

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 MUR: 7180
6 DATE COMPLAINT FILED: 11/01/2016
7 DATES OF NOTIFICATION: 11/04/2016,
8 12/27/2016
9 DATE OF LAST RESPONSE: 01/31/2017
10 DATE ACTIVATED: 02/15/2017

11
12 EXPIRATION OF SOL: 04/17/2020 –
13 11/1/2021
14 ELECTION CYCLE: 2016

15
16 **COMPLAINANTS:**

17 Lawrence M. Noble
18 Catherine Hinckley Kelley
19 Campaign Legal Center

20 **RESPONDENTS:**

21 Rebuilding America Now and Ryan Call in
22 his official capacity as treasurer

23 The GEO Group, Inc.
24 GEO Corrections Holdings, Inc.

25
26 **RELEVANT STATUTE
27 AND REGULATIONS:**

28 52 U.S.C. § 30119
29 11 C.F.R. § 115.2

30 **INTERNAL REPORTS CHECKED:**

31 Disclosure Reports

32 **FEDERAL AGENCIES CHECKED:**

33 None

34 **I. INTRODUCTION**

35 This matter involves allegations that GEO Corrections Holdings, Inc. (“GC Holdings”)
36 and Rebuilding America Now and Ryan Call in his official capacity as treasurer, (“RAN”),
37 violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) when GC
Holdings, purportedly a federal contractor, made contributions to RAN, an independent

1 expenditure-only political committee.¹ Specifically, the complaint alleges that on August 19,
2 2016, GC Holdings contributed \$100,000 to RAN while it was a federal contractor.² The
3 complaint also alleges that RAN “may have” knowingly solicited the contribution from GC
4 Holdings in violation of the Act.³ In a supplement, the complainants alleged that GC Holdings
5 also violated the Act by making a second contribution to RAN on November 1, 2016, in the
6 amount of \$125,000, a \$200,000 contribution to Senate Leadership Fund on September 27, 2016,
7 and a \$100,000 contribution to Conservative Solutions PAC on April 17, 2015.⁴

8 Respondents admit that GC Holdings made the contributions in question but deny they
9 violated the law. GC Holdings and its related entities, The GEO Group, Inc. (the “GEO Group”)
10 and GEO Reentry Services, LLC (“GEO Reentry”) (collectively the “GEO Respondents”)⁵
11 submitted a joint response contending that GC Holdings was permitted to make contributions
12 because it is not a federal contractor and is a separate and distinct legal entity from other
13 companies in the GEO family that are federal contractors.⁶ RAN also denies that GC Holdings
14 was a federal contractor and that it knowingly solicited a contribution from a federal contractor.⁷

¹ Compl. at 1-2 (Nov. 1, 2016).

² *Id.* at 5.

³ *Id.* at 10.

⁴ Supp. Compl. at 1-2 (Dec. 20, 2016).

⁵ Though the complainant makes no allegations against the related entity GEO Reentry, GEO Reentry joined the response of GC Holdings and GEO Group.

⁶ GEO Resp. at 7, 9.

⁷ RAN Resp. at 2-3. Respondents also question whether the contractor ban is unconstitutional as applied to contributions to independent-expenditure-only committees, but no court has made such a ruling. In *Wagner v. FEC*, the D.C. Circuit, sitting *en banc*, upheld the validity of the contractor ban but did not address the ban specifically as

1 As set forth below, the available information, including GC Holdings' representation in
2 an unrelated National Labor Relations Board ("NLRB") proceeding that it is a federal contractor,
3 suggests that GC Holdings may have been a federal contractor when it made its contributions to
4 RAN and to other committees. Further, even if GC Holdings was not itself a federal contractor,
5 its management and finances appear tightly interwoven with other GEO entities that are federal
6 contractors. Thus, there is reason to believe GC Holdings is subject to the federal contractor ban
7 because it does not appear to be separate and distinct from related entities that are federal
8 contractors.

9 Accordingly, we recommend that the Commission find reason to believe that GC
10 Holdings made contributions in violation of 52 U.S.C. § 30119(a)(1) and 11 C.F.R. §115.2(a)
11 and authorize an investigation to determine whether GC Holdings was a federal contractor at the
12 time it made its contributions in 2015 and 2016. As there is presently insufficient information
13 indicating that RAN knowingly solicited or accepted a prohibited contribution, we recommend
14 that the Commission take no further action as to RAN at this time. If during the course of the
15 investigation, we discover additional information regarding RAN's conduct, we will make the
16 appropriate recommendation.

applied to contributions made to independent-expenditure-only political committees. 793 F.3d 1 (D.C. Cir. 2015) (*en banc*). Absent a court ruling to the contrary, the Commission has continued to enforce the ban as to independent-expenditure-only committees. In MUR 7099 (Suffolk Construction Co.), the Commission found reason to believe that a contributor violated section 30119 by making a contribution to an independent-expenditure-only political committee. Certification, MUR 7099 (Suffolk Construction Co.) (May, 23 2017); *see also* FEC Statement on *Carey v. FEC*, n. 1 (Oct. 6, 2011), <https://beta.fec.gov/updates/fec-statement-on-carey-v-fec/> (“[f]oreign nationals, government contractors, national banks and corporations organized by authority of any law of Congress cannot contribute” to non-contribution accounts used to make only independent expenditures). Accordingly, contributions made by federal contractors to independent expenditure-only political committees remain prohibited.

