



**Overview of Federal Criminal Cases
Fiscal Year 2009**



UNITED STATES SENTENCING COMMISSION



United States Sentencing Commission

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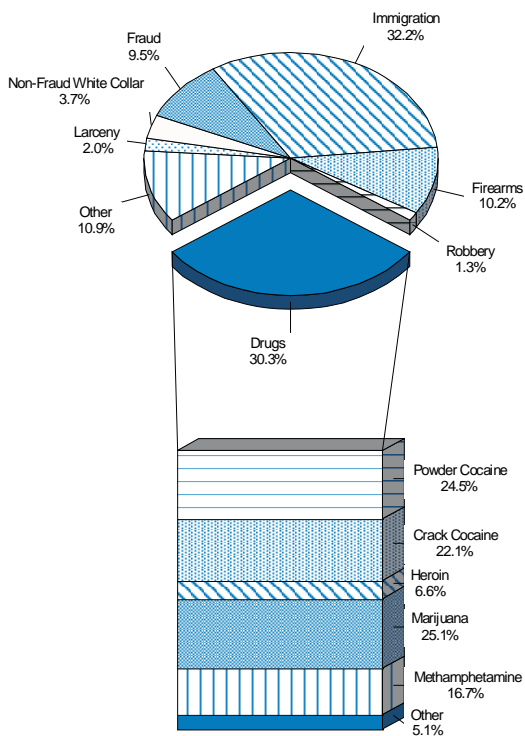
Fiscal Year 2009

Glenn R. Schmitt
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The United States Sentencing Commission¹ received information on 81,549 new federal criminal cases in which the offender was sentenced in fiscal year 2009.² Among these cases, 81,372 involved an individual defendant and 177 involved a corporation or other “organizational” defendant. This publication provides a brief overview of those cases.

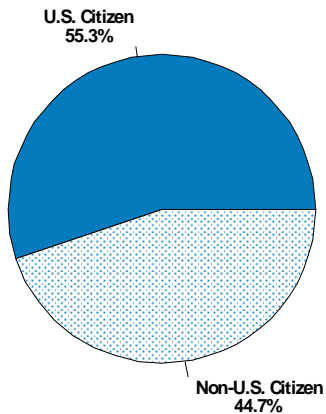
The Case Load at a Glance

The vast majority of the cases reported to the Commission involve an individual defendant. Over the last decade, the number of these cases has increased every year except one.³ In fiscal year 2009, the increase was 6.4 percent over the number of such cases in fiscal year 2008. Cases involving immigration, drugs, firearms, or fraud continue to be the most common federal criminal cases and make up the vast majority of federal felonies and Class A misdemeanors. These four crime types have been the most common for the last eight fiscal years. In fiscal year 2009, these cases accounted for more than 80 percent of all cases reported to the Commission.



For definitions of these categories, see Appendix A of the *2009 Sourcebook of Federal Sentencing Statistics*.

Immigration offenses⁴ continued to be the fastest growing segment of cases in the federal system. In fiscal year 2009, there were 25,927 immigration cases reported to the Commission, an increase of nearly 4,500 cases from the prior fiscal year. In the last ten fiscal years, the number of cases of this type has increased by 168 percent, while the total federal caseload has grown by less than 50 percent (46.9%). As a result, the portion of the annual caseload attributable to immigration cases has increased from 17.5 percent in fiscal year 1999 to

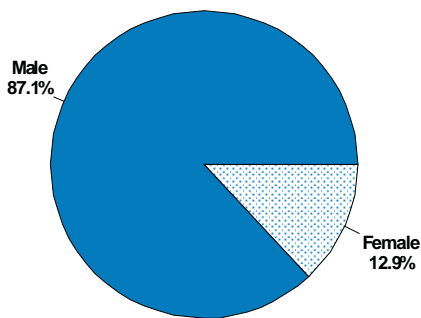


32.2 percent in fiscal year 2009. Immigration cases are now the most common serious federal crime.

