

Overview of Federal Criminal Cases
Fiscal Year 2008



UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

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December 2009

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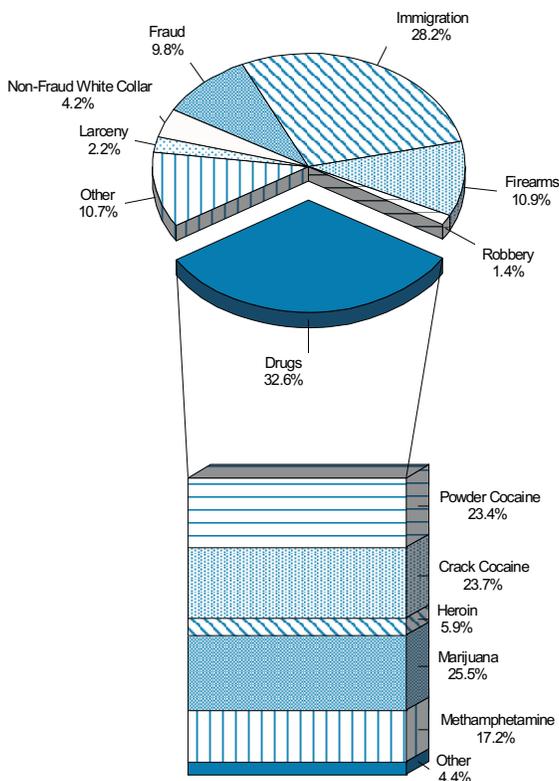
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Glenn R. Schmitt
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The United States Sentencing Commission¹ received information on 76,478 new federal criminal cases in which the offender was sentenced in fiscal year 2008.² Among these cases, 76,279 involved an individual defendant and 199 involved a corporation or other “organizational” defendant. This publication provides a brief overview of those cases involving individual or organizational offenders.

The Case Load at a Glance

The vast majority of the cases reported to the Commission involve an individual defendant. The number of cases of this type has increased every year except one over the last decade.³ In fiscal year 2008, the increase was 4.7 percent from the number of such cases in fiscal year 2007. Cases involving drugs, immigration, firearms, or fraud continue to be the most common federal crimes⁴ and make up the vast majority of the federal criminal cases reported to the Commission. In fiscal year 2008, these four case types accounted for 81.5 percent of those cases.

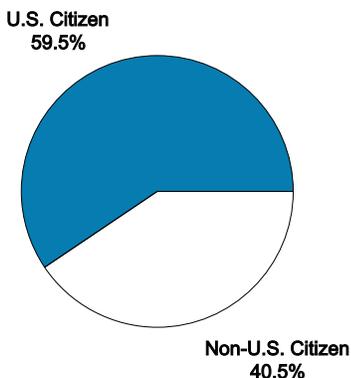
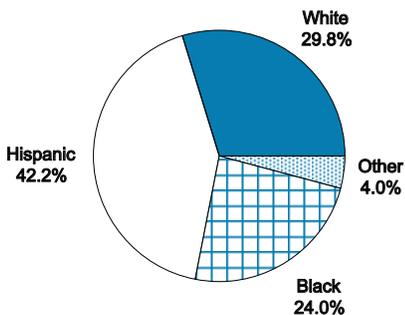
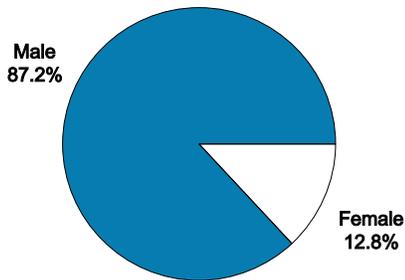


For definitions of these categories, see Appendix A of the 2008 *Sourcebook of Federal Sentencing Statistics*.

Immigration cases continue to be the fastest growing segment of cases in the federal system. In fiscal year 2008, there were 21,429 immigration cases reported to the Commission, an increase of more than 3,800 cases from the prior fiscal year. In the last ten fiscal years, this type of case has grown more than 165 percent, while the total federal caseload has grown by 50 percent. As a result, the portion of the annual caseload attributable to immigration cases increased from 15.9 percent in fiscal year 1998 to 28.2 percent in fiscal year 2008.