1 **II. FACTS**

2 **A. GEO Respondents**

3 The GEO family of companies operates correctional and detention facilities and provides
4 related services throughout the world.⁸ The GEO Group is the parent company, and it is
5 incorporated in Florida.⁹ The GEO Group does not deny that it is a federal contractor, although
6 it does not discuss those contracts.¹⁰ According to GEO Group's 2015 Annual Report, 45
7 percent of the company's annual revenues come from federal contracts.¹¹

8 GC Holdings, a wholly-owned subsidiary of the GEO Group, is also incorporated in
9 Florida.¹² According to the GEO Respondents, GC Holdings "houses and performs a number of
10 administrative functions on behalf of The GEO Group family of companies" and generates no
11 income "through the sale of goods or services to persons beyond the GEO Group family of
12 companies."¹³ GEO Respondents state that despite GC Holdings not having outside sources of
13 revenue, it "has receipts in excess of \$250 million annually" and that "[t]hese funds are received
14 by other companies within The GEO Group family of companies from their customers and

⁸ See GEO Resp. at 3-4; The GEO Group, Inc., 2015 Annual Report at 2 (Feb. 25, 2016), <https://www.sn1.com/interactive/lookandfeel/4144107/2015AnnualReport.pdf> (cited in Compl. at n. 8).

⁹ GEO Resp. at 4; Compl. at 3.

¹⁰ *Id.* at 10 ("The GEO Group, Inc. does not deny that it is a federal contractor for purposes of the Act, although we maintain that the complaints do not establish that point by identifying an actual federal contract held by any Respondent.").

¹¹ 2015 Annual Report at 79, *supra* n. 8.

¹² GEO Resp. at 4.

¹³ *Id.* at 5.

1 transferred to GEO Correcting Holdings, Inc., for tax, administrative and management
2 purposes.”¹⁴

3 GEO Reentry bills itself as “the nation’s leader in safe, secure alternatives to detention
4 and reentry services for offenders released to community treatment and supervision,”¹⁵ and it
5 contracts with federal, state, and local governments.¹⁶ Prior to December 2012, GEO Reentry
6 was a wholly-owned subsidiary of the GEO Group, but it was converted to its current form as a
7 single member LLC, and 100% of the LLC’s equity interest was transferred to GC Holdings.¹⁷
8 Thus, GC Holdings is the sole member of GEO Reentry.¹⁸

9 Cornell Companies, Inc. (“Cornell Companies”) was acquired by the GEO Group in 2010
10 and became both a wholly-owned subsidiary of the GEO Group and a sister company to GC
11 Holdings.¹⁹ It is incorporated in Delaware.²⁰ According to the GEO Respondents, Cornell
12 Companies has no direct financial arrangements with GC Holdings.²¹ While Complainants
13 allege that GC Holdings operates a federal contract in connection with the D. Ray James

¹⁴ *Id.*

¹⁵ *See* <http://www.georeentry.com/about/>.

¹⁶ GEO Resp. at 6.

¹⁷ *Id.* at 6.

¹⁸ We note that the Commission recently was divided as to the question of whether the owner of a single member LLC, which does not elect to be treated as a corporation and is therefore a “disregarded” entity, can make a political contribution. *See* Certification, AOR 2016-20 (Christopher LLC) (Dec. 20, 2016). Here, because we do not have any information as to how GEO Reentry has elected to be taxed by the Internal Revenue Service, we do not analyze this issue at this time. Should we obtain relevant information during the course of the investigation, we will make the appropriate recommendations.

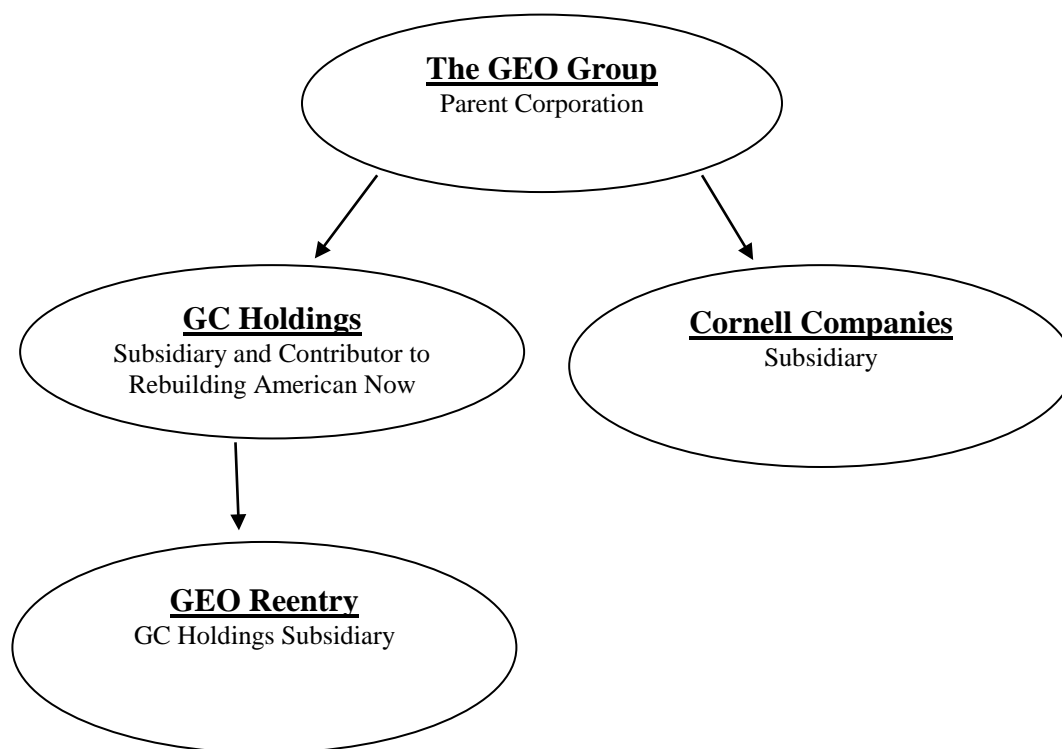
¹⁹ GEO Resp. at 6.

²⁰ *Id.*

²¹ *Id.*

1 Detention Facility in Folkston, Georgia (the "Georgia Detention Facility"), GEO Respondents
 2 assert that Cornell Companies holds the federal contract for services at this facility.²²

3 The following chart illustrates the corporate structure of the relevant GEO entities.



15

16 **B. Rebuilding American Now**

17 RAN is an independent-expenditure-only committee.²³ According to its website, RAN
 18 describes itself as "a Super PAC supporting Donald Trump in the 2016 general election."²⁴
 19 According to the GEO Respondents, on August 17, 2016, GC Holdings issued a \$100,000

²² *Id.* at 3.