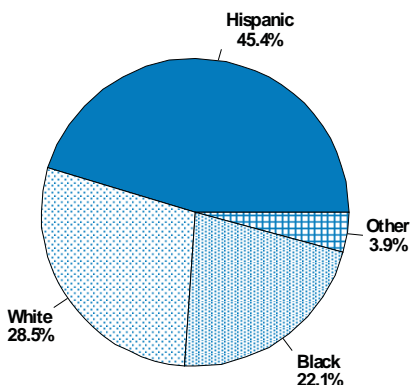
The number of drug offenses⁵ has remained relatively constant for the last five years, although the portion of the criminal caseload attributable to those cases decreased to 30.3 percent in fiscal year 2009 compared with 34.7 percent in fiscal year 2004. Firearms offenses⁶ were 10.2 percent of the caseload in fiscal year 2009, a decrease of 1.7 percentage points over the five-year period. The proportion of fraud offenses over that period also was relatively stable at 9.5 percent in fiscal year 2009, as compared with 10.6 percent in fiscal year 2004.

Offender Characteristics

In fiscal year 2009, 55.3 percent of all offenders were United States citizens. However, the percentage of non-citizen offenders has risen steadily over the last ten years, up 8.9 percentage points from fiscal year 2004 and up 10.8 percentage points from fiscal year 1999. Most non-citizens who were convicted of a federal crime committed an immigration offense (68.2%). Drug trafficking was the next most common type of offense committed by non-citizens (19.5%).



The vast majority of criminal offenders are men, and their proportion of the total offender population has remained constant for more than a decade. In fiscal year 2009, 87.1 percent of all offenders were men, compared with 86.3 percent in fiscal year 2004 and 84.6 percent in fiscal year 1999. Among female offenders, the most common crime was drug trafficking (28.5% of all women offenders). Embezzlement was the only crime where female offenders outnumber male offenders (56.0% to 44.0%).



There are more offenders of Hispanic ethnicity than any other ethnicity. In fiscal year 2009, 45.4 percent of all offenders were Hispanic, while 28.5 percent of offenders were White and 22.1 percent were Black. However, the racial composition of offenders varied widely across offense types and most Hispanic offenders (86.0%) were sentenced for one of two type of offenses — drug

trafficking or immigration crimes. Even among drug offenders, racial and ethnic background varied depending on the type of drug involved in the crime.

More than half of the federal offenders sentenced in fiscal year 2009 (50.8%) had not completed high school and only 5.4 percent of offenders had completed college. The average age of offenders in fiscal year 2009 was 35 years; this average has remained relatively unchanged for more than 15 years.

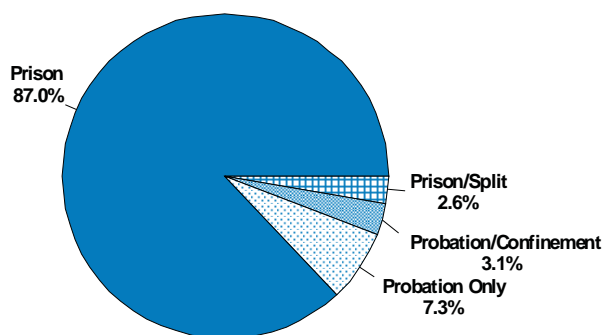
Case Disposition

The vast majority of convicted defendants plead guilty. In fiscal year 2009, more than 96 percent of all offenders did so, a rate that has been largely the same for ten years. When offenders pled guilty, 41.6 percent received a sentence below the applicable sentencing guideline range, either at the request of the government or at their own request. In these below-range cases, a sentence below the applicable guideline range was requested by the government 62.9 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.

In the 3.7 percent of cases in which offenders did not plead guilty, 32.5 percent received a sentence below the guideline range. In those below-range cases, the government requested the lower sentence less than six percent of the time.

The average age of offenders has remained relatively unchanged for more than 15 years.

More than 96 percent of offenders pled guilty during fiscal year 2009.



Most federal offenders
receive a prison sentence.