Even with the increase in immigration cases, drug cases remained the most common type of case in the federal system, with 25,176 cases in fiscal year 2008.

Although the number of drug cases has remained relatively constant for the last five years, the portion



of the criminal caseload attributable to those cases decreased by 4.8 percentage points, to 32.6 percent in fiscal year 2008 compared with 37.4 percent in fiscal year 2003. Firearm cases made up 10.9 percent of the caseload in fiscal year 2008, an increase of 1.1 percentage points over the five-year period. The proportion of fraud cases in the federal system also was stable, at 9.8 percent in fiscal year 2008 as compared with 10.8 percent in fiscal year 2003.

Offender Characteristics

Most persons convicted of federal crimes are United States citizens. In fiscal year 2008, 59.5 percent of all offenders were Americans. However, the percentage of non-citizen offenders has risen steadily over the last ten years, up 5.3 percentage points from fiscal year 2003 and up 8.6 percentage points from fiscal year 1998. Most non-citizens convicted of crimes in federal court were convicted of an immigration offense (63.5%). The next most common type of offense committed by non-citizens was drug trafficking (23.8%).

The vast majority of criminal offenders are men, and their portion of the total offender population has remained constant for more than a decade. In fiscal year 2008, 87.2 percent of all offenders were men, compared to 86.9 percent in fiscal year 2003 and 84.9 percent in fiscal year 1998. The most common crime among female offenders was drug crime (31.9% of all women offenders). Embezzlement was the only crime where female offenders outnumber male offenders.

Overall, there were more Hispanic offenders in fiscal year 2008 than offenders of any other racial or ethnic background. Hispanic offenders represented 42.2 percent of all offenders, while 29.8 percent of offenders were White and 24.0 percent were Black. The racial composition of offenders varied widely across offense type, however, with the majority (84.6%) of all Hispanic offenders sentenced for either drug or immigration crimes. As discussed in greater detail below, among drug offenders, the racial background varied depending on the type of drug involved in the crime.

Many offenders do not have a basic education. Almost half of the federal offenders sentenced in fiscal year 2008 (49.4%) had not completed high school. Only 5.4 percent of offenders had completed college.

The average age of federal offenders in fiscal year 2008 was 35 years. This average has remained relatively unchanged for more than 15 years.

Case Disposition

The vast majority of convicted defendants plead guilty. In fiscal year 2008, more than 96 percent of all offenders did so, a rate that has been largely the same for ten years. When offenders pled guilty, 39.4 percent received a sentence below the applicable sentencing guideline range, either at the request of the government or at their own request. In these cases, a sentence below the applicable guideline range was requested by the government 67.2 percent of the time, usually because the defendant had provided substantial assistance to the government or had agreed to have his or her case handled as part of an early disposition program.

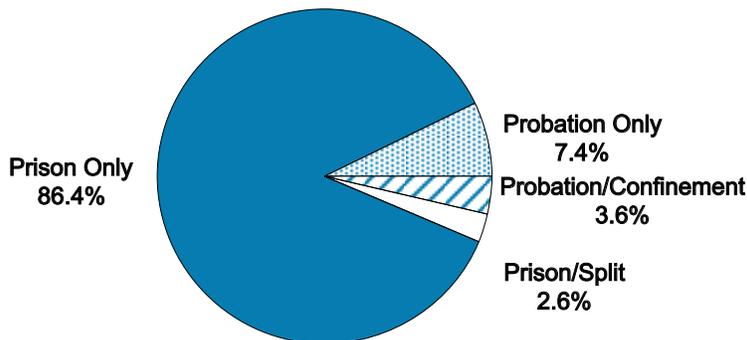
When offenders did not plead guilty, 26.8 percent received a sentence below the guideline range. In those cases, the government requested a below-range sentence in less than seven percent of the cases.

Most federal offenders convicted of a felony or Class A misdemeanor receive a sentence of incarceration. In fiscal year 2008, only 7.4 percent of offenders received a sentence of probation (*i.e.*, where no type of confinement was imposed), a rate that has decreased steadily from a high of 13.0 percent in 1997. Another 3.6 percent were sentenced to periods of both probation and some type of confinement, and 2.6 percent were sentenced to a combination of imprisonment and community confinement, such as in a half-way house or through home confinement.

