

Overview of Statutory Mandatory Minimum Sentencing¹

The Commission has identified at least 171 individual mandatory minimum provisions currently in the federal criminal statutes.² In the Commission's fiscal year 2008 datafile, there were 31,239 counts of conviction that carried a mandatory minimum term of imprisonment.³ Because an offender may be sentenced for multiple counts of conviction that carry mandatory minimum penalties, these 31,239 counts of conviction exceed the total number of offenders (21,023 offenders, as reported below) who were convicted of statutes carrying such penalties.

Of these 31,239 counts of conviction, the overwhelming majority (90.7%) were for drug offenses (24,789 counts of conviction, or 79.4%) and firearms offenses (3,527 counts of conviction, or 11.3%). Most of the 171 mandatory minimum provisions rarely, if ever, were used in fiscal year 2008, with 68 such provisions not used at all.

A. Data on Mandatory Minimum Sentencing

In preparation for this analysis, the Commission reviewed data from its fiscal year 2008 datafile. For that fiscal year, the Commission received documentation for 76,478 cases.⁴ Of these 76,478 cases, the Commission received sufficient documentation in 73,497 cases to determine whether the offender was convicted of a statute carrying a mandatory minimum penalty. Of these 73,497 cases, offenders in 21,023 cases (28.6%) were convicted of a statute carrying a mandatory minimum penalty.⁵ Of these 21,023 offenders, 3,078 (14.6%) received a statutory mandatory minimum sentence that was required to be consecutive to any other sentence imposed.⁶

¹ "Mandatory minimums," "mandatory minimum sentencing provisions," and related terms refer to statutory provisions requiring the imposition of a sentence of at least a specified minimum term of imprisonment when criteria set forth in the relevant statute have been met.

² See Appendix A, listing current mandatory minimum sentencing provisions as defined in footnote 1 of this report.

³ See Appendix B.

⁴ The Commission is required to receive five sentencing documents from the district courts: the charging document, written plea agreement (if any); the presentence investigation report; the judgment and commitment order; and the statement of reasons form. See 28 U.S.C. § 994(w)(1). For fiscal year 2008, the Commission received 99.1% of all such documents. See USSC FY2008 Sourcebook, Table 1. The Commission also is required to analyze these documents and to compile data on federal sentencing trends and practices. See 28 U.S.C. §§ 994(w)(3), 995.

⁵ For purposes of this analysis, an offender was considered to have been convicted under a statute carrying a mandatory minimum penalty if the court indicated the presence of a mandatory minimum on the statement of reasons form or other sentencing documentation received by the Commission conclusively established that one or more of the statutes of conviction carried such a penalty.

⁶ See, e.g., 18 U.S.C. § 924(c)(requiring mandatory consecutive terms of imprisonment for certain firearms offenses).

1. Demographics

Table 1 provides demographic data for all cases in the Commission’s fiscal year 2008 datafile, as well as for those cases in which an offender was convicted of a statute carrying a mandatory minimum penalty.

As Table 1 indicates, of offenders sentenced in fiscal year 2008 for which the relevant sentencing documentation was received to determine race or ethnicity,⁷ non-white offenders comprised 74.0 percent of offenders convicted of a statute carrying a statutory mandatory minimum penalty. This is slightly higher than the percentage of nonwhite offenders in the Commission’s overall fiscal year 2008 datafile, which was 70.2 percent. Black offenders are the only racial/ethnic group that comprised a greater percentage of offenders convicted of a statute carrying a mandatory minimum penalty (35.7%) than their percentage in the overall fiscal year 2008 offender population (24.0%).

**Table 1: Demographic Characteristics for All Cases and Mandatory Minimum Cases
Fiscal Year 2008**

	All Cases		All Mandatory Minimum Cases	
	N	%	N	%
Race/Ethnicity				
White	20,770	29.8	5,439	26.0
Black	16,767	24.0	7,466	35.7
Hispanic	29,471	42.2	7,492	35.8
Other	2,806	4.0	534	2.5
Total	69,814	100.0	20,931	100.0
Citizenship				
U.S. Citizen	43,521	59.5	15,632	74.5
Non-Citizen	29,658	40.5	5,345	25.5
Total	73,179	100.0	20,977	100.0
Gender				
Male	63,515	87.2	18,947	90.2
Female	9,302	12.8	2,052	9.8
Total	72,817	100.0	20,999	100.0

This table excludes cases missing information for the variables required for analysis.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

⁷ As indicated in Table 1, the Commission did not receive sufficient demographic information for all 76,748 cases in its overall fiscal year 2008 datafile or all 21,023 offenders convicted of an offense carrying a statutory mandatory minimum penalty.

For purposes of assessing the demographic impact of mandatory minimums, however, it is helpful to remove the federal immigration caseload from the analysis. Immigration offenders, 84.3 percent of whom in fiscal year 2008 were Hispanic, comprise a relatively large percentage of offenders in the overall federal caseload (19,333 out of the 70,786 cases or 27.3%), but comprise a relatively small percentage of the offenders convicted of a statute carrying a mandatory minimum sentence (1.2%). Therefore, inclusion of these offenders may skew the analysis of the impact of mandatory minimums by race and ethnicity. Table 2, accordingly, presents demographic data excluding immigration cases.

Excluding immigration cases, both Hispanic offenders and black offenders comprised a greater percentage of non-immigration offenders convicted of a statute carrying a mandatory minimum penalty than their percentage in the overall fiscal year 2008 offender population. As Table 2 indicates, Hispanic offenders convicted of a non-immigration statute carrying a mandatory minimum had a higher differential in this regard, comprising 35.4 percent of offenders convicted of a non-immigration statute carrying a mandatory minimum penalty but only 27.9 percent of the overall non-immigration offender population. Black offenders comprised 35.9 percent of offenders convicted of a non-immigration statute carrying a mandatory minimum penalty but only 31.5 percent of the overall non-immigration offender population.

**Table 2: Demographic Characteristics for Non-Immigration Cases and Mandatory Minimum, Non-Immigration Cases
Fiscal Year 2008**

	Non-Immigration Cases		Mandatory Minimum Non-Immigration Cases	
	N	%	N	%
Race/Ethnicity				
White	18,574	35.7	5,405	26.1
Black	16,394	31.5	7,436	35.9
Hispanic	14,545	27.9	7,320	35.4
Other	2,579	4.9	531	2.6
Total	52,092	100.0	20,692	100.0
Citizenship				
U.S. Citizen	41,619	77.1	15,588	75.2
Non-Citizen	12,395	22.9	5,147	24.8
Total	54,014	100.0	20,735	100.0
Gender				
Male	46,079	85.3	18,739	90.3
Female	7,927	14.7	2,017	9.7
Total	54,006	100.0	20,756	100.0

This table excludes cases missing information for the variables required for analysis.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSC FY2008.

2. Trial Rates

In the Commission's fiscal year 2008 data file, there were 76,427 cases for which the Commission received sufficient documentation to determine whether an offender pled guilty or was convicted after a trial. In these 76,427 cases, there were 73,617 offenders (96.3%) who pled guilty and 2,810 offenders (3.7%) who were convicted after a trial.⁸ By comparison, of the 21,023 offenders convicted under a statute carrying a mandatory minimum penalty, 19,713 offenders (93.8%) pled guilty and 1,310 offenders (6.2%) were convicted after a trial.

⁸ See USSC FY2008 Sourcebook, Fig. C, which provides guilty plea and trial rates for fiscal years 2004-2008.

B. Mechanisms for Relief from Mandatory Minimum Sentences

Before discussing the use of mandatory minimums for different types of offenses, it is important to note that Congress has provided two mechanisms by which offenders may be sentenced without regard to the otherwise applicable statutory mandatory minimum provisions: 18 U.S.C. § 3553(e)⁹ and 18 U.S.C. § 3553(f).¹⁰ Section 3553(e), upon motion of the Government,¹¹ authorizes the court to impose “a sentence below a level established by statute as a minimum sentence so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense.” Section 3553(e) may be applied to any qualifying offender, without regard to the type of offense involved.

