

Table 58

GUIDELINE INVOLVED IN ISSUES APPEALED BY THE GOVERNMENT¹
Fiscal Year 2005, Post-Booker (January 12, 2005, through September 30, 2005)

GUIDELINE	Number	Percent	Affirmance Rate²
TOTAL	147	100.0	34.0
5K2.0 (Departures)	28	19.0	71.4
2D1.1 (Drug Trafficking)	8	5.4	37.5
2L1.2 (Unlawfully Entering or Remaining in the United States)	5	3.4	40.0
5K1.1 (Substantial Assistance to Authorities)	5	3.4	20.0
2B1.1 (Larceny, Embezzlement, and Theft)	4	2.7	0.0
3E1.1 (Acceptance of Responsibility)	4	2.7	75.0
1B1.3 (Relevant Conduct)	3	2.0	0.0
5K2.13 (Diminished Capacity)	3	2.0	66.7
2F1.1 (Fraud)	2	1.4	0.0
3B1.1 (Aggravating Role)	2	1.4	50.0
3B1.2 (Mitigating Role)	2	1.4	0.0
3C1.1 (Obstruction of Justice)	2	1.4	100.0
4A1.1 (Criminal History Category)	2	1.4	50.0
4B1.1 (Career Offender)	2	1.4	0.0
4B1.4 (Armed Career Criminal)	2	1.4	0.0
5H1.3 (Mental and Emotional Conditions)	2	1.4	0.0
18 U.S.C. § 3553(a) Factors	3	2.0	33.3
Constitutional Issues	38	25.8	31.6
Other Guidelines	15	10.2	46.7
Other Non-guideline Issues	15	10.2	46.7

¹Based on 5,010 "Post-Booker" appeals defendants with sentencing as at least one of the reasons for appeal. Information on issues was available in 5,010 of these cases which cited 11,192 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 two times among relevant cases.

²Affirmance Rate includes all appeals cases not reversed or directly remanded by the circuit court.