Monetary fines were imposed as punishment in 10.6 percent of all cases in which an individual was sentenced in fiscal 2008, either as the sole punishment or in combination with some other sanction. Fines were most commonly imposed in antitrust cases

The rate of offenders who plead guilty generally has remained steady for the past ten years.

Fewer than eight percent of offenders received a sentence of probation in fiscal year 2008.



(79.2%), environmental cases (65.2%), drug possession cases (57.2%), and food and drug cases (51.4%). Fines were imposed on 68.1 percent of organizational offenders.

Courts ordered that restitution be paid to the victims of the crime in 13.4 percent of all cases in which the offender was an individual. Restitution was most commonly ordered in cases involving embezzlement (81.6%), burglary (75.5%), robbery (75.0%), and arson (63.3%). Restitution was ordered in 32.8 percent of the organizational offender cases sentenced in fiscal year 2008.

Virtually all offenders who were sentenced to imprisonment also were sentenced to serve a period of supervised release following the completion of their confinement. In fiscal year 2008, more than 95 percent of offenders sentenced to incarceration also were sentenced to serve a period of supervised release. The average length of supervised release imposed was 41 months.

The Most Common Crimes

Drugs

Offenses involving illegal drugs accounted for 32.6 percent of the federal criminal caseload, greater than any other type of crime.

DRUG TYPE	TOTAL	U.S. CITIZEN		NON-U.S. CITIZEN	
		Number	Percent	Number	Percent
TOTAL	25,316	18,154	71.7	7,162	28.3
Powder Cocaine	5,883	3,750	63.7	2,133	36.3
Crack Cocaine	6,168	5,955	96.5	213	3.5
Heroin	1,474	873	59.2	601	40.8
Marijuana	6,329	3,553	56.1	2,776	43.9
Methamphetamine	4,344	3,105	71.5	1,239	28.5
Other	1,118	918	82.1	200	17.9

Drug crime⁵ has been the most common offense prosecuted in the federal courts throughout the entire period during which the Commission has released sentencing data (since fiscal year 1988). In fiscal year 2008, 25,176 offenders were convicted of a drug crime, the majority involving the manufacture, sale, or transportation of the drug.⁶ Offenses involving cocaine, in either

powder form or base (“crack”) form, were the most common drug crimes, accounting for 47.1 percent of all such crime. These cases were almost evenly split between offenses involving crack cocaine and offenses involving powder cocaine. Marijuana cases were the next most common, representing 25.5 percent of all drug cases. These cases were more prevalent than either crack cocaine or powder cocaine cases if the cocaine cases are viewed separately. Cases involving methamphetamine represented 17.2 percent of all drug cases. Heroin cases were the least common of the major types of drug crime, accounting for 5.9 percent of all drug cases.

Most drug offenders are citizens, but the percentage of drug offenders who are citizens varies widely depending on the type of drug involved in the offense. For example, in fiscal year 2008 96.5 percent of crack cocaine offenders were citizens while only 59.2 percent of heroin offenders were citizens. Non-citizens were most often convicted of an offense involving marijuana. In fiscal year 2008, 43.9 percent of all non-citizen drug offenders committed an offense involving marijuana.

The race of drug offenders varied even more widely. More than 40 percent of all drug offenders convicted in federal court were Hispanic, with Black offenders accounting for 31.4 percent of all drug offenders and White offenders accounting for 25.3 percent of

DRUG TYPE	TOTAL	WHITE		BLACK		HISPANIC		OTHER	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	25,273	6,395	25.3	7,929	31.4	10,163	40.2	786	3.1
Powder Cocaine	5,871	973	16.6	1,771	30.2	3,068	52.3	59	1.0
Crack Cocaine	6,154	637	10.4	4,911	79.8	542	8.8	64	1.0
Heroin	1,472	236	16.0	363	24.7	851	57.8	22	1.5
Marijuana	6,329	1,731	27.4	483	7.6	3,889	61.4	226	3.6
Methamphetamine	4,332	2,271	52.4	126	2.9	1,704	39.3	231	5.3
Other	1,115	547	49.1	275	24.7	109	9.8	184	16.5

those offenders. Yet, in cases involving methamphetamine, 52.4 percent of the offenders were White. In crack cocaine cases, 79.8 percent of those convicted were Black. These differences result from several factors, including where the drug was produced, who

imported it into the United States, and the location of the users of the type of drug (*i.e.*, whether in an urban or rural area). Weapons were involved in the drug crimes prosecuted in federal courts slightly more than 17 percent of the time. Again, as with the race of the offenders, the rate of weapon involvement varied depending on the type of drug involved, ranging from 27.4 percent of crack cocaine cases to 7.3 percent of marijuana cases.

