196	10.5	966	51.9

Of the 76,478 guideline cases, 821 cases were excluded due to one or more of the following reasons: missing sentencing information (102), missing primary offense category (50), or cases in which the defendant received no imprisonment or probation (718).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 5

**TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008**

Second Circuit

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		N	%	N	%	N	%	N	%
TOTAL	4,567	3,688	80.8	158	3.5	245	5.4	476	10.4
Murder	11	11	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	0	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	5	5	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	19	17	89.5	1	5.3	0	0.0	1	5.3
Assault	20	18	90.0	1	5.0	0	0.0	1	5.0
Robbery	30	29	96.7	0	0.0	0	0.0	1	3.3
Arson	3	3	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	1,820	1,673	91.9	52	2.9	46	2.5	49	2.7
Drugs - Communication Facility	41	33	80.5	0	0.0	4	9.8	4	9.8
Drugs - Simple Possession	59	13	22.0	0	0.0	3	5.1	43	72.9
Firearms	431	396	91.9	14	3.2	5	1.2	16	3.7
Burglary/B&E	0	0	--	0	--	0	--	0	--
Auto Theft	2	1	50.0	0	0.0	0	0.0	1	50.0
Larceny	103	25	24.3	5	4.9	30	29.1	43	41.7
Fraud	606	358	59.1	44	7.3	66	10.9	138	22.8
Embezzlement	32	8	25.0	5	15.6	6	18.8	13	40.6
Forgery/Counterfeiting	63	33	52.4	10	15.9	12	19.0	8	12.7
Bribery	27	14	51.9	1	3.7	4	14.8	8	29.6
Tax	38	11	28.9	3	7.9	11	28.9	13	34.2
Money Laundering	169	134	79.3	3	1.8	11	6.5	21	12.4
Racketeering/Extortion	188	172	91.5	4	2.1	3	1.6	9	4.8
Gambling/Lottery	41	12	29.3	2	4.9	13	31.7	14	34.1
Civil Rights	3	2	66.7	0	0.0	0	0.0	1	33.3
Immigration	507	467	92.1	3	0.6	3	0.6	34	6.7
Pornography/Prostitution	155	152	98.1	1	0.6	2	1.3	0	0.0
Prison Offenses	20	18	90.0	1	5.0	0	0.0	1	5.0
Administration of Justice Offenses	76	39	51.3	6	7.9	13	17.1	18	23.7
Environmental/Wildlife	8	3	37.5	0	0.0	0	0.0	5	62.5
National Defense	4	3	75.0	0	0.0	0	0.0	1	25.0
Antitrust	4	0	0.0	0	0.0	1	25.0	3	75.0
Food & Drug	3	1	33.3	0	0.0	1	33.3	1	33.3
Other Miscellaneous Offenses	79	37	46.8	2	2.5	11	13.9	29	36.7

Of the 4,607 guideline cases from the Second Circuit, 40 cases were excluded due to one of the following reasons: missing sentencing information (1) or cases in which the defendant received no imprisonment or probation (39).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 6

**INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES
BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008**

PRIMARY OFFENSE	TOTAL	National				Second Circuit			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
		N	%	N	%	N	%	N	%
TOTAL	14,464	9,400	65.0	5,064	35.0	387	50.0	387	50.0
Fraud	2,462	1,257	51.1	1,205	48.9	56	38.9	88	61.1
Larceny	980	195	19.9	785	80.1	11	15.7	59	84.3
Immigration	7,263	6,687	92.1	576	7.9	229	86.4	36	13.6
Embezzlement	257	66	25.7	191	74.3	3	17.6	14	82.4
Drugs - Trafficking	594	287	48.3	307	51.7	17	37.8	28	62.2
Drugs - Simple Possession	342	103	30.1	239	69.9	11	20.0	44	80.0
Firearms	304	134	44.1	170	55.9	9	64.3	5	35.7
Forgery/Counterfeiting	331	116	35.0	215	65.0	11	50.0	11	50.0
Other Miscellaneous Offenses	1,931	555	28.7	1,376	71.3	40	28.2	102	71.8

Of the 76,478 guideline cases, 62,014 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (62,010), missing sentencing information (102) or missing primary offense category (50).