⁹ 18 U.S.C. § 3553(e) provides:

(e) Limited Authority To Impose a Sentence Below a Statutory Minimum.— Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant’s substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

¹⁰ 18 U.S.C. § 3553(f) provides:

(f) Limitation on Applicability of Statutory Minimums in Certain Cases.— Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

¹¹ After the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), a government motion is still required in order for 18 U.S.C. § 3553(e) to apply. *See, e.g., United States v. Rivera*, 170 Fed. App’x 209, 211 (2d Cir. 2006) (rejecting defendant’s argument that the government motion requirement be applied as advisory in light of *Booker*).

Section 3553(f), commonly referred to as the “safety valve,” provides an additional mechanism by which certain drug offenders¹² may be sentenced without regard to the otherwise applicable drug mandatory minimum provisions. In 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994,¹³ concluding that the “integrity and effectiveness of controlled substance mandatory minimums could in fact be strengthened if a limited ‘safety valve’ from operation of these penalties was created and made applicable to the least culpable offenders.” The Act created section 3553(f) to permit offenders “who are the least culpable participants in drug trafficking offenses, to receive strictly regulated reductions in prison sentences for mitigating factors” recognized in the federal sentencing guidelines.¹⁴

1. 18 U.S.C. § 3553(e): The Substantial Assistance Provision

Of the 21,023 offenders convicted under a statute carrying a mandatory minimum penalty, the Commission received sufficient sentencing documentation to determine whether the statutory substantial assistance provision applied in 19,628 cases. Of these 19,628 offenders, there were 3,831 (19.5%) offenders eligible to be sentenced without regard to the statutory mandatory minimum solely because a motion under 18 U.S.C. § 3553(e) was filed. Of these 3,831 eligible offenders, 2,714 offenders (13.8% of the 19,628 offenders) were sentenced without regard to and below the statutory mandatory minimum. The remaining 1,117 offenders (5.7% of the 19,628 offenders) received a sentence at or above the statutory mandatory minimum. Table 3 provides information regarding application of the substantial assistance provision per offense type.

¹² For purposes of 18 U.S.C. § 3553(f), the term “drug offenders” means offenders convicted under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. § 841, § 844, or § 846, respectively) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. § 960 or § 963, respectively).

¹³ Pub. L. No. 102–322 (1994).

¹⁴ See H. Rep. No. 103–460, 103rd Cong. 2nd Sess. (1994). As with the statutory substantial assistance provision, after *Booker* courts still are required to apply the statutory safety valve provision when its criteria are met. See, e.g., *United States v. Krumnow*, 476 F.3d 294, 297 (5th Cir. 2007) (a district court may sentence below a statutory minimum only if “(1) the Government makes a motion . . . asserting the defendant’s substantial assistance [18 U.S.C. 3553(e)]; or (2) the defendant meets the ‘safety valve’ criteria set forth in 18 U.S.C. § 3553(f)”) (citations omitted); *United States v. Barrera*, 562 F.3d 899, 902–04 (8th Cir. 2009) (defendant was not entitled to safety-valve relief from statutory minimum sentence when he did not meet the statutory requirements).

**Table 3: Application of Substantial Assistance Provision
(18 U.S.C. § 3553(e)) by Offense Type for Fiscal Year 2008**

Offenses	Total Number of Offenders¹⁵	Number of Offenders Convicted of Mandatory Minimums	Number of Offenders Eligible for Mandatory Minimum Relief Due to § 3553(e) (Substantial Assistance)	Number of Offenders Sentenced without regard to and below Mandatory Minimum Due to § 3553(e) (Substantial Assistance)
Drugs¹⁶	24,321	16,198 (66.6% of 24,321)	3,266 (20.2% of 16,198)	2,381 (14.7% of 16,198)
Immigration¹⁷	18,820	237 (1.3% of 18,820)	48 (20.3% of 237)	41 (17.3% of 237)
Fraud¹⁸	8,189	525 (6.4% of 8,189)	91 (17.3% of 525)	33 (6.3% of 525)
Firearms¹⁹	6,212	751 (12.1% of 6,212)	126 (16.8% of 751)	101 (13.4% of 751)
Criminal Sexual Abuse/Pornography/Prostitution²⁰	2,034	920 (45.2% of 2,034)	42 (4.6% of 920)	27 (2.9% of 920)
Other²¹	8,311	997 (12.0% of 8,311)	258 (25.9% of 997)	131 (13.1% of 997)
Total	67,887	19,628 (28.9% of 67,887)	3,831 (19.5% of 19,628)	2,714 (13.8% of 19,628)

¹⁵ Of the 76,748 cases sentenced in fiscal year 2008, 70,786 cases had sufficient sentencing documentation to permit classification of offenders by the type of offense. Of these 70,786 cases, 67,887 had sufficient sentencing documentation for the remaining analysis in this table.

¹⁶ Of the 70,786 cases referred to in footnote 15, *supra*, 25,337 (or 35.8%) were drug cases. Of those 25,337 cases, 24,321 cases had sufficient sentencing documentation to permit the remaining analysis in this table.

¹⁷ Of the 70,786 cases referred to in footnote 15, *supra*, 19,333 (or 27.3%) were immigration cases. Of those 19,333 cases, 18,820 cases had sufficient sentencing documentation to permit the remaining analysis in this table.

¹⁸ Of the 70,786 cases referred to in footnote 15, *supra*, 8,591 (or 12.1%) were fraud cases. Of those 8,591 cases, 8,189 cases had sufficient sentencing documentation to permit the remaining analysis in this table.

¹⁹ Of the 70,786 cases referred to in footnote 15, *supra*, 6,673 (or 9.4%) were firearms cases. Of those 6,673 cases, 6,212 cases had sufficient sentencing documentation to permit the remaining analysis in this table.

²⁰ Of the 70,786 cases referred to in footnote 15, *supra*, 2,087 (or 3.0%) were criminal sexual abuse/pornography/prostitution cases. Of those 2,087 cases, 2,034 cases had sufficient sentencing documentation to permit the remaining analysis in this table.

²¹ Of the 70,786 cases referred to in footnote 15, *supra*, 8,765 (or 12.4%) were categorized as “other.” Of those 8,765 cases, 8,311 cases had sufficient sentencing documentation to permit the remaining analysis in this table.

2. 18 U.S.C. § 3553(f): The Safety Valve Provision

Of the 25,337 drug offenders sentenced in fiscal year 2008, there were 24,321 offenders for which the Commission received sufficient information to determine whether the statutory safety valve provision at 18 U.S.C. § 3553(f) applied. Of those 24,321 drug offenders, there were 16,198 offenders convicted under a statute carrying a mandatory minimum penalty. As Table 4 indicates, of those 16,198 drug offenders, there were 4,112 (25.4%) offenders who were eligible to be sentenced without regard to the statutory mandatory minimum penalty because the statutory safety valve applied. Of these 4,112 offenders, there were 3,803 offenders (23.5% of the 16,198 offenders) for whom 18 U.S.C. § 3553(f) was the sole statutory mechanism by which they were sentenced without regard to and below the mandatory minimum penalty. The remaining 309 offenders (1.9% of the 16,198 offenders) received a sentence at or above the statutory mandatory minimum.