Average prison sentences in fiscal year 2008 for crack cocaine offenses were 114.5 months.

The average prison sentence for drug offenders can be affected by a number of factors including statutory mandatory minimum punishments, the quantity of the drugs involved in the case, the prior criminal history of the offender, and whether the offender assisted the government in the investigation of his or her crime and other crimes. Because of these factors, comparisons of the average sentence length in the different types of drug cases should be made cautiously. In fiscal year 2008, the average punishment for drug crimes ranged from a high of 114.5 months for crack cocaine offenders (with a median sentence of 97 months) to 36.8 months for marijuana offenders (with a median sentence of 24 months).

An offender's role in the offense also can affect the guideline range that judges consider when imposing punishment. In fiscal year 2008, in 20.7 percent of all drug cases the court determined that the applicable guideline range should be lowered because of the offender's minor or minimal role in the offense. In marijuana cases, this adjustment to the guideline range occurred 41.8 percent of the time. In contrast, courts found such an adjustment warranted in only 5.2 percent of crack cocaine cases. In another 5.7 percent of drug cases, the court determined that the applicable guideline range should be increased because of the offender's role in the offense as an organizer, leader, manager, or supervisor.

Crack and powder cocaine offenders received mandatory minimum sentences at virtually the same rate.

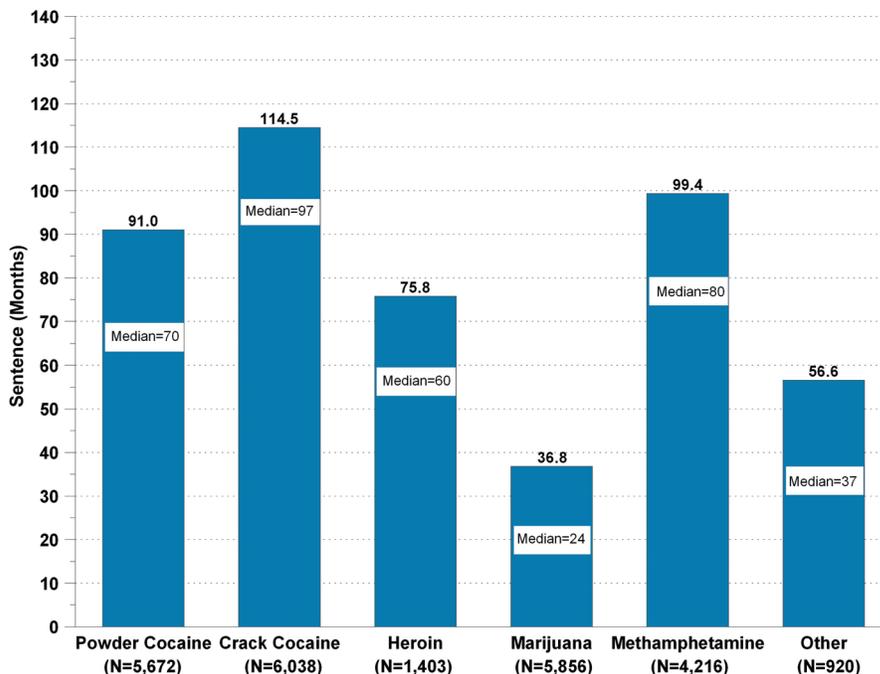
The average prison sentence for crack offenders in fiscal year 2008 was 114.5 months, a reduction of 14.5 months from the prior fiscal year, due largely to an amendment to the sentencing guidelines that lowered the punishment for crack cocaine offenses.⁷ For powder cocaine offenders, the average sentence was 91 months, an increase of five months from the average in fiscal year 2007.