Of the 4,607 guideline cases from the Second Circuit, 3,833 cases were excluded due to one or both of the following reasons: defendant ineligible for non-prison alternatives (3,833) or missing sentencing information (1).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 7

**AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008**

PRIMARY OFFENSE	National			Second Circuit		
	Mean Months	Median Months	Number	Mean Months	Median Months	Number
TOTAL	56.9	33.0	66,104	58.4	37.0	3,647
Murder	221.5	210.0	69	254.2	240.0	11
Manslaughter	48.5	40.0	51	--	--	0
Kidnapping/Hostage Taking	205.3	180.0	56	230.8	240.0	5
Sexual Abuse	95.0	66.0	469	70.7	48.0	17
Assault	44.3	33.0	568	31.0	21.0	17
Robbery	82.7	65.0	1,018	82.4	60.0	27
Arson	81.1	60.0	58	44.0	60.0	3
Drugs - Trafficking	83.2	60.0	23,279	70.3	55.0	1,665
Drugs - Communication Facility	43.2	48.0	282	33.4	38.5	28
Drugs - Simple Possession	18.9	6.0	167	11.4	4.8	11
Firearms	89.2	60.0	7,709	79.6	48.0	399
Burglary/B&E	20.6	18.0	40	--	--	0
Auto Theft	55.5	24.0	51	--	--	1
Larceny	18.8	13.0	663	22.6	16.5	28
Fraud	28.6	18.0	5,375	28.8	18.0	377
Embezzlement	14.6	12.0	245	12.8	12.0	11
Forgery/Counterfeiting	22.2	18.0	695	14.5	12.0	41
Bribery	26.6	18.0	154	17.5	12.0	15
Tax	24.5	18.0	341	14.1	14.5	14
Money Laundering	42.9	30.0	675	29.7	24.0	134
Racketeering/Extortion	91.6	60.0	668	84.5	60.0	175
Gambling/Lottery	12.1	9.0	47	7.5	7.0	14
Civil Rights	56.8	30.0	47	--	--	2
Immigration	20.2	14.0	20,007	21.1	13.0	397
Pornography/Prostitution	122.2	78.0	1,621	83.1	60.0	152
Prison Offenses	17.8	15.0	343	9.7	10.0	18
Administration of Justice Offenses	25.6	15.0	628	16.8	13.0	41
Environmental/Wildlife	12.8	6.0	35	17.3	18.0	3
National Defense	62.5	30.0	45	266.7	300.0	3
Antitrust	11.9	6.0	11	--	--	0
Food & Drug	9.7	6.0	20	--	--	1
Other Miscellaneous Offenses	17.5	9.0	667	20.8	13.0	37

Of the 76,478 guideline cases, 10,374 cases were excluded for one or more of the following reasons: zero months prison ordered (9,550), missing primary offense category (50) or missing or indeterminable sentencing information (824).

Of the 4,607 guideline cases from the Second Circuit, 960 cases were excluded due to one of the following reasons: zero prison months ordered (919) or missing or indeterminable sentencing information (41).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 8

**COMPARISON OF SENTENCE IMPOSED AND POSITION
RELATIVE TO THE GUIDELINE RANGE
Fiscal Year 2008**

	National		Second Circuit	
	N	%	N	%
TOTAL CASES¹	74,493	100.0	4,547	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	44,263	59.4	2,063	45.4
CASES SENTENCED ABOVE GUIDELINE RANGE	1,195	1.5	35	0.8
DEPARTURE ABOVE GUIDELINE RANGE	473	0.6	13	0.3
Upward Departure From Guideline Range ²	326	0.4	7	0.2
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	147	0.2	6	0.1
OTHERWISE ABOVE GUIDELINE RANGE	722	0.9	22	0.5
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	622	0.8	17	0.4
All Remaining Cases Above Guideline Range ⁵	100	0.1	5	0.1
GOVERNMENT SPONSORED BELOW RANGE⁶	19,063	25.6	1,170	25.7
§5K1.1 Substantial Assistance Departure	10,048	13.5	997	21.9
§5K3.1 Early Disposition Program Departure	5,894	7.9	1	0.0
Other Government Sponsored Below Range	3,121	4.2	172	3.8
NON-GOVERNMENT SPONSORED BELOW RANGE	9,972	13.4	1,279	28.2
DEPARTURE BELOW GUIDELINE RANGE	2,459	3.3	331	7.3
Downward Departure From Guideline Range ²	1,544	2.1	181	4.0
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	915	1.2	150	3.3
OTHERWISE BELOW GUIDELINE RANGE	7,513	10.1	948	20.9
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	6,678	9.0	890	19.6
All Remaining Cases Below Guideline Range ⁵	835	1.1	58	1.3

¹This table reflects the 76,478 cases sentenced nationally in Fiscal Year 2008, 4,607 of which were from the Second Circuit. Of these, 1,985 cases nationally and 60 cases from the Second Circuit were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range.