²³ RAN, Statement of Organization,
<http://docquery.fec.gov/pdf/838/201606029017459838/201606029017459838.pdf>.

²⁴ See <https://rebuildingamericanow.com/about-our-organization/>.

1 contribution check to RAN,²⁵ and RAN reported that it accepted \$100,000 from GC Holdings on
2 August 19, 2016.²⁶ Further, on November 1, 2016, GC Holdings made another contribution
3 totaling \$125,000 to RAN.²⁷ RAN denies that it solicited the contribution knowing that GC
4 Holdings was a federal contractor.²⁸ RAN states that prior to making the contribution, counsel
5 for both GC Holdings and RAN were consulted on the legality of the contribution and
6 determined that the contribution would be permissible.²⁹

7 **III. LEGAL ANALYSIS**

8 **A. The Act's Prohibition of Contributions By Federal Contractors**

9
10 The Act prohibits federal contractors from “directly or indirectly” making a contribution
11 to any political party, political committee, federal candidate, or “any person for any political
12 purpose or use.”³⁰ A federal contractor includes any person who is negotiating or performing a
13 contract with the federal government or its agencies for certain enumerated purposes, including
14 the “rendition of personal services.”³¹ In addition, the Act prohibits any person from knowingly
15 soliciting a contribution from any person who is negotiating or performing a contract with the

²⁵ GEO Resp. at 2. The response indicates that a copy of this dated check is attached but a copy of the check is not among the attachments.

²⁶ RAN, October Quarterly Report,
<http://docquery.fec.gov/pdf/661/201610159032869661/201610159032869661.pdf>.

²⁷ Supp. Compl. at 1; RAN, Post-General Report,
<http://docquery.fec.gov/pdf/740/201612089039950740/201612089039950740.pdf>.

²⁸ RAN Resp. at 2-3.

²⁹ *Id.* at 3.

³⁰ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a).

³¹ *Id.*

1 United States government.³² “When determining whether an entity has made a contribution in
2 violation of [52 U.S.C. § 30119], the Commission first looks to whether the entity met the
3 statutory and regulatory definition of government contractor at the time the contribution was
4 made.”³³

5 With respect to a parent company that has an ownership interest in a federal-contractor
6 subsidiary, the Commission has recognized that such parent company may make a contribution
7 without violating section 30119 if it is a “separate and distinct legal entity” from its federal-
8 contractor subsidiary and “has sufficient revenue derived from sources other than its contractor
9 subsidiary to make a contribution.”³⁴ If, however, the subsidiary is merely an agent,
10 instrumentality, or alter ego of the holding company, then the parent company is prohibited from
11 making a contribution.³⁵ In determining whether a parent company is “separate and distinct”
12 from its subsidiary, the Commission has not articulated a test setting forth factors that a company
13 must satisfy but has made the determination based on the specific facts and circumstances of
14 each matter.³⁶

³² 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c).

³³ Factual and Legal Analysis at 5, MUR 6403 (*Aleut Corp., et al.*).

³⁴ Factual and Legal Analysis at 6, MUR 6726 (*Chevron*) (citing MUR 6403) (*Alaskans Standing Together, et al.*). *See also* Advisory Op. 2005-01 (*Mississippi Band of Choctaw Indians*); Advisory Op. 1998-11 (*Patriot Holdings LLC*) (superseded on other grounds).

³⁵ Advisory Op. 1998-11 (*Patriot Holdings LLC*) at 5.

³⁶ *See* Factual and Legal Analysis at 6, MUR 6726 (*Chevron Corp.*) (parent corporation was separate and distinct from contracting subsidiary where entities were separately incorporated and under direction and control of separate management); Advisory Op. 1998-11 (holding company was separate and distinct from its contractor subsidiaries where holding company did not pay salary or expenses of its subsidiaries and would not be held liable if its subsidiaries breached contracts with federal government); Advisory Op. 2005-01 (*Indian tribe and its subsidiary corporation were separate and distinct from each other where subsidiary was separately incorporated, owned separate property, maintained separate management, and did not intermingle contractor funds with other tribal funds*); Advisory Op. 1999-32 (*Tohono O’odham Nation*) (*Indian tribe and its subordinate entity were separate and distinct*

1 **B. GC Holdings Appears to be Subject to the Act's Prohibition Against**
 2 **Contributions by Federal Contractors**

3
 4 1. GC Holdings May Be a Federal Contractor

5 In support of their allegations, complainants assert that GC Holdings is a federal
 6 contractor based on documents GC Holdings filed with the NLRB in which it represented that it
 7 holds federal contracts.³⁷ Complainants also rely on information on a government website,
 8 USAspending.gov, that indicates GC Holdings has a federal contract in Louisiana.³⁸

9 Complainants maintain that in a matter before the NLRB in 2013, GC Holdings is
 10 identified as the employer and contractor for the Georgia Detention Facility, a federal prison.³⁹
 11 Indeed, according to its brief in that matter, GC Holdings explicitly affirms that it was a federal
 12 contractor:

13 [GC Holdings] is a large operator of prisons and other correctional facilities. *It*
 14 *has contracts with several state and federal agencies, such as the Federal Bureau*
 15 *of Prisons and Immigrations and Customs Enforcement, Department of Homeland*
 16 *Security. The D. Ray James Detention Facility [Georgia Detention Facility] is a*
 17 *secure facility and is operated pursuant to a contract with the Federal Bureau of*
 18 *Prisons. The D. Ray James Facility houses approximately 2,800 inmates.*⁴⁰

from each other where the subordinate had its own bank account, employees, personnel policies, employee benefits and legal counsel).

³⁷ Compl. at 3-4.

³⁸ *Id.* at 4.