Mandatory minimum sentences enacted by Congress play a large part in determining the sentence for drug offenders, either outright or through the impact of these statutes on the structure of the guidelines. In fiscal year 2008, crack cocaine offenders and powder cocaine offenders were convicted of an offense that provided for the imposition of a mandatory minimum sentence at virtually the same rate, just over 79 percent.⁸ However, almost 60

percent of powder cocaine offenders obtained relief from a mandatory minimum sentence through the “safety valve” exception to such sentences, which authorizes courts to sentence an offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.⁹ In contrast, a little more than 22 percent of crack cocaine offenders qualified for this relief.

The differing criminal histories of these two categories of offenders played a large role in this result. Only offenders assigned to Criminal History Category I (offenders with a criminal history score of zero or one) are eligible to receive the benefit of the safety valve. In fiscal year 2008, 59.9 percent of powder cocaine offenders were assigned to CHC I while only 22.6 percent of crack cocaine offenders were assigned to that category.¹⁰

As discussed above, the offender's prior criminal history is also a key factor in determining the guideline range. In fiscal year 2008, crack cocaine offenders had, on average, a more serious criminal history than any other category of drug offender, including powder cocaine offenders. Under the guidelines, offenders are assigned to one of six criminal history categories (CHCs) based on their prior criminal history.¹¹ Powder cocaine offenders were assigned to the most serious criminal history category (CHC VI) in 8.5 percent



of powder cocaine cases, whereas crack cocaine offenders were assigned to that category in 25.4 percent of all crack cocaine cases. In contrast, in heroin cases, 59.3 percent of offenders were assigned to CHC I and 12.4 percent assigned to CHC VI. In methamphetamine cases, 50.3 percent of offenders were assigned to CHC I and 9.5 percent to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 69.7 percent assigned to CHC I and 3.5 percent to CHC VI.¹²

Most immigration offenses involve either unlawful entry into the United States or remaining in the United States without authority.

Immigration

Immigration offenses¹³ are the second largest category of federal crimes, accounting for 28.2 percent of the federal criminal caseload for fiscal year 2008. More than 70 percent of these offenses involved either the unlawful reentry into the United States or remaining in the United States without authority. Another 18.4 percent involved alien smuggling activities.

The offenders who commit immigration offenses are very different from most other offenders. For example, while citizens committed the majority of federal crimes (59.5%) in fiscal year 2008, non-citizens committed most immigration offenses. In fiscal year 2008, 90.1 percent of immigration offenders were non-citizens.¹⁴ Hispanics accounted for only 27.5 percent of non-immigration crimes, but 84.2 percent of immigration offenders were Hispanic. Immigration offenders also had significantly less education than other offenders, a fact that is common among non-citizen offenders generally. Eighty percent of immigration offenders had less than a high school education, compared with less than 40 percent of offenders convicted of other crimes. And while men committed most (85.4%) federal crimes not involving an immigration offense, men committed an even higher proportion of immigration crimes (92.7% of those cases).

Nearly half of firearms cases (3,941) in fiscal year 2008 involved a convicted felon in illegal possession of a firearm.

Firearms and other weapons

Firearm crimes¹⁵ made up 10.9 percent of the total federal criminal convictions for fiscal year 2008. Of the 8,250 firearms cases reported to the Commission, 19 percent (1,593) involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime.¹⁶ Almost 48 percent of the cases (3,941) involved a convicted felon who illegally possessed a firearm.¹⁷

Of all cases reported to the Commission in fiscal year 2008, a firearm or other dangerous weapon (e.g., knife) was involved in the offense in some way 9.1 percent of the time (6,413). In contrast, however, in drug cases a weapon was involved, on average, 17.2

percent of the time. Weapons were present most often in crack cocaine cases (27.4%) and least often in marijuana cases (7.3%).

Fraud

Crimes involving fraud, deceit, theft, embezzlement, insider trading, and other forms of deception accounted for the fourth largest portion (9.8%) of federal criminal cases in fiscal year 2008. The losses in these cases ranged from less than \$100 to more than \$400 million. More than half of the cases involved a loss of less than \$70,000, but 7.0 percent of these cases involved a loss of more than \$1.5 million. Identity theft crimes accounted for a relatively small number (773) of these cases in fiscal year 2008, but have increased significantly from the 218 such crimes reported in fiscal year 2003.