²All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

³All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

⁴All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

⁵All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

⁶Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 9

**SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT
Fiscal Year 2008**

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	74,493	44,263	59.4	326	0.4	147	0.2	622	0.8	100	0.1
D.C. CIRCUIT	406	154	37.9	1	0.2	0	0.0	4	1.0	1	0.2
District of Columbia	406	154	37.9	1	0.2	0	0.0	4	1.0	1	0.2
FIRST CIRCUIT	1,735	1,091	62.9	8	0.5	7	0.4	7	0.4	3	0.2
Maine	210	130	61.9	2	1.0	0	0.0	1	0.5	0	0.0
Massachusetts	466	237	50.9	3	0.6	1	0.2	4	0.9	1	0.2
New Hampshire	223	108	48.4	2	0.9	2	0.9	1	0.4	0	0.0
Puerto Rico	748	563	75.3	1	0.1	3	0.4	1	0.1	2	0.3
Rhode Island	88	53	60.2	0	0.0	1	1.1	0	0.0	0	0.0
SECOND CIRCUIT	4,547	2,063	45.4	7	0.2	6	0.1	17	0.4	5	0.1
Connecticut	419	175	41.8	1	0.2	0	0.0	4	1.0	0	0.0
New York											
Eastern	1,242	479	38.6	2	0.2	1	0.1	7	0.6	2	0.2
Northern	488	260	53.3	1	0.2	1	0.2	1	0.2	0	0.0
Southern	1,580	702	44.4	0	0.0	1	0.1	3	0.2	2	0.1
Western	655	381	58.2	1	0.2	3	0.5	2	0.3	1	0.2
Vermont	163	66	40.5	2	1.2	0	0.0	0	0.0	0	0.0
THIRD CIRCUIT	3,152	1,690	53.6	19	0.6	4	0.1	19	0.6	3	0.1
Delaware	145	72	49.7	0	0.0	0	0.0	2	1.4	0	0.0
New Jersey	990	510	51.5	3	0.3	1	0.1	6	0.6	2	0.2
Pennsylvania											
Eastern	750	325	43.3	3	0.4	1	0.1	7	0.9	0	0.0
Middle	647	363	56.1	11	1.7	0	0.0	0	0.0	1	0.2
Western	539	366	67.9	2	0.4	2	0.4	1	0.2	0	0.0
Virgin Islands	81	54	66.7	0	0.0	0	0.0	3	3.7	0	0.0
FOURTH CIRCUIT	6,462	4,286	66.3	52	0.8	36	0.6	52	0.8	9	0.1
Maryland	731	362	49.5	6	0.8	2	0.3	6	0.8	2	0.3
North Carolina											
Eastern	673	378	56.2	25	3.7	19	2.8	9	1.3	1	0.1
Middle	355	272	76.6	1	0.3	0	0.0	2	0.6	0	0.0
Western	800	515	64.4	5	0.6	3	0.4	4	0.5	1	0.1
South Carolina	1,205	797	66.1	2	0.2	0	0.0	4	0.3	0	0.0
Virginia											
Eastern	1,562	1,176	75.3	11	0.7	9	0.6	16	1.0	4	0.3
Western	397	262	66.0	2	0.5	1	0.3	4	1.0	1	0.3
West Virginia											
Northern	468	338	72.2	0	0.0	1	0.2	4	0.9	0	0.0
Southern	271	186	68.6	0	0.0	1	0.4	3	1.1	0	0.0