³⁹ *Id.* at 3-4 (citing *GEO Corrections Holdings, Inc. (Employer) v. International Union, Security, Police, and Fire Professionals of America* (Petitioner), Case No. 12-RC-097792, available at <https://www.nlr.gov/case/12-RC-097792>).

⁴⁰ GEO Corrections Holdings, Inc., Brief in Support of Exceptions at 3, *GEO Corrections Holdings, Inc. (Employer) v. International Union, Security, Police, and Fire Professionals of America* (Petitioner), Case No. 12-RC-097792 (May 28, 2013), available at <https://www.nlr.gov/case/12-RC-097792> (also available as Supp. Compl., Ex A) (emphasis added, internal citations omitted). Although GC Holdings filed its brief in 2013, prior to making its contributions in 2015 and 2016, the GEO Group obtained ownership of the Georgia Detention Facility when it acquired Cornell Companies in 2010, and the contract with the federal government appears to have been ongoing since then. *See* GEO Resp. at 3. Because the GEO Respondents cannot sufficiently rebut why GC Holdings asserted that it was the employer for the federal facility in its statement before the NLRB, we believe that the facts support a

1
2 In addition, the brief describes in detail GC Holdings' negotiations with employees who were
3 members of a union at the Georgia Detention Facility.

4 The GEO Respondents do not dispute that GC Holdings made those factual
5 representations before the NLRB. Instead, they argue that Cornell Companies, not GC Holdings,
6 holds the contract for the Georgia Detention Facility and receives funds from the U.S.
7 Department of Justice.⁴¹ In support, they rely upon the Affidavit of Amber Martin, Executive
8 Vice President for Contract Administration for the parent company, The GEO Group.⁴² Martin's
9 Affidavit states, "GEO Corrections Holdings, Inc. does not seek, negotiate, hold or perform any
10 federal government contracts, or any government contracts of any kind."⁴³ Martin's averments,
11 however, post-date the contributions mentioned in the Complaint and Supplement, and they are
12 all phrased in the present tense, leaving open the possibility that GC Holdings was the contractor
13 at the time of the contributions. Further, the affidavit lacks supporting information, including
14 any contemporaneous evidence regarding the negotiation, formation, or execution of the contract
15 in question.⁴⁴

reasonable inference that GC Holdings was a federal contractor for as long as the Georgia Detention Facility has been under the GEO Group's ownership.

⁴¹ GEO Resp. at 3.

⁴² Martin Aff. ¶ 2 ("The federal government's contract for services at the D. Ray James Detention Facility is with Cornell Companies, Inc. Cornell Companies, Inc., contracts with, and receives funds from, the U.S. Department of Justice.").

⁴³ *Id.* ¶ 6.

⁴⁴ *See La Botz v. FEC*, 889 F. Supp.2d 51, 61-62 (D.D.C. 2012) (reversing and remanding Commission decision that relied on summary, *post hoc* affidavit that also was contradicted by contemporaneous document because Commission's decision was not based on "substantial evidence").

1 With respect to the matter filed with the NLRB, the GEO Respondents contend that the
2 Complaint's assertion that GC Holdings operates the Georgia Detention Facility is "factually
3 incorrect."⁴⁵ Respondents state that "[i]t is unclear why GEO Corrections Holdings, Inc. is
4 identified as the employer in the NLRB action referenced in the Complaint at Paragraph 6."⁴⁶
5 GEO Respondents do not, however, explain why GC Holdings filed a brief representing to the
6 NLRB that it was the employer and a federal contractor. Moreover, GC Holdings' identification
7 as an employer is not limited to the NLRB proceeding above, as Complainants note that GC
8 Holdings has been identified as such in three other matters before the agency.⁴⁷

9 The GEO Respondents claim that GC Holdings' statement regarding its federal contractor
10 status before another federal agency should have no bearing on this matter,⁴⁸ but they do not
11 explain how the definition of the term "federal contractor" in the Act and the Commission's
12 regulations is inconsistent with those of other federal agencies. Consequently, because
13 respondents do not sufficiently rebut complainants' allegations or sufficiently explain GC
14 Holdings' own statements to the NLRB, the available information indicates that GC Holdings
15 may be a federal contractor.

16 With respect to the information in USAspending.gov, which indicates that GC Holdings
17 was the recipient of \$266,000 in federal contracts in Fiscal Year 2015, GEO Respondents state
18 that the information on that site is not accurate and reflects a "sub-award transaction" between

⁴⁵ GEO Resp. at 3.

⁴⁶ *Id.*

⁴⁷ Supp. Compl. at 3, n. 9-10 (*citing GEO Corrections Holdings, Inc. v. SPFPA Local 126*, Case No. 12-CA-118124; *GEO Corrections Holdings, Inc.*, Case No. 12-CA-115020; *GEO Corrections Holdings, Inc. v. SPFPA Local 445*, Case No. 19-RC-099484).

⁴⁸ GEO Resp. at 8.

1 GC Holdings' wholly-owned subsidiary, GEO Reentry, and the Louisiana Department of Public
2 Safety and Corrections ("LDPSC").⁴⁹ In support, GEO Respondents provided a copy of this
3 contract confirming that the parties to the contract were GEO Reentry and LDPSC.⁵⁰ Because
4 Commission regulations provide that state contracts, even when the funds are derived from
5 federal grants, do not subject a person the federal contractor contribution ban,⁵¹ this contract does
6 not demonstrate that GC Holdings is a federal contractor.⁵² It is notable, however, that
7 Respondents attached documents proving that the contract for services in Louisiana was not a
8 federal contract, but they did not attach similarly probative documents regarding the contract at
9 the Georgia Detention Facility.

10 2. GC Holdings Does Not Appear to Be Separate and Distinct from Its
11 Related Federal Contractor Entities

12
13 Further, even if GC Holdings did not actually hold the contract for the Georgia Detention
14 Facility, it may not be separate and distinct from its related contractor entities.