Most federal offenders convicted of a felony or Class A misdemeanor receive a sentence of incarceration. In fiscal year 2009, only 7.3 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 13.1 percent in 1997. Another 3.1 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.

The length of confinement imposed on offenders receiving a sentence other than probation varies greatly depending on the seriousness of the offense and the criminal history of the offender. In fiscal year 2009, 25.8 percent of offenders received a sentence of more than five years and 9.9 percent received a sentence of more than ten years. Three hundred two offenders were sentenced to life imprisonment and four offenders were sentenced to death.

Monetary fines were imposed as punishment in 10.2 percent of all cases in which an individual was sentenced in fiscal 2009, either as the sole punishment or combined with some other sanction. Fines were most commonly imposed in antitrust cases (95.3%), environmental cases (67.9%), and gambling/lottery cases (56.5%). When the offender was an organization, courts imposed a fine in three out of every four cases (74.0%).

Courts ordered restitution to be paid to the victim of the crime in 12.4 percent of all cases in which the offender was an individual. Restitution was most commonly ordered in cases involving embezzlement (83.8%), arson (83.4%), robbery (81.3%), auto theft (74.0%), and burglary (63.9%). Restitution was ordered in 29.4 percent of the cases with an organizational offender.

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 2009, 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

Immigration

Immigration offenses were the most common serious federal crimes, representing 32.2 percent of the federal criminal case load for fiscal year 2009. More than three-quarters of these offenses involved either the unlawful reentry into the United States or remaining in the United States without authority. Another 14.5 percent involved alien smuggling activities.

The offenders who commit immigration offenses are very different from offenders committing other crimes. For example, although citizens committed the majority of federal crimes (55.3%), most immigration offenses were committed by non-citizens. In fiscal year 2009, 92.1 percent of immigration offenders were non-citizens.⁷ Hispanics accounted for only 27.5 percent of non-immigration crimes, but 86.3 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. More than 80 percent of immigration offenders had less than a high school education, compared with less than 40 percent of offenders convicted of other crimes. While men committed most (85.4%) federal crimes not involving an immigration offense, men committed an even higher proportion of immigration crimes (93.4%).

Drugs

Until fiscal year 2009, drug offenses had been the most common federal crime during the 20 years for which the Commission has released sentencing data. In fiscal year 2009, 25,206 offenders were convicted of a drug crime, the majority involving the manufacture, sale, or transportation of a drug.⁸ Of these, 760 offenders were convicted of an offense involving simple possession of a drug.

Offenses involving cocaine, in either powder form or base (crack) form, were the most common drug crimes, accounting for 47.0 percent of all such crimes. These cases were almost evenly split between offenses involving crack cocaine and offenses involving powder cocaine. Marijuana cases were the next most common, representing 24.8 percent of all drug crimes. In fact, marijuana

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

The most common drug crimes involved cocaine, with powder and crack forms accounting for nearly the same prevalence.

cases were more prevalent than either crack cocaine or powder cocaine cases. Drug offenses involving methamphetamine represented 16.6 percent of all drug crimes. Heroin cases were the least common of the major drug offenses, accounting for 6.5 percent of all drug crimes.

Most drug offenders were citizens, but the percentage of drug offenders who are citizens varied widely depending on the type of drug involved in the offense. For example, 97.1 percent of crack cocaine offenders were citizens, while only 61.8 percent of heroin offenders were citizens. Non-citizens were most often convicted of an offense involving marijuana. In fiscal year 2009, 38.4 percent of all non-citizen drug offenders committed an offense involving marijuana.