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	10,048	13.5	5,894	7.9	3,121	4.2	1,544	2.1	915	1.2	6,678	9.0	835	1.1
D.C. CIRCUIT	140	34.5	0	0.0	33	8.1	11	2.7	22	5.4	30	7.4	10	2.5
District of Columbia	140	34.5	0	0.0	33	8.1	11	2.7	22	5.4	30	7.4	10	2.5
FIRST CIRCUIT	183	10.5	17	1.0	76	4.4	49	2.8	34	2.0	233	13.4	27	1.6
Maine	49	23.3	0	0.0	0	0.0	4	1.9	1	0.5	22	10.5	1	0.5
Massachusetts	39	8.4	1	0.2	34	7.3	24	5.2	14	3.0	102	21.9	6	1.3
New Hampshire	48	21.5	0	0.0	7	3.1	7	3.1	6	2.7	39	17.5	3	1.3
Puerto Rico	41	5.5	16	2.1	33	4.4	12	1.6	11	1.5	49	6.6	16	2.1
Rhode Island	6	6.8	0	0.0	2	2.3	2	2.3	2	2.3	21	23.9	1	1.1
SECOND CIRCUIT	997	21.9	1	0.0	172	3.8	181	4.0	150	3.3	890	19.6	58	1.3
Connecticut	76	18.1	0	0.0	17	4.1	36	8.6	37	8.8	70	16.7	3	0.7
New York														
Eastern	290	23.3	1	0.1	89	7.2	47	3.8	54	4.3	250	20.1	20	1.6
Northern	133	27.3	0	0.0	5	1.0	33	6.8	7	1.4	46	9.4	1	0.2
Southern	283	17.9	0	0.0	36	2.3	39	2.5	40	2.5	444	28.1	30	1.9
Western	174	26.6	0	0.0	20	3.1	5	0.8	4	0.6	60	9.2	4	0.6
Vermont	41	25.2	0	0.0	5	3.1	21	12.9	8	4.9	20	12.3	0	0.0
THIRD CIRCUIT	764	24.2	1	0.0	50	1.6	55	1.7	52	1.6	436	13.8	59	1.9
Delaware	8	5.5	0	0.0	2	1.4	3	2.1	0	0.0	31	21.4	27	18.6
New Jersey	281	28.4	1	0.1	10	1.0	12	1.2	6	0.6	152	15.4	6	0.6
Pennsylvania														
Eastern	232	30.9	0	0.0	15	2.0	7	0.9	24	3.2	125	16.7	11	1.5
Middle	177	27.4	0	0.0	16	2.5	11	1.7	3	0.5	60	9.3	5	0.8
Western	58	10.8	0	0.0	5	0.9	22	4.1	18	3.3	59	10.9	6	1.1
Virgin Islands	8	9.9	0	0.0	2	2.5	0	0.0	1	1.2	9	11.1	4	4.9
FOURTH CIRCUIT	1,135	17.6	0	0.0	93	1.4	111	1.7	52	0.8	563	8.7	73	1.1
Maryland	173	23.7	0	0.0	29	4.0	10	1.4	19	2.6	108	14.8	14	1.9
North Carolina														
Eastern	191	28.4	0	0.0	3	0.4	5	0.7	5	0.7	34	5.1	3	0.4
Middle	56	15.8	0	0.0	0	0.0	2	0.6	0	0.0	22	6.2	0	0.0
Western	208	26.0	0	0.0	8	1.0	10	1.3	6	0.8	29	3.6	11	1.4
South Carolina	256	21.2	0	0.0	19	1.6	23	1.9	0	0.0	86	7.1	18	1.5
Virginia														
Eastern	101	6.5	0	0.0	17	1.1	51	3.3	18	1.2	134	8.6	25	1.6
Western	82	20.7	0	0.0	4	1.0	4	1.0	0	0.0	35	8.8	2	0.5
West Virginia														
Northern	40	8.5	0	0.0	13	2.8	4	0.9	2	0.4	66	14.1	0	0.0
Southern	28	10.3	0	0.0	0	0.0	2	0.7	2	0.7	49	18.1	0	0.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
FIFTH CIRCUIT	17,396	12,254	70.4	88	0.5	33	0.2	173	1.0	28	0.2
Louisiana											
Eastern	479	367	76.6	5	1.0	4	0.8	9	1.9	1	0.2
Middle	204	143	70.1	2	1.0	0	0.0	1	0.5	0	0.0
Western	335	254	75.8	1	0.3	0	0.0	8	2.4	0	0.0
Mississippi											
Northern	177	109	61.6	0	0.0	0	0.0	4	2.3	0	0.0
Southern	422	341	80.8	1	0.2	2	0.5	4	0.9	3	0.7
Texas											
Eastern	1,012	735	72.6	8	0.8	0	0.0	4	0.4	3	0.3
Northern	1,081	736	68.1	22	2.0	12	1.1	35	3.2	2	0.2
Southern	6,511	3,754	57.7	29	0.4	3	0.0	24	0.4	11	0.2
Western	7,175	5,815	81.0	20	0.3	12	0.2	84	1.2	8	0.1
SIXTH CIRCUIT	5,359	2,911	54.3	22	0.4	10	0.2	34	0.6	9	0.2
Kentucky											
Eastern	681	313	46.0	0	0.0	1	0.1	5	0.7	0	0.0
Western	488	349	71.5	3	0.6	0	0.0	1	0.2	0	0.0
Michigan											
Eastern	736	403	54.8	3	0.4	0	0.0	4	0.5	2	0.3
Western	453	274	60.5	5	1.1	3	0.7	9	2.0	3	0.7
Ohio											
Northern	905	496	54.8	1	0.1	1	0.1	6	0.7	1	0.1
Southern	621	250	40.3	1	0.2	2	0.3	1	0.2	1	0.2
Tennessee											
Eastern	586	358	61.1	2	0.3	1	0.2	3	0.5	2	0.3
Middle	287	161	56.1	2	0.7	1	0.3	0	0.0	0	0.0
Western	602	307	51.0	5	0.8	1	0.2	5	0.8	0	0.0
SEVENTH CIRCUIT	3,041	1,683	55.3	3	0.1	9	0.3	34	1.1	5	0.2
Illinois											
Central	387	215	55.6	0	0.0	0	0.0	0	0.0	1	0.3
Northern	919	425	46.2	1	0.1	4	0.4	3	0.3	2	0.2
Southern	310	239	77.1	1	0.3	3	1.0	5	1.6	1	0.3
Indiana											
Northern	452	296	65.5	0	0.0	2	0.4	3	0.7	1	0.2
Southern	293	168	57.3	1	0.3	0	0.0	8	2.7	0	0.0
Wisconsin											
Eastern	490	192	39.2	0	0.0	0	0.0	13	2.7	0	0.0
Western	190	148	77.9	0	0.0	0	0.0	2	1.1	0	0.0
EIGHTH CIRCUIT	5,407	3,476	64.3	32	0.6	11	0.2	48	0.9	8	0.1
Arkansas											
Eastern	432	302	69.9	2	0.5	2	0.5	1	0.2	2	0.5
Western	206	146	70.9	1	0.5	0	0.0	2	1.0	0	0.0
Iowa											
Northern	590	429	72.7	10	1.7	3	0.5	5	0.8	2	0.3
Southern	470	253	53.8	2	0.4	1	0.2	5	1.1	1	0.2
Minnesota	575	272	47.3	1	0.2	0	0.0	1	0.2	0	0.0
Missouri											
Eastern	1,010	696	68.9	0	0.0	0	0.0	6	0.6	0	0.0
Western	778	497	63.9	2	0.3	3	0.4	10	1.3	1	0.1
Nebraska	641	429	66.9	10	1.6	0	0.0	12	1.9	2	0.3
North Dakota	251	122	48.6	0	0.0	1	0.4	1	0.4	0	0.0
South Dakota	454	330	72.7	4	0.9	1	0.2	5	1.1	0	0.0