Organizational Cases

Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 199 organizations were sentenced for at least one federal criminal offense in fiscal year 2008. This number is a one-percent increase from the 197 cases reported in fiscal year 2007. The number of organizational defendants convicted continued to remain lower than in earlier years. For example, 296 organizational defendants were sentenced in fiscal year 2002, and 255 organizational defendants were sentenced in fiscal year 1999.

Ninety-one percent of the organizational offenders sentenced in fiscal year 2008 pled guilty to one or more charges. The most common crimes for which organizational defendants were convicted were fraud and environmental crimes. These defendants were sentenced to pay a fine to the government in 135 cases. In 28 cases, the defendant was sentenced to pay restitution to the victims of the crime as well as a fine. In 37 cases, the organization was sentenced to pay restitution only. No fine or restitution was imposed in 26 cases, although other sanctions were imposed in some of these cases. Additionally, of the 199 offenders, 130 received some term of probation and 12 were ordered to make improvements in compliance or ethics procedures.

The number of identity theft cases has continued to rise during the past five fiscal years.

For More Information

More information on these cases can be found in the Commission's *2008 Annual Report*, *2008 Sourcebook of Federal Sentencing Statistics*, and *Guideline Application Frequencies for Fiscal Year 2008*. The *Annual Report* and *Sourcebook* are available in hard copy format through the Commission and all three documents, together with other reports of sentencing data, are available in electronic format at the Commission's website at www.ussc.gov.

Endnotes

1. The United States Sentencing Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues.
2. The Commission receives information from the courts on cases in which the defendant has been convicted of a felony or Class A misdemeanor.
3. See Louis Reedt and Jessica Widico-Stroop, United States Sentencing Commission, *Changing Face of Federal Criminal Sentencing 1* (2009). In FY 2004, the number of cases reported to the Commission fell by 0.3 percent.
4. These four crime types have been the most common for the last eight fiscal years.
5. Drug crime means, in general, a case in which at least one of the statutes of conviction recorded by the Commission was an offense under The Controlled Substances Act (title 21) of the United States Code.
6. This number also includes persons convicted of one or more crimes in addition to a drug crime.
7. See Amendments 706 and 711 to the sentencing guidelines. These amendments became effective on November 1, 2007.
8. Some of these offenders received a sentence that was lower than the applicable statutory mandatory minimum punishment due to the operation of 18 U.S.C. §§ 3553(e) or (f). Subsection (e) authorizes courts to impose a sentence that is below a statutory mandatory minimum when the offender has provided substantial assistance to the government in investigating or prosecuting another offender. Subsection (f) requires courts to impose a sentence on a non-violent offender with no or limited criminal background without regard to a statutory mandatory minimum punishment when certain other conditions are met.
9. See 18 U.S.C. § 3553(f).
10. Some of the difference in the criminal history categories of powder and crack cocaine offenders may be attributable to the fact that the criminal records of non-citizen offenders may be incomplete. Among powder cocaine offenders, 36.3 percent were non-citizens, while only 3.5 percent of crack cocaine offenders were non-citizens.
11. The criminal history score establishes the criminal history category (CHC) for an offender. See USSG, Chapter 4. The CHC along with the final offense level determine the sentencing range under the guidelines.
12. For more information on sentencing issues involving cocaine drug cases, see United States Sentencing Commission, *Report to the Congress: Cocaine and Federal Sentencing Policy* (2007).
13. Immigration offense means, in general, a case in which at least one of the statutes of conviction involved trafficking in passports or entry documents; failure to surrender naturalization certificates; fraudulently acquiring passports; alien smuggling; unlawful presence in the United States; or fraudulently acquiring entry documents.
14. Non-citizens primarily were convicted of immigration crimes. Non-citizens were the offenders in only 20 percent of federal crimes other than immigration crimes.

Endnotes

15. Firearm crimes include unlawful possession or transportation of firearms or ammunition; unlawful trafficking in explosives; possession of guns or explosives in a federal facility, a school, or on an aircraft; the use of fire or explosives to commit a felony; and the use of firearms or ammunition during a crime.

16. *I.e.*, a case in which 18 U.S.C. § 924(c) was the statute of conviction.

17. *I.e.*, a case in which 18 U.S.C. § 922(g) was the statute of conviction.

18. Identity theft crimes are those fraud cases in which one or more of the offenses of conviction was 18 U.S.C. § 1028(a)(7) or 18 U.S.C. §1028A.