

Table 58**GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2005**

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	206	100.0	37.9
5K2.0 (Departures)	41	19.9	31.7
2D1.1 (Drug Trafficking)	9	4.4	33.3
2B1.1 (Larceny, Embezzlement, and Theft)	5	2.4	20.0
2K2.1 (Firearms)	5	2.4	0.0
2L1.2 (Unlawfully Entering or Remaining in the United States)	5	2.4	40.0
3E1.1 (Acceptance of Responsibility)	5	2.4	60.0
5K1.1 (Substantial Assistance to Authorities)	5	2.4	20.0
1B1.3 (Relevant Conduct)	4	1.9	0.0
3B1.1 (Aggravating Role)	4	1.9	75.0
3B1.2 (Mitigating Role)	4	1.9	0.0
5H1.4 (Physical Condition)	4	1.9	50.0
5H1.6 (Family Ties and Responsibilities)	4	1.9	0.0
5K2.13 (Diminished Capacity)	4	1.9	75.0
3C1.1 (Obstruction of Justice)	3	1.5	100.0
4A1.3 (Adequacy of Criminal History)	3	1.5	0.0
4B1.1 (Career Offender)	3	1.5	33.3
4B1.2 (Definitions for Career Offender)	3	1.5	66.7
5H1.11 (Military, Civic, Charitable, or Public Service)	3	1.5	100.0
18 U.S.C. §3553(a) Factors	3	1.5	33.3
Constitutional Issues	38	18.4	31.6
Other Guidelines	27	13.1	40.7
Other Non-guideline Issues	24	11.7	58.3

¹Based on 6,208 "Post-Booker" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 6,208 of these cases which cited 13,440 issues. 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.