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE DEPARTURE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
FIFTH CIRCUIT	1,299	7.5	1,254	7.2	1,021	5.9	418	2.4	39	0.2	655	3.8	134	0.8
Louisiana														
Eastern	53	11.1	0	0.0	7	1.5	6	1.3	4	0.8	23	4.8	0	0.0
Middle	44	21.6	0	0.0	1	0.5	4	2.0	1	0.5	7	3.4	1	0.5
Western	30	9.0	0	0.0	0	0.0	0	0.0	5	1.5	24	7.2	13	3.9
Mississippi														
Northern	40	22.6	0	0.0	14	7.9	2	1.1	0	0.0	5	2.8	3	1.7
Southern	36	8.5	0	0.0	1	0.2	2	0.5	3	0.7	17	4.0	12	2.8
Texas														
Eastern	104	10.3	0	0.0	91	9.0	28	2.8	6	0.6	27	2.7	6	0.6
Northern	173	16.0	0	0.0	23	2.1	7	0.6	3	0.3	62	5.7	6	0.6
Southern	371	5.7	1,095	16.8	802	12.3	225	3.5	1	0.0	184	2.8	12	0.2
Western	448	6.2	159	2.2	82	1.1	144	2.0	16	0.2	306	4.3	81	1.1
SIXTH CIRCUIT	1,375	25.7	1	0.0	133	2.5	98	1.8	105	2.0	584	10.9	77	1.4
Kentucky														
Eastern	290	42.6	0	0.0	6	0.9	7	1.0	1	0.1	51	7.5	7	1.0
Western	62	12.7	0	0.0	23	4.7	9	1.8	0	0.0	38	7.8	3	0.6
Michigan														
Eastern	154	20.9	0	0.0	12	1.6	11	1.5	14	1.9	125	17.0	8	1.1
Western	86	19.0	0	0.0	0	0.0	9	2.0	8	1.8	53	11.7	3	0.7
Ohio														
Northern	209	23.1	0	0.0	27	3.0	14	1.5	22	2.4	106	11.7	22	2.4
Southern	195	31.4	0	0.0	30	4.8	22	3.5	39	6.3	65	10.5	15	2.4
Tennessee														
Eastern	149	25.4	0	0.0	4	0.7	8	1.4	3	0.5	47	8.0	9	1.5
Middle	64	22.3	0	0.0	11	3.8	6	2.1	10	3.5	30	10.5	2	0.7
Western	166	27.6	1	0.2	20	3.3	12	2.0	8	1.3	69	11.5	8	1.3
SEVENTH CIRCUIT	559	18.4	1	0.0	78	2.6	44	1.4	98	3.2	455	15.0	72	2.4
Illinois														
Central	93	24.0	1	0.3	5	1.3	7	1.8	3	0.8	58	15.0	4	1.0
Northern	176	19.2	0	0.0	21	2.3	23	2.5	81	8.8	155	16.9	28	3.0
Southern	31	10.0	0	0.0	2	0.6	1	0.3	5	1.6	17	5.5	5	1.6
Indiana														
Northern	95	21.0	0	0.0	5	1.1	0	0.0	4	0.9	26	5.8	20	4.4
Southern	50	17.1	0	0.0	15	5.1	5	1.7	2	0.7	44	15.0	0	0.0
Wisconsin														
Eastern	102	20.8	0	0.0	30	6.1	4	0.8	0	0.0	134	27.3	15	3.1
Western	12	6.3	0	0.0	0	0.0	4	2.1	3	1.6	21	11.1	0	0.0
EIGHTH CIRCUIT	814	15.1	53	1.0	144	2.7	73	1.4	76	1.4	613	11.3	59	1.1
Arkansas														
Eastern	62	14.4	0	0.0	6	1.4	10	2.3	11	2.5	24	5.6	10	2.3
Western	33	16.0	0	0.0	0	0.0	2	1.0	0	0.0	21	10.2	1	0.5
Iowa														
Northern	57	9.7	31	5.3	1	0.2	0	0.0	3	0.5	46	7.8	3	0.5
Southern	101	21.5	0	0.0	25	5.3	6	1.3	3	0.6	62	13.2	11	2.3
Minnesota	164	28.5	0	0.0	8	1.4	11	1.9	23	4.0	92	16.0	3	0.5
Missouri														
Eastern	132	13.1	0	0.0	22	2.2	18	1.8	12	1.2	114	11.3	10	1.0
Western	136	17.5	0	0.0	21	2.7	8	1.0	11	1.4	87	11.2	2	0.3
Nebraska	24	3.7	19	3.0	44	6.9	7	1.1	6	0.9	79	12.3	9	1.4
North Dakota	93	37.1	3	1.2	3	1.2	3	1.2	1	0.4	23	9.2	1	0.4
South Dakota	12	2.6	0	0.0	14	3.1	8	1.8	6	1.3	65	14.3	9	2.0

