



**US Sentencing Commission's Annual National Seminar  
on the Federal Sentencing Guidelines**

# National Seminar

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## **RICO Offenses Answers**



## RICO OFFENSES

**Santana Falcon** has pled guilty to the following offense:

- Ct. One: Racketeering Conspiracy; in violation of 18 U.S.C. § 1962(d) – Not more than life imprisonment

### Background on Lincoln Park Crew RICO Conspiracy

For several years, the Lincoln Park housing project in Baltimore, Maryland has been a war zone for violent feuds between several criminal enterprises styled as neighborhood-based street gangs. The Lincoln Park Crew (LPC), which was led by Jose Cerrano until he was murdered by a rival gang in August of 2014, has been the center of the violent conflicts. The LPC has been responsible for multiple murders, attempted murders, shooting, assaults and other acts of violence that arise from the gang's ongoing feuds with other street gangs in Lincoln Park.

In approximately 2004, the LPC started as a group of young men who socialized together and were involved in street-level crime. Among the founders were Jose Cerrano and Pedro Ortiz who were both from Lincoln Park. The LPC eventually developed into a substantial criminal organization with sets of gang members who have engaged in criminal activity in neighboring counties in Maryland. The Lincoln Park housing project is considered LPC territory and in recent years a number of shootings and other violent conflicts have occurred when members of rival gangs have entered LPC territory.

The goals of the LPC include protecting the power of the gang and its members through violence and threats of violence against its rivals (including murdering and attempting to murder rivals of the gang) and enriching the gang and its members by engaging in the distribution of crack cocaine, heroin and other drugs (including prescription drugs), in and around LPC controlled territory and by acting in concert to commit robberies involving the use of violence.

### Santana Falcon and the LPC RICO Conspiracy

In approximately 2006 **Falcon** became a member of the LPC because of his affiliation and friendship with the now deceased Jose Cerrano, one of the founders of the gang. As an LPC member, **Falcon** was aware that the LPC sold drugs and committed assaults and shootings of rival gang members. **Falcon** held guns for other LPC members, sold crack cocaine with other members and participated in shootings. Specifically, on November 21, 2011, **Falcon** participated in a shootout with a rival gang. During the shootout two members from the rival gang were shot and injured.

### Offense Conduct

In 2009, **Falcon** got involved in the prescription drug business. The Lincoln Park grocery was owned by the Jones family. **Falcon** initially provided protection for the store in exchange for a small amount of money, and by doing this he learned the prescription drug business at the store. The Jones family would purchase pills from customers both inside and outside the store. These individuals would sell their legally obtained Medicaid-dispensed prescription drug bottles to the Jones family. After aggregating

## RICO OFFENSES

large quantities and removing the patient labels, the Jones family would re-sell the medication to others. Oxycodone tablets were re-sold in loose form like any other controlled substance.

At some point, **Falcon** began stealing customers of the Jones family. Among other things, **Falcon** would stand on the same block as the grocery and intercept customers who would have otherwise sold their pills to the Jones family at the grocery store.

**Falcon** is responsible for possessing with intent to distribute approximately 400 grams of Oxycodone.

In 2010, **Falcon** participated in a knife-point robbery of approximately \$50,000 of stolen income tax checks. **Falcon** and another gang member arranged to purchase the checks from an individual, but then **Falcon** decided to rob the individual of the checks instead of purchase them. **Falcon** and his co-conspirator were armed with knives and robbed the individual at knifepoint when he arrived with the checks.

1. How many underlying offenses are in this RICO conspiracy?

**Answer:** Prohibited activities in a RICO Conspiracy are defined by statute at 18 U.S.C. § 1961 and include, among other offenses, murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter and dealing a controlled substance or listed chemical. In this case, there are at least two underlying offenses for certain, PWID Oxycodone and Robbery. There is a circuit split regarding the standard of evidence used to determine the underlying offenses in a RICO Conspiracy. The 1st, 2nd, 6th and 7th Circuits use a preponderance of evidence standard while the 11th Circuit requires a beyond a reasonable doubt standard. Regarding Falcon's other activities as part of the Lincoln Park Crew, more information would be needed to establish additional underlying offenses.

2. Is each underlying offense compared to the base offense level of 19?

**Answer:** No. §2E1.1(a)(2) directs that the combined offense level for the underlying offenses is to be used. That is, apply Chapters Two and Three Parts A, B, C, and D to the underlying offenses and determine a combined offense level, then compare that combined offense level to the 19.