DRUG TYPE	TOTAL	U.S. CITIZEN		NON-U.S. CITIZEN	
		Number	Percent	Number	Percent
TOTAL	24,901	17,994	72.3	6,907	27.7
Powder Cocaine	6,029	3,912	64.9	2,117	35.1
Crack Cocaine	5,683	5,516	97.1	167	2.9
Heroin	1,624	1,003	61.8	621	38.2
Marijuana	6,160	3,508	56.9	2,652	43.1
Methamphetamine	4,125	2,946	71.4	1,179	28.6
Other	1,280	1,109	86.6	171	13.4

DRUG TYPE	TOTAL	WHITE		BLACK		HISPANIC		OTHER	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	24,852	6,492	26.1	7,611	30.6	9,877	39.7	872	3.5
Powder Cocaine	6,020	1,031	17.1	1,684	28.0	3,202	53.2	103	1.7
Crack Cocaine	5,669	558	9.8	4,476	79.0	584	10.3	51	0.9
Heroin	1,619	281	17.4	450	27.8	875	54.0	13	0.8
Marijuana	6,151	1,784	29.0	579	9.4	3,520	57.2	268	4.4
Methamphetamine	4,118	2,158	52.4	118	2.9	1,577	38.3	265	6.4
Other	1,275	680	53.3	304	23.8	119	9.3	172	13.5

The race of drug offenders varied even more widely. Almost 40 percent (39.7%) of all drug offenders convicted in federal court were Hispanic, with Black offenders accounting for 30.6 percent of all drug offenders and White offenders representing 26.1 percent of all drug offenders. Yet, in cases involving methamphetamine, 52.4 percent of the offenders were White. In crack cocaine cases, 79.0 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 drug crimes slightly less 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 28.7 percent of crack cocaine cases to 6.8 percent of marijuana cases.

Several factors affect the average prison sentence for drug offenders, 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 2009, the average punishment for drug crimes ranged from a high of 114.8 months of imprisonment for crack cocaine offenders (with a median sentence of 96 months) to 36.2 months for marijuana offenders (with a median sentence of 24 months).

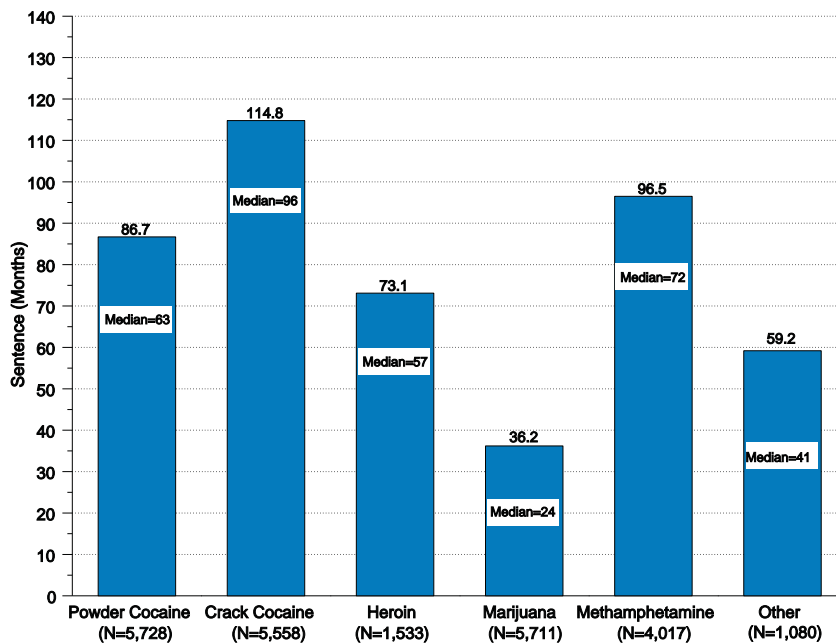
An offender's role in the offense also can affect the guideline range that judges consider when imposing punishment. In fiscal year 2009, judges in 19.7 percent of all drug cases determined that the applicable guideline range should be lowered because of the offender's minor or minimal role in the offense. In marijuana cases, this adjustment to the guideline range occurred 38.8 percent of the time. In contrast, courts found such an adjustment warranted in only 5.3 percent of crack cocaine cases. In another 5.9 percent of drug cases, the court determined that the applicable

Almost 20 percent of drug offenders received a sentence in a lower guideline range due to a mitigating role in the offense.