CIRCUIT District	TOTAL	SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
NINTH CIRCUIT	14,074	6,282	44.6	68	0.5	17	0.1	70	0.5	21	0.1
Alaska	164	84	51.2	0	0.0	0	0.0	3	1.8	2	1.2
Arizona	3,724	1,204	32.3	41	1.1	3	0.1	9	0.2	3	0.1
California											
Central	1,615	605	37.5	3	0.2	4	0.2	12	0.7	4	0.2
Eastern	884	425	48.1	0	0.0	4	0.5	6	0.7	2	0.2
Northern	704	371	52.7	0	0.0	2	0.3	5	0.7	0	0.0
Southern	3,757	1,889	50.3	10	0.3	2	0.1	6	0.2	3	0.1
Guam	68	51	75.0	1	1.5	0	0.0	0	0.0	1	1.5
Hawaii	278	119	42.8	0	0.0	0	0.0	1	0.4	1	0.4
Idaho	265	125	47.2	0	0.0	0	0.0	3	1.1	0	0.0
Montana	417	298	71.5	5	1.2	0	0.0	8	1.9	3	0.7
Nevada	429	292	68.1	1	0.2	1	0.2	2	0.5	0	0.0
Northern Mariana Islands	18	13	72.2	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	631	296	46.9	2	0.3	0	0.0	3	0.5	2	0.3
Washington											
Eastern	337	132	39.2	1	0.3	1	0.3	8	2.4	0	0.0
Western	783	378	48.3	4	0.5	0	0.0	4	0.5	0	0.0
TENTH CIRCUIT	5,876	3,581	60.9	15	0.3	4	0.1	70	1.2	5	0.1
Colorado	473	285	60.3	2	0.4	0	0.0	2	0.4	2	0.4
Kansas	664	403	60.7	2	0.3	3	0.5	44	6.6	1	0.2
New Mexico	2,901	1,743	60.1	4	0.1	0	0.0	5	0.2	2	0.1
Oklahoma											
Eastern	89	83	93.3	0	0.0	0	0.0	0	0.0	0	0.0
Northern	213	165	77.5	2	0.9	0	0.0	0	0.0	0	0.0
Western	339	241	71.1	1	0.3	0	0.0	10	2.9	0	0.0
Utah	859	441	51.3	4	0.5	0	0.0	7	0.8	0	0.0
Wyoming	338	220	65.1	0	0.0	1	0.3	2	0.6	0	0.0
ELEVENTH CIRCUIT	7,038	4,792	68.1	11	0.2	10	0.1	94	1.3	3	0.0
Alabama											
Middle	266	174	65.4	0	0.0	0	0.0	5	1.9	0	0.0
Northern	478	304	63.6	0	0.0	3	0.6	13	2.7	0	0.0
Southern	556	364	65.5	2	0.4	0	0.0	6	1.1	0	0.0
Florida											
Middle	1,664	1,027	61.7	1	0.1	1	0.1	9	0.5	1	0.1
Northern	338	239	70.7	1	0.3	0	0.0	5	1.5	0	0.0
Southern	2,162	1,584	73.3	1	0.0	2	0.1	23	1.1	1	0.0
Georgia											
Middle	352	284	80.7	0	0.0	2	0.6	6	1.7	0	0.0
Northern	706	409	57.9	2	0.3	2	0.3	7	1.0	0	0.0
Southern	516	407	78.9	4	0.8	0	0.0	20	3.9	1	0.2