15 *First*, the factual record indicates that GC Holdings performs substantial management
16 services for the GEO family of companies, including its parent, the GEO Group, which is a
17 federal contractor. As the GEO Respondents state:

18 GEO Corrections Holdings, Inc. is the employer of those individuals
19 engaged in administration and management functions at The GEO Group's
20 corporate headquarters in Boca Raton, Florida. Pursuant to a formal

⁴⁹ *Id.* at 3.

⁵⁰ *Id.*, Attach. 4.

⁵¹ *See* 11 C.F.R. § 115.1(d).

⁵² Complainants also rely upon a class action complaint filed against GC Holdings, among other defendants. See Supp. Compl., Ex. B. While that Complaint identified GC Holdings as an operator of correctional facilities in California, GEO Respondents note in their response, GC Holdings and the other defendants denied all allegations in the complaint, and we have found no information indicating whether those facilities in California involved federal or state contracts. GEO Resp. at 7, n. 9.

1 management services agreement, GEO Corrections Holdings, Inc.
2 performs a variety of management services for the GEO Group Family of
3 companies.⁵³
4

5 These facts call into question whether GC Holdings is separate and distinct from its
6 related contractor entities.

7 There is also substantial overlap in management between GC Holdings and the other
8 GEO-related entities that are federal contractors. For example, the GEO Group and GC Holdings
9 not only share a CEO, but the overwhelming majority—perhaps even all—of the eleven
10 directors/officers of GC Holdings appear to hold director/officer positions at the GEO Group.⁵⁴
11 Although the substantial overlap of directors may not, by itself, be sufficient to establish that the
12 two entities are not separate and distinct, as discussed, GC Holdings also manages and employs
13 personnel at other GEO-related companies.

14 *Second*, the GEO Group and GC Holdings appear to have significant financial ties.⁵⁵ In
15 addition to the financial arrangements already described, which provide an undisclosed amount

⁵³ GEO Resp. at 5. *See also* Supp Compl. at 3 (quoting GEO Spokesperson Pablo Paez statement in the *Daily Beast*: “GEO Corrections Holdings employs all of our corporate employees.”).

⁵⁴ According to the complaint, the nine out of the eleven offices/directors (including the CEO) of the GC Holdings are also officers/directors of the GEO Group. A review of their corporate filings with the Florida Department of State Division of Corporations (to which complaint cites) shows nine out of eleven directors/officers (including the CEO) of GC Holdings are also officers/directors of the GEO Group. (George C. Zoley, Brian R. Evans, John J. Bulfin, Marcel Maier, Shayn March, Ronald A. Black, Louis V. Carrillo, Thomas Wierdsma, and Ann Schlarb) According to the GEO Group’s website an additional member of GC Holdings’ officers/directors, J. David Donahue, is also listed as senior vice president and president of the GEO Group. https://www.geogroup.com/management_team. The only member of the director/officer team at GC Holdings that is not listed in either of these locations as part of the GEO Group’s officer/director team is Amber Martin. But, Martin submitted an affidavit on behalf of the GEO Respondents indicating that she is the Executive Vice President *for Contract Administration*, for the GEO Group. GEO Resp., Martin Aff. ¶ 1. Thus, every officer/director at GC Holdings appears to hold a senior position at the GEO Group as well.

⁵⁵ In an analogous context regarding whether a wholly-owned subsidiary of a federally chartered savings association could make a contribution, the Commission considered the financial independence of two entities in determining whether they are separate and distinct. *See* Factual and Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank) (citing 18 Am. Jur. 2d *Corporations* §§ 54, 61–65 for the proposition that “Courts will disregard the fiction of a separate legal entity when there is such domination of finances, policy and practices by the parent that the

1 of GC Holdings' revenues, the GEO Group and GC Holdings appear to have taken on substantial
2 debt obligations together, such as entering into a joint credit agreement that provides a \$296.3
3 million dollar loan and a \$700 million dollar revolving credit facility.⁵⁶ This loan, which is
4 larger than GC Holdings' annual revenues of \$250 million, provides further support for the
5 conclusion that the companies may not be separate and distinct.⁵⁷

6 We note that unlike previous matters, GC Holdings, the contributing entity, is not simply
7 the parent corporation of a federal-contractor subsidiary (GEO Reentry), but is itself a subsidiary
8 of the parent company, GEO Group, and a sister company to Cornell Companies, both of which
9 are federal contractors.⁵⁸ Although the Commission has not had the opportunity to apply the
10 "separate and distinct" test to these circumstances, the Commission has never stated that this test
11 is limited to the situation in which the parent of a federal-contractor subsidiary makes the

subsidiary has no separate existence of its own and is merely a business conduit for its principal.""). The Commission concluded that the two entities were not distinct where they shared the same officers and directors, the subsidiary did not have its own employees, and the subsidiary had not conducted its own business in many years. *Id.*

⁵⁶ Supp. Compl. at 5, n. 17. *See* 2015 Annual Report at 19, *supra* n. 8. According to this annual report the credit agreement was entered into "by and among" GC Holdings and the GEO Group. Without inspecting the agreement, it is difficult to know precisely the ways in which this agreement ties the two entities financially, for example, whether the entities agreed to indemnify each other.

⁵⁷ GEO Respondents also point to other criteria indicating financial entanglement that are appropriate to consider including: whether the parent company pays the salaries or expenses of its subsidiary, whether the terms of the federal contract hold the parent liable for the breach of the subsidiary, whether the companies have separate bank accounts, employees, personnel policies, and employee benefits. GEO Resp. at 12-13. GEO Respondents do not address or provide facts regarding these issues.

The GEO respondents also indicate that in 2013, the GEO family of companies underwent a corporate restructuring as part of a conversion to a Real Estate Investment Trust ("REIT"). GEO Resp. at 4. As a REIT, subsidiary companies doing non-real estate work are treated differently than the real-estate subsidiary companies for tax purposes. Under 26 U.S. C. § 856(i), real-estate subsidiaries are not treated as separate corporations from their parent company. The Commission has yet to specifically consider how a REIT structure affects whether an entity is separate and distinct from a related contractor entity. And GEO Respondents have provided no information to explain which category of subsidiary GC Holdings falls into; thus, it is unclear from the present record how the REIT structure affects GC Holdings' status as a federal contractor.