The average prison sentence for crack offenders was nearly the same in both fiscal years 2008 and 2009.

guideline range should be increased because of the offender’s role in the offense as an organizer, leader, manager, or supervisor.

The average prison sentence for crack offenders in fiscal year 2009 was 114.8 months, almost identical to the sentence for those offenders in fiscal year 2008. This is a reduction of nearly 15 months from the average sentence for crack offenders during fiscal year 2007, largely due to an amendment to the sentencing guidelines that lowered the punishment for crack cocaine offenses.⁹ For powder cocaine offenders, the average sentence was 86.7 months, a decrease of about four months from the average in fiscal year 2008.



Mandatory minimum sentences enacted by Congress played a large part in determining the sentence for these offenders, either outright or through the impact of these statutes on the structure of the guidelines. In fiscal year 2009, 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 80 percent of crack cocaine offenders and just over 76 percent of powder cocaine offenders.¹⁰ However, 34 percent of powder cocaine offenders obtained relief from a mandatory minimum sentence through the "safety valve" exception to such sentences, which requires courts to sentence an offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met.¹¹ In contrast, just over ten percent of crack cocaine offenders obtained this relief.

The "safety valve" provision was available to just one in five crack cocaine offenders in fiscal year 2009.

The differing criminal histories of these two categories of offenders account for much of 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 2009, 59.3 percent of powder cocaine offenders were assigned to CHC I while only 22.0 percent of crack cocaine offenders were assigned to that category.

As discussed above, the offender's prior criminal history is a key factor in determining the guideline range. In fiscal year 2009, 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.¹² Powder cocaine offenders were assigned to the most serious criminal history category (CHC VI) in 8.2 percent of powder cocaine cases, whereas crack cocaine offenders were assigned to that category in 27.9 percent of all crack cocaine cases. In contrast, 55.6 percent of heroin offenders were assigned to CHC I and 12.3 percent assigned to CHC VI. In methamphetamine cases, 49.5 percent of offenders were assigned to CHC I and 11.6 percent to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 69.6 percent assigned to CHC I and 3.4 percent to CHC VI.¹³

Nearly half of firearms cases involved a convicted felon in illegal possession of a firearm.

Firearms and other weapons

Firearms crimes were 10.2 percent of the total federal criminal convictions for fiscal year 2009. Of the 8,243 firearms cases reported to the Commission, 20.4 percent (1,682) involved the possession or use of a firearm in connection with a crime of violence or drug trafficking crime.¹⁴ Almost half of these cases (4,087) involved a convicted felon who illegally possessed a firearm.¹⁵

Of all cases reported to the Commission in fiscal year 2009, a firearm or other dangerous weapon (e.g., knife) was involved in the offense in some way 8.4 percent of the time (6,125 cases). However, a weapon was involved twice as often in drug cases (16.8%). Weapons were present most often in crack cocaine cases (28.7%) and least often in marijuana cases (6.8%).

Fraud

Crimes involving fraud, deceit, theft, embezzlement, insider trading, and other forms of deception accounted for the fourth largest portion (9.5%) of federal criminal cases in fiscal year 2009. The losses in these cases ranged from less than \$100 to more than \$400 million. More than half of these cases involved a loss of less than \$70,000. Only eight percent of fraud cases involved a loss of more than \$1.5 million. Identity theft crimes¹⁶ accounted for a relatively small number (901) of these cases in fiscal year 2009, but have increased significantly from the 161 such crimes reported in fiscal year 2004.

Identity theft crimes have increased significantly in the past decade.

Organizational Cases

Organizations such as corporations and partnerships can be prosecuted for violating federal criminal law, and 177 organizations were sentenced for at least one federal criminal offense in fiscal year 2009. This number is an 11-percent decrease from the 199 cases reported in fiscal year 2008. The number of organizational defendants convicted continued to remain lower than in earlier years. For example, 200 organizational defendants were sentenced in fiscal year 2003, and 255 organizational defendants were sentenced in fiscal year 1999.