CIRCUIT District	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
NINTH CIRCUIT	1,304	9.3	3,964	28.2	750	5.3	262	1.9	141	1.0	1,002	7.1	193	1.4
Alaska	29	17.7	0	0.0	21	12.8	2	1.2	7	4.3	14	8.5	2	1.2
Arizona	183	4.9	1,931	51.9	118	3.2	48	1.3	26	0.7	139	3.7	19	0.5
California														
Central	212	13.1	430	26.6	109	6.7	31	1.9	31	1.9	124	7.7	50	3.1
Eastern	133	15.0	183	20.7	33	3.7	16	1.8	11	1.2	62	7.0	9	1.0
Northern	84	11.9	49	7.0	78	11.1	13	1.8	13	1.8	69	9.8	20	2.8
Southern	154	4.1	1,232	32.8	119	3.2	103	2.7	14	0.4	159	4.2	66	1.8
Guam	6	8.8	0	0.0	0	0.0	1	1.5	0	0.0	6	8.8	2	2.9
Hawaii	86	30.9	0	0.0	3	1.1	3	1.1	2	0.7	59	21.2	4	1.4
Idaho	70	26.4	33	12.5	4	1.5	1	0.4	3	1.1	23	8.7	3	1.1
Montana	54	12.9	0	0.0	0	0.0	4	1.0	3	0.7	36	8.6	6	1.4
Nevada	36	8.4	0	0.0	44	10.3	3	0.7	3	0.7	43	10.0	4	0.9
Northern Mariana Islands	4	22.2	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0
Oregon	117	18.5	23	3.6	66	10.5	15	2.4	9	1.4	95	15.1	3	0.5
Washington														
Eastern	29	8.6	68	20.2	39	11.6	1	0.3	2	0.6	54	16.0	2	0.6
Western	107	13.7	15	1.9	116	14.8	21	2.7	16	2.0	119	15.2	3	0.4
TENTH CIRCUIT	405	6.9	572	9.7	495	8.4	150	2.6	75	1.3	477	8.1	27	0.5
Colorado	76	16.1	0	0.0	21	4.4	19	4.0	5	1.1	57	12.1	4	0.8
Kansas	106	16.0	0	0.0	41	6.2	3	0.5	3	0.5	57	8.6	1	0.2
New Mexico	91	3.1	392	13.5	367	12.7	93	3.2	41	1.4	155	5.3	8	0.3
Oklahoma														
Eastern	1	1.1	0	0.0	0	0.0	0	0.0	0	0.0	5	5.6	0	0.0
Northern	29	13.6	0	0.0	1	0.5	1	0.5	0	0.0	15	7.0	0	0.0
Western	21	6.2	0	0.0	3	0.9	4	1.2	1	0.3	56	16.5	2	0.6
Utah	52	6.1	180	21.0	48	5.6	25	2.9	3	0.3	90	10.5	9	1.0
Wyoming	29	8.6	0	0.0	14	4.1	5	1.5	22	6.5	42	12.4	3	0.9
ELEVENTH CIRCUIT	1,073	15.2	30	0.4	76	1.1	92	1.3	71	1.0	740	10.5	46	0.7
Alabama														
Middle	61	22.9	0	0.0	2	0.8	3	1.1	0	0.0	20	7.5	1	0.4
Northern	95	19.9	0	0.0	2	0.4	5	1.0	2	0.4	52	10.9	2	0.4
Southern	124	22.3	0	0.0	4	0.7	2	0.4	2	0.4	50	9.0	2	0.4
Florida														
Middle	328	19.7	30	1.8	22	1.3	21	1.3	15	0.9	203	12.2	6	0.4
Northern	66	19.5	0	0.0	0	0.0	4	1.2	1	0.3	20	5.9	2	0.6
Southern	198	9.2	0	0.0	19	0.9	23	1.1	33	1.5	257	11.9	21	1.0
Georgia														
Middle	39	11.1	0	0.0	5	1.4	2	0.6	0	0.0	13	3.7	1	0.3
Northern	119	16.9	0	0.0	16	2.3	25	3.5	18	2.5	98	13.9	10	1.4
Southern	43	8.3	0	0.0	6	1.2	7	1.4	0	0.0	27	5.2	1	0.2

Of the 76,478 cases, 1,985 were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Districts for which information needed to determine the relationship between the sentence imposed and the guideline range is missing in five percent missing in five percent or more of the cases received included: Western Oklahoma (39.0%), Eastern Virginia (23.1%), Middle Georgia (20.5%), Central California (14.6%), Northern New York (8.4%), Middle Tennessee (6.8%), Southern Mississippi (6.8%), Western Washington (6.6%), and Maryland (6.6%).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 10

**GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008**

National

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	74,452	44,240	59.4	326	0.4	147	0.2	622	0.8	100	0.1
Robbery	1,050	671	63.9	15	1.4	13	1.2	13	1.2	2	0.2
Drugs - Trafficking	24,213	12,484	51.6	43	0.2	17	0.1	66	0.3	21	0.1
Drugs - Simple Possession	413	370	89.6	1	0.2	2	0.5	5	1.2	3	0.7
Firearms	8,212	5,516	67.2	58	0.7	31	0.4	105	1.3	17	0.2
Larceny	1,548	1,159	74.9	3	0.2	4	0.3	25	1.6	5	0.3
Fraud	7,310	4,527	61.9	26	0.4	9	0.1	72	1.0	14	0.2
Embezzlement	483	334	69.2	0	0.0	1	0.2	2	0.4	0	0.0
Forgery/Counterfeiting	1,006	697	69.3	2	0.2	4	0.4	15	1.5	3	0.3
Immigration	21,072	13,151	62.4	97	0.5	35	0.2	196	0.9	21	0.1
Other Miscellaneous Offenses	9,145	5,331	58.3	81	0.9	31	0.3	123	1.3	14	0.2