⁵⁸ *See* Chart, *supra* p. 6.

1 contribution. Here, where GC Holdings appears to exercise significant management control
2 throughout the entire GEO family of companies, we believe that this test is appropriately applied
3 throughout the GEO network of companies.⁵⁹

4 Because we conclude that that GC Holdings do not appear to be separate and distinct
5 from its related contractor entities, we do not analyze here whether GC Holdings had sufficient
6 revenue from other non-contracting sources.⁶⁰

7 3. Conclusion

8 The facts here indicate that GC Holdings may have been prohibited from making a
9 political contribution as a federal contractor. First, GC Holdings represented to the NLRB that it
10 was a federal contractor. Second, GC Holdings does not appear to be separate and distinct from
11 the GEO-related companies that are federal contractors because it manages and acts as the
12 employer for those federal contractor companies, it has extensive overlap in senior management
13 with its federal contractor parent company, and it has significant financial ties with those federal
14 contractor entities.

15 Accordingly, we recommend that the Commission find that there is reason to believe GC
16 Holdings violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).⁶¹ With respect to GEO

⁵⁹ The Commission also reached a similar conclusion when applying the contribution ban on national banks under 52 U.S.C. § 30118. *See* Advisory Op. 1995-32 (Chicago Host Committee). In that context, the Commission has determined that contributions from entities related to banks—whether “the holding company, subsidiary company and sister company”—are permissible only when the entities in question are “distinct legal entities, and not merely the agents, instrumentalities or alter egos of their associated state or Federal banks.” *Id.* at 3. The analogy to the bank contribution ban is particularly apt as the Commission cited the application of the separate and distinct test in the bank context when adopting the test in the present context. *See* Advisory Op. 1998-11 at 4-5.

⁶⁰ We note that the GEO Respondents contend that one of GC Holdings’ wholly owned subsidiaries, GEO Corrections and Detentions, LLC, does not hold federal contracts, and in 2016, earned \$7.8 million.

⁶¹ *See Statement of Policy Regarding Commission Action in Matters at the Initial Stage of Enforcement*, 2007-6 at 4 (reason-to-believe finding appropriate where complaint “credibly alleges that a significant violation may

1 Group, which was also named as a respondent, we do not have any information that they had a
2 role in making the contributions. If during the course of the investigation, we obtain information
3 as to its involvement in the making of these contributions, we will make the appropriate
4 recommendation.

5 **C. Alleged Solicitation by RAN**

6 Under 52 U.S.C. §30119(a)(2) and 11 C.F.R. §115.2(c), any person, including any
7 political committee, is prohibited from knowingly soliciting a contribution from a federal
8 contractor. The current record does not establish that RAN knowingly solicited or accepted
9 prohibited contributions from a federal contractor. Complainants support their allegation that
10 “Rebuilding America Now *may have* violated the ban on knowingly soliciting a federal
11 contractor” by stating that the “contribution was made on the same day as several other
12 contributions from Florida-based corporations, suggesting that the contribution was made at a
13 Florida fundraiser where Rebuilding America Now agents solicited contributions.”⁶² In
14 response, while not explicitly denying that such a fundraiser occurred, RAN notes that it also
15 received more than \$400,000 from donors in Connecticut and Washington on the same day.⁶³
16 Further, the GEO Respondents note that the contribution in question was made by a check dated
17 August 17, 2016, two days before the Florida fundraiser.⁶⁴

have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.”).

⁶² Compl. at 10 (emphasis added).

⁶³ RAN Resp. at 3.

⁶⁴ GEO Resp. at 2.

1 In addition, RAN contends that counsel for both RAN and GC Holdings were consulted,
2 and they both concluded that GC Holdings could legally make a contribution.⁶⁵ Nevertheless,
3 because the facts suggest that GC Holdings may have been a federal contractor, it is unclear
4 exactly what counsel for both respondents had communicated to each other regarding GC
5 Holdings' status as a federal contractor. Given that we are requesting an investigation, we
6 recommend that the Commission take no action at this time as to RAN. If during the course of
7 the investigation, we discover any relevant information pertaining to RAN's knowledge, we will
8 make the appropriate recommendation.

9 **IV. PROPOSED INVESTIGATION**

10 We intend to confirm whether GC Holdings was a federal contractor at the time it made
11 its contributions to RAN, as well as Senate Leadership Fund and Conservative Solutions PAC.
12 In particular, we would seek information relating to the federal contract for the Georgia
13 Detention Facility, and any other federal contract to which GC Holdings was a party, or was
14 negotiating at the relevant times. We also intend to seek information pertaining to the corporate
15 structure of GC Holdings to determine whether it is a separate and distinct entity from the other
16 GEO-related companies that are federal contractors. We will seek to conduct our investigation
17 through voluntary means but recommend that the Commission authorize the use of compulsory
18 process, including the issuance of appropriate interrogatories, document subpoenas, and
19 deposition subpoenas, as necessary.

20 **V. RECOMMENDATIONS**

- 21 1. Find reason to believe that GEO Corrections Holdings, Inc. violated 52 U.S.C. §
22 30119(a)(1) and 11 C.F.R. § 115.2(a);


⁶⁵ RAN Resp. at 3.


- 1 2. Take no action at this time with respect to GEO Group, Inc.;
- 2 3. Take no action at this time with respect to Rebuilding America Now and Ryan Call in his
- 3 official capacity as treasurer;
- 4 4. Approve the attached Factual and Legal Analysis;
- 5 5. Authorize compulsory process; and
- 6 6. Approve appropriate letters.


Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel
for Enforcement

15 Date: 6-15-17

16 
 17 _____
 18 Stephen Gura
 19 Deputy Associate General Counsel
 20 for Enforcement

21 
 22 _____
 23 Jim Lee
 24 Acting Assistant General Counsel

25 
 26 _____
 27 Nicholas Mueller
 28 Attorney

30 Attachments:

- 31 1. Factual and Legal Analysis of GEO Corrections Holdings, Inc.

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **RESPONDENT:** GEO Corrections Holdings, Inc.
5

MUR 7180

6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission by
8 Campaign Legal Center.¹ The Complaint makes allegations that GEO Corrections Holdings,
9 Inc. (“GC Holdings”) violated the Federal Election Campaign Act of 1971, as amended, (the
10 “Act”) when GC Holdings, purportedly a federal contractor, made contributions to Rebuilding
11 America Now (“RAN”), an independent expenditure-only political committee.² Specifically, the
12 complaint alleges that on August 19, 2016, GC Holdings contributed \$100,000 to RAN while it
13 was a federal contractor.³ In a supplement, the complainants alleged that GC Holdings also
14 violated the Act by making a second contribution to RAN on November 1, 2016, in the amount
15 of \$125,000, a \$200,000 contribution to Senate Leadership Fund on September 27, 2016, and a
16 \$100,000 contribution to Conservative Solutions PAC on April 17, 2015.⁴

17 Respondents admit that GC Holdings made the contributions in question but deny they
18 violated the law. GC Holdings and its related entities, The GEO Group, Inc. (the “GEO Group”)
19 and GEO Reentry Services, LLC (“GEO Reentry”) (collectively the “GEO Respondents”)⁵
20 submitted a joint response contending that GC Holdings was permitted to make contributions

¹ Compl. (Nov. 1, 2016); *See* 52 U.S.C. § 30109(a)(1).

² Compl. at 1-2.

³ *Id.* at 5.

⁴ Supp. Compl. at 1-2 (Dec. 20, 2016).

⁵ Though the complainant makes no allegations against the related entity GEO Reentry, GEO Reentry joined the response of GC Holdings and GEO Group.

1 because it is not a federal contractor and is a separate and distinct legal entity from other
2 companies in the GEO family that are federal contractors.⁶

3 As set forth below, the available information, including GC Holdings' representation in
4 an unrelated National Labor Relations Board ("NLRB") proceeding that it is a federal contractor,
5 suggests that GC Holdings may have been a federal contractor when it made its contributions to
6 RAN and to other committees. Further, even if GC Holdings was not itself a federal contractor,
7 its management and finances appear tightly interwoven with other GEO entities that are federal
8 contractors. Thus, there is reason to believe GC Holdings is subject to the federal contractor ban
9 because it does not appear to be separate and distinct from related entities that are federal
10 contractors.

11 Accordingly, the Commission finds reason to believe that GC Holdings made
12 contributions in violation of 52 U.S.C. § 30119(a)(1) and 11 C.F.R. §115.2(a) and authorizes an
13 investigation to determine whether GC Holdings was a federal contractor at the time it made its
14 contributions in 2015 and 2016.

15 **II. FACTS**

16 **A. GEO Respondents**

17 The GEO family of companies operates correctional and detention facilities and provides
18 related services throughout the world.⁷ The GEO Group is the parent company, and it is
19 incorporated in Florida.⁸ The GEO Group does not deny that it is a federal contractor, although

⁶ GEO Resp. at 7, 9.

⁷ See GEO Resp. at 3-4; The GEO Group, Inc., 2015 Annual Report at 2 (Feb. 25, 2016), <https://www.sn1.com/interactive/lookandfeel/4144107/2015AnnualReport.pdf> (cited in Compl. at n. 8).

⁸ GEO Resp. at 4; Compl. at 3.

1 it does not discuss those contracts.⁹ According to GEO Group’s 2015 Annual Report, 45 percent
2 of the company’s annual revenues come from federal contracts.¹⁰

3 GC Holdings, a wholly-owned subsidiary of the GEO Group, is also incorporated in
4 Florida.¹¹ According to the GEO Respondents, GC Holdings “houses and performs a number of
5 administrative functions on behalf of The GEO Group family of companies” and generates no
6 income “through the sale of goods or services to persons beyond the GEO Group family of
7 companies.”¹² GEO Respondents state that despite GC Holdings not having outside sources of
8 revenue, it “has receipts in excess of \$250 million annually” and that “[t]hese funds are received
9 by other companies within The GEO Group family of companies from their customers and
10 transferred to GEO Correcting Holdings, Inc., for tax, administrative and management
11 purposes.”¹³

12 GEO Reentry bills itself as “the nation’s leader in safe, secure alternatives to detention
13 and reentry services for offenders released to community treatment and supervision,”¹⁴ and it
14 contracts with federal, state, and local governments.¹⁵ Prior to December 2012, GEO Reentry
15 was a wholly-owned subsidiary of the GEO Group, but it was converted to its current form as a

⁹ *Id.* at 10 (“The GEO Group, Inc. does not deny that it is a federal contractor for purposes of the Act, although we maintain that the complaints do not establish that point by identifying an actual federal contract held by any Respondent.”).

¹⁰ 2015 Annual Report at 79, *supra* n. 7.

¹¹ GEO Resp. at 4.

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *See* <http://www.georeentry.com/about/>.

¹⁵ GEO Resp. at 6.

1 single member LLC, and 100% of the LLC's equity interest was transferred to GC Holdings.¹⁶

2 Thus, GC Holdings is the sole member of GEO Reentry.

3 Cornell Companies, Inc. ("Cornell Companies") was acquired by the GEO Group in 2010

4 and became both a wholly-owned subsidiary of the GEO Group and a sister company to GC

5 Holdings.¹⁷ It is incorporated in Delaware.¹⁸ According to the GEO Respondents, Cornell

6 Companies has no direct financial arrangements with GC Holdings.¹⁹ While Complainants

7 allege that GC Holdings operates a federal contract in connection with the D. Ray James

8 Detention Facility in Folkston, Georgia (the "Georgia Detention Facility"), GEO Respondents

9 assert that Cornell Companies holds the federal contract for services at this facility.²⁰

10

¹⁶ *Id.* at 6.