Table 4: Application of Safety Valve and Safety Valve/Substantial Assistance Provision for Drug Offenders

Total Number of Drug Offenders	Number of Drug Offenders Convicted of Mandatory Minimums	Numbers of Drug Offenders Eligible for Mandatory Minimum Relief Due to § 3553(f) (Safety Valve)	Number of Drug Offenders Sentenced Without Regard to and Below Mandatory Minimum Due to § 3553(f) (Safety Valve)	Number of Drug Offenders Eligible for Mandatory Minimum Relief Due to Both § 3553(e) (Substantial Assistance) & § 3553(f) (Safety Valve)	Number of Drug Offenders Sentenced Without Regard to and Below Mandatory Minimum Due to Both § 3553(e) (Substantial Assistance) & § 3553(f) (Safety Valve)
24,321 ²²	16,198 ²³ (66.6%)	4,112 (25.4% of 16,198)	3,803 (23.5% of 16,198)	1,669 (10.3% of 16,198)	1,634 (10.1% of 16,198)

As Table 4 also indicates, in some instances, a drug offender may receive the benefit of both the substantial assistance and safety valve statutory provisions. In the Commission's fiscal year 2008 datafile, there were 16,198 drug offenders for whom the Commission received sufficient sentencing documentation to determine whether both the substantial assistance provision under 18 U.S.C. § 3553(e) and the safety valve provision

²² Of the 25,337 drug offenders sentenced in fiscal year 2008, there were 24,321 offenders for which the Commission received sufficient information to determine whether the statutory safety valve provision at 18 U.S.C. § 3553(f) applied.

²³ Of the 16,933 drug offenders convicted of a statute carrying a mandatory minimum penalty in fiscal year 2008, sufficient sentencing documentation was received for 16,198 cases.

under 18 U.S.C. §3553(f) could have applied. Of these 16,198 drug offenders, there were 1,669 (10.3%) offenders who were eligible to be sentenced below the mandatory minimum because both the statutory substantial assistance and safety valve provisions applied. Of these 1,669 offenders, there were 1,634 drug offenders (10.1% of the 16,198 drug offenders) sentenced without regard to and below the mandatory minimum pursuant to these statutory provisions. The remaining 35 offenders (0.2% of the 16,198 drug offenders) received a sentence at or above the mandatory minimum sentence.

Table 4A provides a summary of the information contained in Tables 3 and 4 regarding the total number of drug offenders who were eligible to be sentenced, and who were sentenced, without regard to and below the statutory mandatory minimum because of the substantial assistance provision and the safety valve provision, either alone or in combination with one another. As shown in Table 4A, there were 9,047 drug offenders (55.9% of the 16,198 drug offenders) who were eligible to be sentenced without regard to and below the statutory mandatory minimum because of either or both of these provisions. Of those 9,047 offenders, 7,818 offenders (or 48.3% of the 16,198 drug offenders) were sentenced without regard to and below the statutory mandatory minimum.

Table 4A: Application of Safety Valve and Substantial Assistance Provisions for Drug Offenders

Total Number of Drug Offenders with Sufficient Sentencing Documentation	Number of Drug Offenders Convicted of Mandatory Minimums	Total Number of Drug Offenders Eligible for Mandatory Minimum Relief Due to Substantial Assistance and Safety Valve, Alone or in Combination with One Another	Total Number of Drug Offenders Sentenced without regard to and below Mandatory Minimum Due to Substantial Assistance and Safety Valve, Alone or in Combination with One Another
24,321	16,198 (66.6%)	9,047 (55.9% of 16,198)	7,818 (48.3% of 16,198)

C. Distribution of Mandatory Minimum Sentences by Offense Type

Table 3 provides information regarding distribution of mandatory minimum sentences by five major offense types. Of the 21,023 offenders convicted of a statute carrying a mandatory minimum penalty, the Commission received sufficient sentencing documentation to classify the offense type of which the offender was convicted in 19,628 cases. Of these 19,628 cases, 18,394 (93.7%) were distributed among four offense categories: drugs, firearms, fraud, and criminal sexual abuse/pornography/prostitution. As previously stated, the overwhelming majority of

offenders convicted of a statute which carries a mandatory minimum penalty committed a drug trafficking offense (16,198 offenders, or 82.5%).²⁴

1. Drug Offenses

Drug cases represented a large portion of the federal caseload in fiscal year 2008, accounting for 35.8 percent of the overall caseload in that fiscal year.²⁵ Drug offenders also represented the vast majority of those offenders convicted under a statute carrying a mandatory minimum penalty in fiscal year 2008, with 16,198 (82.5%) of the 19,628 offenders convicted under such statutes having committed a drug offense as classified by the Commission.

As previously indicated, however, a significant portion (9,047 of the 16,198 drug offenders, or 55.9%) of drug offenders convicted under a statute carrying a mandatory minimum penalty were eligible to be sentenced without regard to and below the mandatory minimum through substantial assistance under 18 U.S.C. § 3553(e), the safety valve under 18 U.S.C. § 3553(f), or a combination of substantial assistance and the safety valve. Of these 9,047 offenders, 7,818 (48.3%) were sentenced without regard to and below mandatory minimum provisions as follows: substantial assistance applied to 2,381 drug offenders (14.7%), the safety valve applied to 3,803 drug offenders (23.5%), and both substantial assistance and the safety valve applied to an additional 1,634 drug offenders (10.1%).

Table 5 illustrates the demographic characteristics of drug offenders convicted under a statute carrying a mandatory minimum penalty relative to the demographic characteristics of the overall federal drug offender population in fiscal year 2008.²⁶ As Tables 5 and 6 indicate together, the impact of drug mandatory minimum penalties on black drug offenders is largely driven by crack cocaine offenses. As shown in Table 6, if crack cocaine cases are excluded from the analysis, black drug offenders in fiscal year 2008 comprised 15.8 percent of the remaining drug cases and 15.8 percent of the remaining drug cases in which a drug mandatory minimum applied.

²⁴ For purposes of this analysis, the overall number of firearms offenders and the number of firearms offenders convicted of a statute carrying a mandatory minimum penalty do not include cases that were sentenced under a drug guideline in Chapter Two, Part D of the Guidelines Manual but also contained a count of conviction for a firearms offense, including 1,023 cases in which the defendant was sentenced under a drug guideline but was also convicted under 18 U.S.C. § 924(c).

²⁵ See Table 3 and accompanying footnotes, *supra*.

²⁶ As indicated in Tables 5 and 6, the Commission did not receive sufficient demographic information for all 25,337 drug offenders sentenced in fiscal year 2008.

**Table 5: Demographics for Drug Cases
and Mandatory Minimum Drug Cases
Fiscal Year 2008**

	All Drug Cases		All Mandatory Minimum Drug Cases	
	N	%	N	%
Race/Ethnicity				
White	6,395	25.3	3,650	22.6
Black	7,929	31.4	5,592	34.6
Hispanic	10,163	40.2	6,532	40.4
Other	786	3.1	393	2.4
Total	25,273	100.0	16,167	100.0
Citizenship				
U.S. Citizen	18,154	71.7	11,647	71.9
Non-Citizen	7,162	28.3	4,542	28.1
Total	25,316	100.0	16,189	100.0
Gender				
Male	22,223	87.7	14,514	89.6
Female	3,109	12.3	1,684	10.4
Total	25,332	100.0	16,198	100.0

This table excludes cases missing information for the variables required for analysis.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Table 6: Demographics for Non-Crack Drug Cases and Non-Crack, Mandatory Minimum Drug Cases Fiscal Year 2008

	Non-Crack Drug Cases		Mandatory Minimum Non-Crack Drug Cases	
	N	%	N	%
Race/Ethnicity				
White	5,758	30.1	3,218	27.9
Black	3,018	15.8	1,818	15.8
Hispanic	9,621	50.3	6,131	53.2
Other	722	3.8	349	3.0
Total	19,119	100.0	11,516	100.0
Citizenship				
U.S. Citizen	12,199	63.7	7,159	62.1
Non-Citizen	6,949	36.3	4,367	37.9
Total	19,148	100.0	11,526	100.0
Gender				
Male	16,622	86.7	10,211	88.5
Female	2,524	13.3	1,324	11.5
Total	19,164	100.0	11,535	100.0

This table excludes cases missing information for the variables required for analysis.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

2. Firearms Offenses

Firearms offenses comprised 9.4 percent of the overall federal caseload in fiscal year 2008 and 3.8 percent (751 of the 19,628 offenders) of cases in which offenders were convicted of a statute carrying a mandatory minimum penalty. Of the 6,673 firearms cases in which the offender was sentenced in fiscal year 2008, the Commission received sufficient guideline information on 6,212 cases. As indicated in Table 3, of these 6,212 cases, in 751 (12.1%) cases the offender was convicted of a statute carrying a mandatory minimum penalty. Of those 751 offenders, 126 (16.8%) were eligible to be sentenced without regard to the statutory mandatory minimum penalty because the statutory substantial assistance provision applied. Of these eligible offenders, 101 (13.4% of the 751 offenders) were sentenced without regard to and below the applicable statutory mandatory minimum penalty. The remaining 25 offenders (3.3% of the 751 offenders) received a sentence at or above the statutory mandatory minimum.