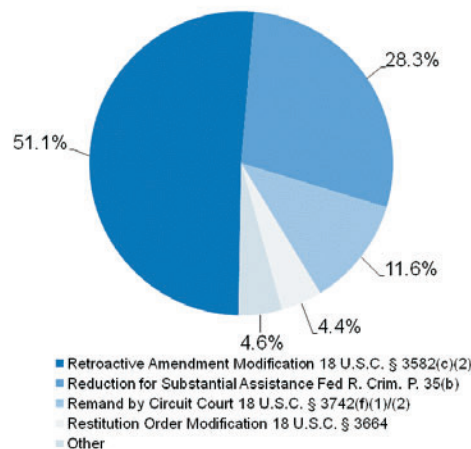
Ninety-six percent of the organizational offenders sentenced in fiscal year 2009 pled guilty to one or more charges. The most common crimes for which organizational defendants were convicted were fraud and environmental crimes. Organizational offenders were sentenced to pay a fine to the government in 131 cases. In 25 cases, the offender was sentenced to pay restitution to the victim of the crime as well as to pay a fine. In 27 cases, the organization was sentenced to pay restitution only. No fine or restitution was imposed in 19 cases, although other sanctions were imposed in some of these cases. Additionally, of the 177 organizational offenders, 131 received some term of probation, and nine were ordered to make improvements in compliance or ethics procedures.

Resentencings and Other Modifications of Sentence

In fiscal year 2009, the Commission received documentation on 7,420 resentencings or other modifications of sentence. More than half of these were modifications of the term of imprisonment due to retroactive application of an amendment to the sentencing guidelines, principally the 2007 amendment to the sentencing guidelines relating to crack cocaine offenses.¹⁷ The next most common type of resentencing was a reduction in sentence for substantial assistance to the government after sentencing.¹⁸ Slightly more than one-quarter of all resentencings or modifications of sentence resulted from substantial assistance to the government by an offender. The third most common type of resentencing occurred after remand of a case that had been appealed to a circuit court.

For More Information

More information on these cases can be found in the Commission's *2009 Annual Report*, *2009 Sourcebook of Federal Sentencing Statistics*, and *Guideline Application Frequencies for Fiscal Year 2009*. 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. Its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines to be consulted regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress 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. In FY 2004, the number of cases reported to the Commission fell by 0.3%. For more information about changes in the federal criminal caseload over the last decade, see LOUIS REEDT & JESSICA WIDICO-STROOP, UNITED STATES SENTENCING COMMISSION, CHANGING FACE OF FEDERAL CRIMINAL SENTENCING (2009).
4. 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.
5. Drug offense 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. Firearms offense includes 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.
7. Non-citizens primarily are convicted of immigration crimes. Non-citizens were the offenders in only 21.2% of federal crimes other than immigration crimes in fiscal year 2009.
8. This number also includes persons convicted of one or more crimes in addition to a drug offense.
9. See Amendments 706 and 711 to the sentencing guidelines. These amendments became effective on November 1, 2007.
10. 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.
11. See 18 U.S.C. § 3553(f).
12. The criminal history score establishes the criminal history category (CHC) for an offender. See USSG, Ch.4. The CHC, along with the final offense level, determines the sentencing range under the guidelines.
13. For more information on sentencing issues involving cocaine drug cases, see UNITED STATES SENTENCING COMMISSION, REPORT TO CONGRESS: FEDERAL COCAINE SENTENCING POLICY (2007).
14. *I.e.*, a case in which 18 U.S.C. § 924(c) was the statute of conviction.
15. *I.e.*, a case in which 18 U.S.C. § 922(g) was the statute of conviction.
16. 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. The Commission includes these cases with other fraud cases when it reports sentencing statistics.
17. See Amendment 713 to the United States Sentencing Commission *Guidelines Manual*, approved December 11, 2007, and effective on March 3, 2008. See also 18 U.S.C. § 3582(c)(2).
18. See Fed R. Crim. P. 35(b).