Second Circuit

PRIMARY OFFENSE	TOTAL	WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/BOOKER		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
		N	%	N	%	N	%	N	%	N	%
TOTAL	4,547	2,063	45.4	7	0.2	6	0.1	17	0.4	5	0.1
Robbery	30	13	43.3	0	0.0	0	0.0	2	6.7	0	0.0
Drugs - Trafficking	1,819	626	34.4	2	0.1	0	0.0	3	0.2	2	0.1
Drugs - Simple Possession	57	55	96.5	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	431	242	56.1	3	0.7	2	0.5	2	0.5	1	0.2
Larceny	101	63	62.4	0	0.0	0	0.0	1	1.0	1	1.0
Fraud	602	261	43.4	0	0.0	0	0.0	5	0.8	0	0.0
Embezzlement	33	20	60.6	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	63	35	55.6	0	0.0	0	0.0	0	0.0	0	0.0
Immigration	501	371	74.1	0	0.0	1	0.2	0	0.0	0	0.0
Other Miscellaneous Offenses	910	377	41.4	2	0.2	3	0.3	4	0.4	1	0.1

National

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	10,038	13.5	5,891	7.9	3,117	4.2	1,544	2.1	915	1.2	6,678	9.0	834	1.1
Robbery	116	11.0	0	0.0	32	3.0	30	2.9	32	3.0	118	11.2	8	0.8
Drugs - Trafficking	6,270	25.9	1,184	4.9	884	3.7	457	1.9	322	1.3	2,274	9.4	191	0.8
Drugs - Simple Possession	10	2.4	0	0.0	11	2.7	0	0.0	1	0.2	6	1.5	4	1.0
Firearms	929	11.3	33	0.4	253	3.1	169	2.1	119	1.4	883	10.8	99	1.2
Larceny	97	6.3	6	0.4	39	2.5	23	1.5	15	1.0	134	8.7	38	2.5
Fraud	1,064	14.6	42	0.6	250	3.4	145	2.0	133	1.8	887	12.1	141	1.9
Embezzlement	28	5.8	0	0.0	14	2.9	14	2.9	9	1.9	71	14.7	10	2.1
Forgery/Counterfeiting	105	10.4	0	0.0	18	1.8	29	2.9	8	0.8	109	10.8	16	1.6
Immigration	344	1.6	4,593	21.8	1,072	5.1	457	2.2	93	0.4	842	4.0	171	0.8
Other Miscellaneous Offenses	1,075	11.8	33	0.4	544	5.9	220	2.4	183	2.0	1,354	14.8	156	1.7

Second Circuit

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/BOOKER		BELOW RANGE W/BOOKER		REMAINING BELOW RANGE	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	997	21.9	1	0.0	172	3.8	181	4.0	150	3.3	890	19.6	58	1.3
Robbery	3	10.0	0	0.0	0	0.0	0	0.0	2	6.7	9	30.0	1	3.3
Drugs - Trafficking	632	34.7	1	0.1	47	2.6	72	4.0	70	3.8	348	19.1	16	0.9
Drugs - Simple Possession	1	1.8	0	0.0	0	0.0	0	0.0	0	0.0	1	1.8	0	0.0
Firearms	58	13.5	0	0.0	10	2.3	22	5.1	15	3.5	72	16.7	4	0.9
Larceny	3	3.0	0	0.0	1	1.0	3	3.0	3	3.0	20	19.8	6	5.9
Fraud	127	21.1	0	0.0	22	3.7	25	4.2	18	3.0	134	22.3	10	1.7
Embezzlement	3	9.1	0	0.0	0	0.0	2	6.1	2	6.1	5	15.2	1	3.0
Forgery/Counterfeiting	6	9.5	0	0.0	2	3.2	7	11.1	0	0.0	13	20.6	0	0.0
Immigration	13	2.6	0	0.0	7	1.4	14	2.8	10	2.0	80	16.0	5	1.0
Other Miscellaneous Offenses	151	16.6	0	0.0	83	9.1	36	4.0	30	3.3	208	22.9	15	1.6

Of the 76,478 guideline cases, 2,026 cases were excluded due to one or both of the following reasons: missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (1,985) or missing primary offense (50).

Of the 4,607 guideline cases from the Second Circuit, 60 cases were excluded due to missing information needed to determine the relationship between the sentence imposed and the guideline range.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.