For purposes of this analysis, the overall number of firearms cases and the number of firearms offenders convicted of a statute carrying a mandatory minimum penalty do not include cases that were sentenced under a drug guideline in Chapter Two, Part D of the Guidelines Manual but also contained a count of conviction for a firearms offense. Those cases, including 1,023 cases in which the defendant was sentenced under a drug guideline but was also convicted under 18 U.S.C. § 924(c), were counted as drug offenders for this analysis. The number of firearms offenders considered to be convicted of a firearms statute carrying a mandatory minimum penalty under this analysis would more than double if such offenders were included in the firearms, rather than the drug, mandatory minimum offender population.

Table 7 shows demographic characteristics of firearms offenders convicted of a statute carrying a mandatory minimum penalty relative to the demographic characteristics of all firearms offenders in the overall fiscal year 2008 caseload.²⁷

Table 7: Demographic Characteristics for Firearms Cases and Firearms Cases with a Mandatory Minimum Fiscal Year 2008

	Firearms Cases		Mandatory Minimum Firearms Cases	
	N	%	N	%
Race/Ethnicity				
White	2,187	32.9	211	28.1
Black	3,272	49.2	474	63.1
Hispanic	1,020	15.4	53	7.1
Other	167	2.5	13	1.7
Total	6,646	100.0	751	100.0
Citizenship				
U.S. Citizen	6,142	92.2	738	98.3
Non-Citizen	522	7.8	13	1.7
Total	6,664	100.0	751	100.0
Gender				
Male	6,443	96.6	747	99.5
Female	224	3.4	4	0.5
Total	6,667	100.0	751	100.0

This table excludes cases missing information for the variables required for analysis. Summary Percentages may not equal 100 percent due to rounding.

²⁷ As indicated in Table 7, the Commission did not receive sufficient demographic information for all 6,673 firearms offenders sentenced in fiscal year 2008.

3. Immigration, Fraud, and Criminal Sexual Abuse/Pornography/Prostitution Offenses

Immigration offenses, fraud offenses, and offenses involving criminal sexual abuse, pornography, and prostitution, together accounted for 8.6 percent (1,682 of the 19,628 offenders) of the offenders who were convicted of a statute carrying a mandatory minimum penalty in fiscal year 2008.

Immigration offenses accounted for 27.3 percent of the overall federal caseload in fiscal year 2008²⁸ but just over one percent of all convictions under mandatory minimum statutes (237 of the 19,628 offenders). Of the 19,333 immigration cases in which the offender was sentenced in fiscal year 2008, the Commission received complete guideline information on 18,820 cases. As Table 3 indicates, of those 18,820 cases, in 237 cases (1.3%) the offender was convicted of a statute carrying a mandatory minimum penalty sentence. Of these 237 immigration offenders, 48 offenders (20.3%) were eligible to be sentenced without regard to the statutory mandatory minimum penalty because the substantial assistance provision applied. Of these 48 offenders, 41 offenders (17.3% of the 237 offenders) were sentenced without regard to and below the statutory mandatory minimum penalty. The remaining 7 offenders (3.0% of the 237 offenders) received a sentence at or above the statutory mandatory minimum.

In fiscal year 2008, fraud offenses accounted for 12.1 percent of the overall federal caseload²⁹ but only 2.7 percent of the offenders convicted of an offense carrying a statutory mandatory minimum penalty. Of the 8,591 fraud cases in which the offender was sentenced in fiscal year 2008, the Commission received complete guideline information on 8,189 cases. As Table 3 indicates, of those 8,189 cases, in 525 cases the offender was convicted of a statute carrying a mandatory minimum penalty sentence. Of these 525 fraud offenders, 91 offenders (17.3%) were eligible to be sentenced without regard to the statutory mandatory minimum penalty because the substantial assistance provision applied. Of these 91 offenders, 33 offenders (6.3% of the 525 offenders) were sentenced without regard to and below the statutory mandatory minimum penalty. The remaining 58 offenders (11.0% of the 525 offenders) received a sentence at or above the statutory mandatory minimum.

In fiscal year 2008, criminal sexual abuse, pornography, and prostitution offenses represent 3.0 percent of the overall federal caseload but 4.7% of the offenders convicted of an offense carrying a statutory mandatory minimum penalty. Of the 2,087 criminal sexual abuse/pornography/prostitution cases in which the offender was sentenced in fiscal year 2008, the Commission received complete guideline information on 2,034 cases. As indicated on Table 3, of those 2,034 cases, in 920 cases the offender was convicted of a statute carrying a mandatory minimum penalty sentence. Of these 920 offenders, 42 offenders (4.6%) were eligible to be sentenced without regard to the

²⁸ See Table 3, *supra*.

²⁹ *Id.*

statutory mandatory minimum penalty because the substantial assistance provision applied. Of these 42 offenders, 27 offenders (2.9% of the 920 offenders) were sentenced without regard to and below the statutory mandatory minimum penalty. The remaining 15 offenders (1.6% of the 920 offenders) received a sentence at or above the statutory mandatory minimum.

Statutory Provisions Requiring Mandatory Minimum Terms of Imprisonment*		
<u>U.S. Code Section</u>	<u>Description of Crime</u>	<u>Minimum Term of Imprisonment</u>
2 USC § 192 (No Guidelines reference in Appendix A)	Refusing to testify before Congress	1 month
2 USC § 390 (No Guidelines reference in Appendix A)	Failure to appear, testify, or produce documents when subpoenaed for contested election case before Congress	1 month
7 USC § 13a (§2B1.1)	Disobeying cease and desist order by registered entity	6 months
7 USC § 13b (No Guidelines reference in Appendix A)	Disobeying cease and desist order by person other than a registered entity	6 months
7 USC § 15b(k) (No Guidelines reference in Appendix A)	Violating provisions of cotton futures contract regulation	30 days
7 USC § 195(3) (§2N2.1)	Violation of court order by packer or swine contractor concerning packers and stockyards	6 months
7 USC § 2024(b)(1) (§2B1.1)	Second and subsequent offense; illegal food stamp activity; value of \$100 to \$4,999	6 months
7 USC § 2024(c) (§2B1.1)	Second and subsequent offense; presentation of illegal food stamp for redemption; value of \$100 or more	1 year
8 USC § 1324(a)(2)(B)(i) (§2L1.1)	First or second offense, bringing in or harboring certain aliens where the offense was committed with the intent or with reason to believe that the unlawful alien will commit a felony	3 years
8 USC § 1324(a)(2)(B)(i) (§2L1.1)	Third or subsequent offense, bringing in or harboring certain aliens where the offense was committed with the intent or with reason to believe that the unlawful alien will commit a felony	5 years
8 USC § 1324(a)(2)(B)(ii) (§2L1.1)	First or second offense, bringing in or harboring certain aliens where the offense was committed for the purpose of commercial advantage or private financial gain	3 years
8 USC § 1324(a)(2)(B)(ii) (§2L1.1)	Third or subsequent offense, bringing in or harboring certain aliens where the offense was committed for the purpose of commercial advantage or private financial gain	5 years
8 USC § 1326(b)(3) (§2L1.2)	Reentry of a an alien removed on national security grounds	10 years

12 USC § 617 (No Guidelines reference in Appendix A)	Commodities price fixing	1 year
12 USC § 630 (No Guidelines reference in Appendix A)	Embezzlement, fraud, or false entries by banking officer	2 years
15 USC § 8 (No Guidelines reference in Appendix A)	Trust in restraint of import trade	3 months
15 USC § 1245(b) (No Guidelines reference in Appendix A)	Possession/use of a ballistic knife during commission of federal crime of violence	5 years
15 USC § 1825(a)(2)(c) (No Guidelines reference in Appendix A)	Killing of horse official	Death or life
16 USC § 414 (No Guidelines reference in Appendix A) [petty offense]	Trespassing on federal land for hunting or shooting	5 days
18 USC § 33(b) (§§2A2.1, 2A2.2, 2B1.1, 2K1.4)	Damage to or destruction of a motor vehicle carrying high-level radioactive waste or spent nuclear fuel with intent to endanger safety of person	30 years
18 USC § 115(b)(3) (§§2A1.1, 2A1.2, 2A2.1, 2X1.1)	First degree murder of a federal official's family member	Death or life
18 USC § 225(a) (§§2B1.1, 2B4.1)	Organizes/manages/supervises a continuing financial crime enterprise which receives \$5M or more within any 24-month period	10 years
18 USC § 229A(a)(2)	Develop/produce/acquires/transfer/possess/use any chemical weapon that results in the death of another person	Death or life
18 USC § 351(a) (§§2A1.1, 2A1.2, 2A1.3, 2A1.4)	First degree murder of a member of Congress, Cabinet, or Supreme Court	Life
18 USC § 844(f) (§§2K1.4, 2X1.1)	Maliciously damages, or attempts to damage, property of the U.S. by means of fire or explosives	5 years
18 USC § 844(h) (§2K2.4 (§2K1.4 for offenses committed prior to November 18, 1988))	First offense involving the use of fire or explosives to commit a felony; penalty enhancement	10 year enhancement

18 USC § 844(h) (§2K2.4 (§2K1.4 for offenses committed prior to November 18, 1988))	Second or subsequent offense involving the use of fire or explosives to commit a felony; penalty enhancement	20 year enhancement
18 USC § 844(i) (§2K1.4)	Use of fire or explosives to destroy property used in interstate commerce	5 years
18 USC § 844(o) (§2K2.4)	First offense involving the transfer of explosive materials to be used to commit crime of violence or drug trafficking crime	10 year enhancement
18 USC § 844(o) (§2K2.4)	Second or subsequent offense involving the transfer of explosive materials to be used to commit crime of violence or drug trafficking crime	20 year enhancement
18 USC § 924(c)(1)(A)(i) (§2K2.4)	First offense, using or carrying a firearm during a crime of violence or drug trafficking crime; penalty enhancement provision	5 years
18 USC § 924(c)(1)(A)(ii) (§2K2.4)	First offense, brandishing a firearm during a crime of violence or drug trafficking crime; penalty enhancement provision	7 years
18 USC § 924(c)(1)(A)(iii) (§2K2.4)	First offense, discharging a firearm during a crime of violence or drug trafficking crime; penalty enhancement provision	10 years
18 USC § 924(c)(1)(B)(i) (§2K2.4)	First offense, firearm is a short-barreled rifle, short-barreled shotgun	10 years
18 USC § 924(c)(1)(B)(ii) (§2K2.4)	First offense, firearm is a machinegun or destructive device or the firearm is equipped with a silencer or muffler	30 years
18 USC § 924(c)(1)(C)(i) (§2K2.4)	Second or subsequent conviction under § 924(c)(1)(A)	25 years
18 USC § 924(c)(1)(C)(ii) (§2K2.4)	Second or subsequent conviction under § 924(c)(1)(A) and firearm is a machinegun or destructive device or the firearm is equipped with a silencer or muffler	Life
18 USC § 924(c)(5)(A) (§2K2.4)	Possession or use of armor piercing ammunition during a crime of violent or drug trafficking crime; penalty enhancement provision	15 years
18 USC § 924(e)(1) (§2K2.1 (see also §4B1.4))	Possession of a firearm or ammunition by a fugitive or addict who has three convictions for violent felonies or drug offenses	15 years
18 USC § 929(a)(1) (§2K2.4)	Carrying firearm during violent crime/drug trafficking, penalty enhancement	5 year enhancement
18 USC § 930(c) (§2K2.5)	First degree murder involving the possession or use of a firearm or other dangerous weapon in a Federal Facility.	Death or life

18 USC § 1028A(a)(1) (§2B1.6)	Aggravated identity theft	2 years
18 USC § 1028A(a)(2) (§2B1.6)	Aggravated identity theft in relation to any offense listed at 18 USC 2332b(g)(5)(B) (Federal Crime of Terrorism)	5 years
18 USC § 1111(a) (§§2A1.1, 2A1.2)	First degree murder	Death or life
18 USC § 1114 (§§2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1)	First degree murder of federal officers	Death or Life
18 USC § 1116 (§§2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1)	First degree murder of foreign officials, official guests, or internationally protected persons	Death or Life
18 USC § 1118 (§§2A1.1, 2A1.2)	Murder in a federal correctional facility by inmate sentenced to a term of life imprisonment	Death or life
18 USC § 1119(b) (§§2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1)	First degree murder of a U.S. national by a U.S. national while outside the United States	Death or Life
18 USC § 1120 (§§2A1.1, 2A1.2, 2A1.3, 2A1.4)	Murder committed by a person who escaped from a Federal correctional institute	Death or Life
18 USC § 1121(a)(1) (§§2A1.1, 2A1.2)	First degree murder of a state or local law enforcement officer or any person assisting in a federal criminal investigation	Death or Life
18 USC § 1121(b)(1) (§§2A1.1, 2A1.2)	Killing of a state correctional officer by an inmate	20 years
18 USC § 1122 (No Guidelines reference in Appendix A)	Selling or donating, or the attempt to do so, of HIV positive tissue or bodily fluids to another person for subsequent use other than medical research	1 year
18 USC § 1201(g)(1) (No Guidelines reference in Appendix A)	Kidnapping of a minor (under the age of eighteen)	20 years
18 USC § 1203(a) (§§2A4.1, 2X1.1)	Hostage taking resulting in the death of any person	Death or life
18 USC § 1466A(a) (§2G2.2)	Production/possession/receipt/transport of obscene visual representations of the sexual abuse of children	Mandatory minimum term of imprisonment specified at section 2252A(b)(1)
18 USC § 1503(b)(1) (§2J1.2)	First degree murder of an officer of the court or a juror	Death or life
18 USC § 1512(a)(1) (§§2A1.1, 2A1.2, 2A1.3, 2A2.1)	First degree murder of any person with the intent to prevent their attendance or testimony in an official proceeding	Death or life

18 USC § 1512(a)(2) (§§2A1.1, 2A1.2, 2A1.3, 2A2.1)	Obstructing justice by using, or attempting to use, physical force against another	Death or life
18 USC § 1512(a)(3)(A) (§§2A1.1, 2A1.2, 2A1.3, 2A2.1)	Obstructing justice by tampering with a witness, victim, or an informant	Death or life
18 USC § 1591(b)(1) (§§ 2G1.1, 2D2.1, 2G1.3)	Sex trafficking of children under the age of 14 by force, fraud or coercion	15 years
18 USC § 1591(b)(2) (§§2G1.1, 2D2.1, 2G1.3)	Sex trafficking of children, over the age of 14 but below the age of 18, by force, fraud or coercion	10 years
18 USC § 1651 (No Guidelines reference in Appendix A)	Piracy under the laws of nations	Life
18 USC § 1652 (No Guidelines reference in Appendix A)	Piracy by a citizen of the United States	Life
18 USC § 1653 (No g/l reference)	Piracy against the United States by an alien	Life
18 USC § 1655 (No Guidelines reference in Appendix A)	Piracy in the form of assault on a commander	Life
18 USC § 1658(b) (No Guidelines reference in Appendix A)	Preventing escape from a sinking vessel OR holding out a false light, or extinguishing a true light with intent to cause distress to a sailing vessel	10 years
18 USC § 1661 (No Guidelines reference in Appendix A)	Robbery ashore by a pirate	Life
18 USC § 1751(a) (§§2A1.1, 2A1.2, 2A1.3, 2A1.4)	Killing the President of the United States, the next in the order of succession to the Office of the President, or any person who is acting as the President of the United States; or any person employed in the Executive Office of the President or Office of the Vice President	Life
18 USC § 1917	Interference with Civil Service Examinations	10 days
18 USC § 1956(h) (§2S1.1)	Racketeering; conspiracy to commit any offense listed in sections 1956 or 1957	Mandatory minimum term of imprisonment applicable to the underlying offense
18 USC § 1958(a) (§2E1.4)	Causing death through the use of interstate commerce facilities in the commission of a murder-for-hire	Death or life
18 USC § 2113(e) (§§2A1.1, 2B3.1)	Bank robbery; avoiding apprehension for bank robbery; escaping custody after a bank robbery; causing death in the course of a bank robbery	10 years; but if death results, death or life

18 USC § 2241(c) (§2A3.1)	First offense, engaging in a sexual act with a child under the age of 12, or engaging in a sexual act by force with a child who is above the age of 12, but under the age of 16	30 years
18 USC § 2241(c) (§2A3.1)	Second or subsequent offense, engaging in a sexual act with a child under the age of 12, or engaging in a sexual act by force with a child who is above the age of 12, but under the age of 16	Life
18 USC § 2250(c) (§2A3.6)	Fails to register as a sex offender and commits a crime of violence	5 years
18 USC § 2251(a) (§2G2.1)	Engaging in explicit conduct with a child for the purpose of producing any visual depiction of such conduct	15 years; if the offender has one prior conviction for sexual exploitation, 25 years; if the offender has two or more prior convictions for sexual exploitation, 35 years; if death results, 30 years
18 USC § 2251(b) (§2G2.1)	Engagement in explicit conduct by a parent or legal guardian with a child for the purpose of producing any visual depiction of such conduct	15 years; if the offender has one prior conviction for sexual exploitation, 25 years; if the offender has two or more prior convictions for sexual exploitation, 35 years; if death results, 30 years
18 USC § 2251(c) (§§2G2.1, 2G2.2)	Enticing a minor to engage in explicit conduct for the purpose of producing any visual depiction of such conduct	15 years; if the offender has one prior conviction for sexual exploitation, 25 years; if the offender has two or more prior convictions for sexual exploitation, 35 years; if death results, 30 years
18 USC § 2251(d) (§2G2.2)	Producing or publishing a notice or advertisement seeking or offering a visual depiction of a child engaging in an elicit sexual act	15 years; if the offender has one prior conviction for sexual exploitation, 25 years; if the offender has two or more prior convictions for sexual exploitation, 35 years; if death results, 30 years
18 USC § 2251(e) (§§2G2.1, 2G2.2)	Sexual exploitation of children, penalties	15 years; if the offender has one prior conviction for sexual exploitation, 25 years; if the offender has two or more prior convictions for sexual exploitation, 35 years; if death results, 30 years
18 USC § 2251A(a) (§2G2.3)	Sale of a child by a parent or legal guardian for the purpose of sexual exploitation	30 years
18 USC § 2251A(b) (§2G2.3)	Purchasing a child for the purpose of sexual exploitation	30 years

18 USC § 2252(a)(1)-(3) (§2G2.2)	Interstate transportation of visual depictions of a minor engaging in sexually explicit conduct; receipt: sale, or possession with intent to sell visual depictions of a minor engaging in sexually explicit conduct	5 years; if the offender has a prior conviction for sexual exploitation of children, 15 years
18 USC § 2252(a)(4) (§2G2.2)	Possession of visual depictions of a minor engaging in sexually explicit conduct	10 years if the offender has a prior conviction for sexual exploitation of children
18 USC § 2252(b) (§2G2.2)	Certain activities relating to material involving the sexual exploitation of minors; penalties	5 years for violations of sections 2252(1)-(3); 15 years for a second or subsequent violation of section 2252(1)-(3); 10 years for a second or subsequent violation of section 2252(4)
18 USC § 2252A(a)(1)-(4),(6) (§2G2.2)	Interstate transportation of child pornography	5 years; 15 years for a second or subsequent violation
18 USC § 2252A(a)(5) (§2G2.2)	Possession of child pornography	10 years if the offender has a prior conviction for possession of child pornography
18 USC § 2252A(b) (§2G2.2)	Child pornography, penalties	5 years for violations of sections 2252A(1)-(4),(6); 15 years for second or subsequent violations of sections 2252A(1)-(4), (6); 10 years for second or subsequent violations of section 2252A(5)
18 USC § 2252A(g) (§2G2.2)	Child exploitation enterprise	20 years
18 USC § 2257(i) (§2G2.5)	Failure to keep records of sexually explicit depictions	2 years
18 USC § 2260(a) (§2G2.1)	Use of a minor in the production of sexually explicit depictions of a minor for importation into the United States	Mandatory minimum term of imprisonment specified at section 2251(e)
18 USC § 2260(b) (§2G2.2)	Use of a visual depiction of a minor engaging in sexually explicit conduct with the intent of importing the visual depiction into the United States	Mandatory minimum term of imprisonment specified at section 2252(b)(1)
18 USC § 2260A (§2A3.6)	Penalty enhancement for registered sex offenders who commit specified offenses involving a minor	10 year enhancement
18 USC § 2261(b)(6) (§2A6.2)	Stalking in violation of a restraining order, or other order described in 18 USC § 2266	1 year
18 USC § 2381 (§2M1.1)	Treason	5 years
18 USC § 2422(b) (§§2G1.1, 2G1.3)	Coercion, via mail or any facility of interstate commerce, of a minor for illegal sexual activity	10 years

18 USC § 2423(a) (§2G1.3)	Transporting a minor across state lines for the purpose of prostitution or another sexual activity which can be charged as a criminal offense	10 years
18 USC § 2423(e) (§2G1.3)	Attempt or conspiracy to transport a minor across state lines for the purpose of prostitution or another sexual activity which can be charged as a criminal offense	10 years
18 USC § 3559(c)(1) (No Guidelines reference in Appendix A)	Sentence enhancement; upon conviction for a serious violent felony, if offender has two or more prior serious violent felony convictions, or one or more prior serious violent felony convictions and one or more prior serious drug offense convictions, apply enhancement	Life
18 USC § 3559(d)(1) (No Guidelines reference in Appendix A)	Sentence enhancement; if the death of a child of less than 14 years results from a serious violent felony as described in section 3591(a)(2), apply enhancement	Life
18 USC § 3559(e)(1) (No Guidelines reference in Appendix A)	Sentence enhancement; where a federal sex offense committed against a minor and the offender was has a prior sex conviction in which a minor was the victim, apply enhancement	Life
18 USC § 3559(f)(1) (No Guidelines reference in Appendix A)	Sentence enhancement; murder of child less than 18	30 years
18 USC § 3559(f)(2) (No Guidelines reference in Appendix A)	Sentence enhancement; kidnapping or maiming of child less than 18	25 years
18 USC § 3559(f)(3) (No Guidelines reference in Appendix A)	Sentence enhancement; crime of violence resulting in serious bodily injury or if a dangerous weapon is used during and in relation to the crime of violence	10 years
19 USC § 283 (§2T3.1)	Failure to report seaboard saloon purchases to customers	3 months
21 USC § 212 [petty offense]	Practice of pharmacy and sale of poisons in China	1 month
21 USC § 461(c) (§2N2.1)	Killing any person engaged in or on account of performance of his official duties as a poultry or poultry products inspector	Death or life
21 USC § 622 (§2C1.1)	Bribery of meat inspectors and acceptance of bribes	1 year
21 USC § 675 (§§2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3)	Killing any person engaged in or on account of performance of his official duties as a meat inspector	Death or life
21 USC § 841(a) (§2D1.1)	Manufacturing, distributing, dispensing, or possessing a controlled substance or counterfeit substance with intent to distribute	Mandatory minimum term of imprisonment specified at section 841(b)

21 USC § 841(b)(1)(A) (§2D1.1)	Third offense, manufacturing, distributing, or possessing with intent to distribute	Life
21 USC § 841(b)(1)(A) (§2D1.1)	Second offense; manufacturing, distributing, or possessing with intent to distribute, death or serious bodily injury results	Life
21 USC § 841(b)(1)(A) (§2D1.1)	Second offense; manufacturing, distributing, or possessing with intent to distribute; no death or serious bodily injury	20 years
21 USC § 841(b)(1)(A) (§2D1.1)	First offense; manufacturing, distributing, or possessing with intent to distribute; death or serious bodily injury results	20 years
21 USC § 841(b)(1)(A) (§2D1.1)	First offense, manufacturing, distributing, or possessing with intent to distribute; no death or serious bodily injury	10 years
21 USC § 841(b)(1)(B) (§2D1.1)	Second or any subsequent offense; manufacturing, distributing, or possessing with intent to distribute, death or serious bodily injury results	Life
21 USC § 841(b)(1)(B) (§2D1.1)	First offense; manufacturing, distributing, or possessing with intent to distribute, death or serious bodily injury results	20 years
21 USC § 841(b)(1)(B) (§2D1.1)	Second and all subsequent offenses; manufacture, distribution, or possession with intent to distribute, no death or serious bodily injury results	10 years
21 USC § 841(b)(1)(B) (§2D1.1)	First offense; manufacture, distribution, or possession with intent to distribute, no death or serious bodily injury results	5 years
21 USC § 841(b)(1)(C) (§2D1.1)	Second or any subsequent offense; manufacturing, distributing, or possessing with intent to distribute, death or serious bodily injury results from use	Life, fine
21 USC § 841(b)(1)(C) (§2D1.1)	First offense; manufacturing, distributing, or possessing with intent to distribute, death or serious bodily injury results from the use	20 years
21 USC § 844(a) (§2D2.1)	First offense; simple possession of a controlled substance, substance contains cocaine base and weighs more than 5 grams	5 years
21 USC § 844(a) (§2D2.1)	Second offense; simple possession, substance contains cocaine base and weighs more than 3 grams	5 years
21 USC § 844(a) (§2D2.1)	Third and all subsequent offenses; simple possession, substance contains cocaine base and weighs more than 1 gram	5 years
21 USC § 844(a) (§2D2.1)	Third and all subsequent offenses, simple possession (other than cocaine base)	90 days

21 USC § 844(a) (§2D2.1)	Second offense; simple possession (other than cocaine base)	15 days
21 USC § 846 (§§2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2)	Attempt and conspiracy under Chapter 13 -- Drug Abuse Prevention and Control: Subchapter -- Offenses and Penalties	Mandatory minimum term of imprisonment applicable to the underlying offense
21 USC § 848(a) (§2D1.5)	Second and all subsequent convictions; continuing criminal enterprise	30 years
21 USC § 848(a) (§2D1.5)	First offense; continuing criminal enterprise	20 years
21 USC § 848(b) (§2D1.5)	Any offense; principal administrator, organizer, or leader ("kingpin") of continuing criminal enterprise	Life
21 USC § 848(e)(1) (§2A1.1)	Engaged in a continuing criminal enterprise and intentionally kills an individual or law enforcement officer	20 years
21 USC § 851 (No Guidelines reference in Appendix A)	Proceedings to establish prior convictions; sentence enhancement provisions	1 year
21 USC § 859(a) (§2D1.2)	First offense; distribution to persons under the age of 21 years	1 year
21 USC § 859(b) (§2D1.2)	Second and subsequent offenses; distribution to persons under the age of 21 years	1 year
21 USC § 860(a) (§2D1.2)	First offense; distribution of a controlled substance near a school or similar facility	1 year
21 USC § 860(b) (§2D1.2)	Second offense; distribution of a controlled substance near a school or similar facility	3 years
21 USC § 860(b) (§2D1.2)	Third offense; distribution of a controlled substance near a school or similar facility	Mandatory minimum term of imprisonment specified at section 841(b)(1)(A)
21 USC § 861(a) (§2D1.2)	Employment or use of persons under 18 years of age in drug operations	Mandatory minimum term of imprisonment specified at section 841(b)
21 USC § 861(b) (§2D1.2)	First offense; knowingly and intentionally employing or using a person under 18 years of age in drug operations	1 year
21 USC § 861(c) (§2D1.2)	Second and subsequent offense; knowingly and intentionally employing or using a person under 18 years of age in drug operations	1 year
21 USC § 861(c) (§2D1.2)	Third offense; knowingly and intentionally employing or using a person under 18 years of age in drug operations	Mandatory minimum term of imprisonment specified at section 841(b)(1)(A)

21 USC § 861(f) (§2D1.2)	Knowingly or intentionally distributing a controlled substance to a pregnant individual	1 year
21 USC § 960(a) (§2D1.1)	Importing or exporting controlled substances	Mandatory minimum term of imprisonment specified at section 960
21 USC § 960(b)(1) (§2D1.1)	Second or any subsequent offense; unlawful import or export, death or serious bodily injury results	Life
21 USC § 960(b)(1) (§2D1.1)	Second or any subsequent offense; unlawful import or export, no death or serious bodily injury results	20 years
21 USC § 960(b)(1) (§2D1.1)	First offense; unlawful import or export, death or serious bodily injury results	20 years
21 USC § 960(b)(1) (§2D1.1)	First offense; unlawful import or export, no death or serious bodily injury results	10 years
21 USC § 960(b)(2) (§2D1.1)	Second or any subsequent offense; unlawful import or export, death or serious bodily injury results	Life, fine
21 USC § 960(b)(2) (§2D1.1)	Second or any subsequent offense; unlawful import or export, no death or serious bodily injury results	10 years
21 USC § 960(b)(2) (§2D1.1)	First offense; unlawful import or export, death or serious bodily injury results	20 years
21 USC § 960(b)(2) (§2D1.1)	First offense; unlawful import or export, no death or serious bodily injury results	5 years
21 USC § 960(b)(3) (§2D1.1)	Second or any subsequent offense; unlawful import or export, death or serious bodily injury results	Life
21 USC § 960(b)(3) (§2D1.1)	First offense; unlawful import or export, death or serious bodily injury results	20 years
21 USC § 963 (§§2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.7, 2D1.8, 2D1.9, 2D1.10, 2D1.11, 2D1.12, 2D1.13, 2D2.1, 2D2.2, 2D3.1, 2D3.2)	Attempt and conspiracy under Chapter 13 -- Drug Abuse Prevention and Control: Subchapter -- Import and Export	Mandatory minimum term of imprisonment applicable to the underlying offense
21 USC § 1041(b) (No Guidelines reference in Appendix A)	Killing any person engaged in or on account of performance of his official duties under Chapter 15 -- Egg Products Inspection	Death or life
22 USC § 4221 (§2B1.1)	Forgery of notary seal	1 year
33 USC § 410 (No Guidelines reference in Appendix A)	Navigable water regulation violation	30 days
33 USC § 411 (§2Q1.3)	Deposit of refuse or obstruction of navigable waterway	30 days

33 USC § 441 (No Guidelines reference in Appendix A)	New York and Baltimore harbors, deposit of refuse	30 days
33 USC § 447 (No Guidelines reference in Appendix A)	Bribery of inspector of New York or Baltimore harbors	6 months
42 USC § 2272(b) (§2M6.1)	Violation of prohibitions governing atomic weapons; no death resulting	25 years
42 USC § 2272(b) (§2M6.1)	Using, attempting to use, or threatening while possessing, an atomic weapon	30 years
42 USC § 2272(b) (§2M6.1)	Violation of prohibitions governing atomic weapons; death of another resulting	Life
46 USC § 58109(a) (No Guidelines reference in Appendix A)	Individual convicted of violating merchant marine act	1 year
47 USC § 13 (No Guidelines reference in Appendix A)	Refusal to operate railroad or telegraph lines	6 months
47 USC § 220(e) (No Guidelines reference in Appendix A)	Falsely entering or destroying books or accounts of common carrier	1 year
49 USC § 46502(a)(2)(A) (§§2A5.1, 2X1.1)	Committing or attempting to commit aircraft piracy in special aircraft jurisdiction of the United States; no death of another individual	20 years
49 USC § 46502(a)(2)(B) (§§2A5.1, 2X1.1)	Committing or attempting to commit aircraft piracy in special aircraft jurisdiction of the United States; resulting in death of another individual	Death or life
49 USC § 46502(b)(1)(A) (§§2A5.1, 2X1.1)	Violation of Convention for the Suppression of Unlawful Seizure of Aircraft outside special aircraft jurisdiction of United States; no death of another individual	20 years
49 USC § 46502(b)(1)(B) (§§2A5.1, 2X1.1)	Violation of Convention for the Suppression of Unlawful Seizure of Aircraft outside special aircraft jurisdiction of United States; resulting in death of another individual	Death or life
49 USC § 46506(1) (§2A5.3)	Application of certain criminal laws to acts on aircraft if in special maritime and territorial jurisdiction of the United States	Mandatory minimum term of imprisonment applicable to the underlying offense
*This table lists federal criminal statutes that require the imposition of at least a specified minimum term of imprisonment when certain criteria specified in the statute are met. Statutes that provide for imprisonment for “any term of years” or require only a minimum specified term of supervised release or a minimum specified fine are not included.		

Appendix B

COUNTS OF CONVICTION UNDER STATUTES REQUIRING MANDATORY MINIMUM TERMS OF IMPRISONMENT Fiscal Year 2008

Statute¹	Number of Counts of Conviction
2 U.S.C. § 192	0
2 U.S.C. § 390	0
7 U.S.C. § 13a	0
7 U.S.C. § 13b	0
7 U.S.C. § 15b(k)	0
7 U.S.C. § 195(3)	0
7 U.S.C. § 2024	0
8 U.S.C. § 1324(a)(2)(B)	239
8 U.S.C. § 1326(b)(3)	0
12 U.S.C. § 617	0
12 U.S.C. § 630	0
15 U.S.C. § 8	0
12 U.S.C. § 1245(b)	0
15 U.S.C. § 1825(a)(2)(C)	0
16 U.S.C. § 414	0
18 U.S.C. § 33(b)	0
18 U.S.C. § 115(b)(3)	0
18 U.S.C. § 225(a)	0
18 U.S.C. § 229A(a)(2)	0
18 U.S.C. § 351(a)	0
18 U.S.C. § 844(f)	6
18 U.S.C. § 844(h)	23
18 U.S.C. § 844(i)	62
18 U.S.C. § 844(o)	0
18 U.S.C. § 924(e)(1)	749
18 U.S.C. § 924(c)	2,778
18 U.S.C. § 929(a)(1)	0
18 U.S.C. § 930(c)	0
18 U.S.C. § 1028A	1,156
18 U.S.C. § 1111	11
18 U.S.C. § 1114	0

Statute	Number of Counts of Conviction
18 U.S.C. § 1116	0
18 U.S.C. § 1118	0
18 U.S.C. § 1119(b)	0
18 U.S.C. § 1120(b)	0
18 U.S.C. § 1121(a)	0
18 U.S.C. § 1121(b)	0
18 U.S.C. § 1122	0
18 U.S.C. § 1201(g)(1)	1
18 U.S.C. § 1203(a)	0
18 U.S.C. § 1466A(a)	29
18 U.S.C. § 1503(b)(1)	0
18 U.S.C. § 1512(a)	3
18 U.S.C. § 1591	15
18 U.S.C. § 1651	0
18 U.S.C. § 1652	0
18 U.S.C. § 1653	0
18 U.S.C. § 1655	0
18 U.S.C. § 1658(b)	0
18 U.S.C. § 1661	0
18 U.S.C. § 1751(a)	0
18 U.S.C. § 1917	0
18 U.S.C. § 1956(h)	3
18 U.S.C. § 1958(a)	1
18 U.S.C. § 2113(e)	7
18 U.S.C. § 2241(c)	15
18 U.S.C. § 2250	0
18 U.S.C. § 2251	245
18 U.S.C. § 2252	878
18 U.S.C. § 2260(a)	5
18 U.S.C. § 2260A	0
18 U.S.C. § 2261(b)(6)	0
18 U.S.C. § 2381	0
18 U.S.C. § 2422(b)	153
18 U.S.C. § 2423(a)	55
18 U.S.C. § 2423(e)	11
18 U.S.C. § 3559(c)	2

Statute	Number of Counts of Conviction
18 U.S.C. § 3559(d)	0
18 U.S.C. § 3559(e)	2
18 U.S.C. § 3559(f)	1
21 U.S.C. § 212	0
21 U.S.C. § 461	0
21 U.S.C. § 622	0
21 U.S.C. § 675	0
21 U.S.C. § 841	13,158
21 U.S.C. § 844	95
21 U.S.C. § 846	9,736
21 U.S.C. § 848	49
21 U.S.C. § 851	423
21 U.S.C. § 859	10
21 U.S.C. § 860	328
21 U.S.C. § 861	13
21 U.S.C. § 960	474
21 U.S.C. § 963	503
21 U.S.C. § 1041(b)	0
22 U.S.C. § 4221	0
33 U.S.C. § 407	0
33 U.S.C. § 408	0
33 U.S.C. § 409	0
33 U.S.C. § 410	0
33 U.S.C. § 414	0
33 U.S.C. § 415	0
33 U.S.C. § 441	0
33 U.S.C. § 447	0
42 U.S.C. § 2272(b)	0
42 U.S.C. § 3631	0
46 U.S.C. § 58101	0
46 U.S.C. § 58103	0
46 U.S.C. § 58105	0
47 U.S.C. § 13	0

Statute	Number of Counts of Conviction
47 U.S.C. § 220	0
49 U.S.C. § 46502	0
49 U.S.C. § 46506	0
TOTAL²	31,239

¹This table lists federal criminal statutes that require the imposition of at least a specified minimum term of imprisonment when certain criteria specified in the statute are met. Statutes that provide for imprisonment for "any term of years" or require only a minimum specified term of supervised release or less than listed in Appendix A because some statutory provisions listed in Appendix A were collapsed for data collection purposes.

²This table reports the number of counts of conviction under each statute providing a mandatory minimum term of imprisonment. Because an offender may be sentenced for multiple counts of conviction which carry mandatory minimum penalties, the total number of counts of conviction reported in this table exceeds the total number of offenders subject to a mandatory minimum as reported elsewhere in the testimony.

SOURCE: U.S. Sentencing Commission 2008 Datafile, FY2008.