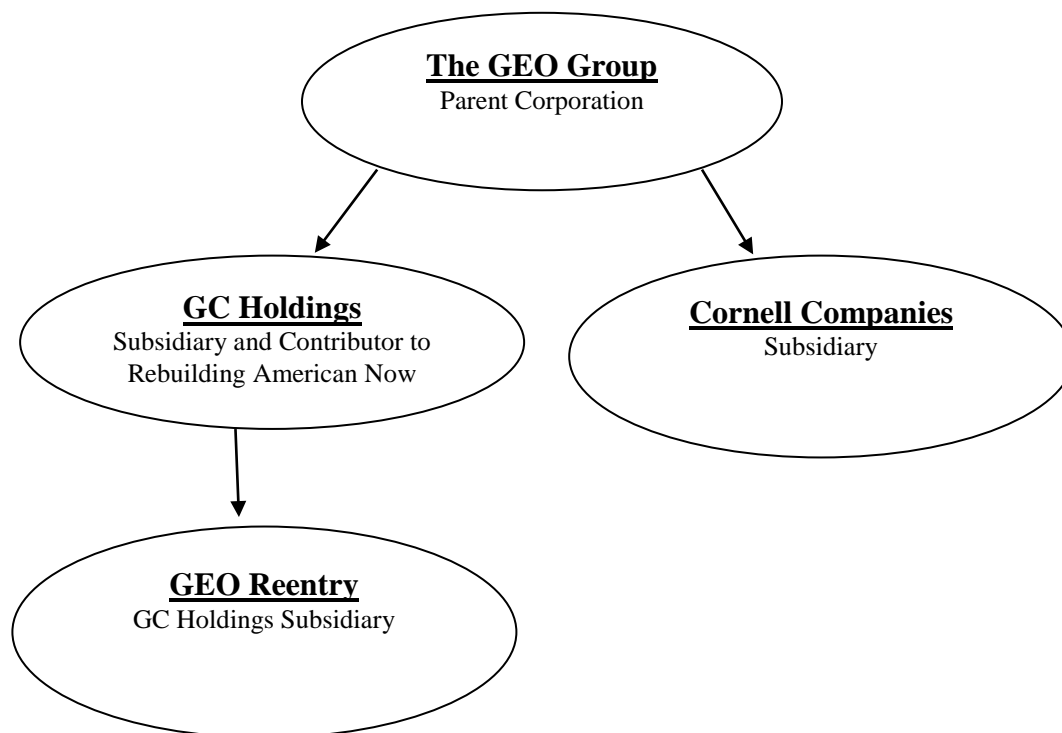
¹⁷ GEO Resp. at 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 3.

The following chart illustrates the corporate structure of the relevant GEO entities.



B. Rebuilding American Now

RAN is an independent-expenditure-only committee.²¹ According to its website, RAN describes itself as “a Super PAC supporting Donald Trump in the 2016 general election.”²² According to the GEO Respondents, on August 17, 2016, GC Holdings issued a \$100,000 contribution check to RAN,²³ and RAN reported that it accepted \$100,000 from GC Holdings on

²¹ RAN, Statement of Organization, <http://docquery.fec.gov/pdf/838/201606029017459838/201606029017459838.pdf>.

²² See <https://rebuildingamericanow.com/about-our-organization/>.

²³ GEO Resp. at 2. The response indicates that a copy of this dated check is attached but a copy of the check is not among the attachments.

1 August 19, 2016.²⁴ Further, on November 1, 2016, GC Holdings made another contribution
2 totaling \$125,000 to RAN.²⁵

3 **III. LEGAL ANALYSIS**

4 **A. The Act's Prohibition of Contributions By Federal Contractors**

5
6 The Act prohibits federal contractors from “directly or indirectly” making a contribution
7 to any political party, political committee, federal candidate, or “any person for any political
8 purpose or use.”²⁶ A federal contractor includes any person who is negotiating or performing a
9 contract with the federal government or its agencies for certain enumerated purposes, including
10 the “rendition of personal services.”²⁷ In addition, the Act prohibits any person from knowingly
11 soliciting a contribution from any person who is negotiating or performing a contract with the
12 United States government.²⁸ “When determining whether an entity has made a contribution in
13 violation of [52 U.S.C. § 30119], the Commission first looks to whether the entity met the
14 statutory and regulatory definition of government contractor at the time the contribution was
15 made.”²⁹

16 With respect to a parent company that has an ownership interest in a federal-contractor
17 subsidiary, the Commission has recognized that such parent company may make a contribution
18 without violating section 30119 if it is a “separate and distinct legal entity” from its federal-

²⁴ RAN, October Quarterly Report,
<http://docquery.fec.gov/pdf/661/201610159032869661/201610159032869661.pdf>.

²⁵ Supp. Compl. at 1; RAN, Post-General Report,
<http://docquery.fec.gov/pdf/740/201612089039950740/201612089039950740.pdf>.

²⁶ 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a).

²⁷ *Id.*

²⁸ 52 U.S.C. § 30119(a)(2); 11 C.F.R. § 115.2(c).

²⁹ Factual and Legal Analysis at 5, MUR 6403 (Aleut Corp., *et al*).

1 contractor subsidiary and “has sufficient revenue derived from sources other than its contractor
 2 subsidiary to make a contribution.”³⁰ If, however, the subsidiary is merely an agent,
 3 instrumentality, or alter ego of the holding company, then the parent company is prohibited from
 4 making a contribution.³¹ In determining whether a parent company is “separate and distinct”
 5 from its subsidiary, the Commission has not articulated a test setting forth factors that a company
 6 must satisfy but has made the determination based on the specific facts and circumstances of
 7 each matter.³²

8 **B. GC Holdings Appears to be Subject to the Act’s Prohibition Against**
 9 **Contributions by Federal Contractors**

10 1. GC Holdings May Be a Federal Contractor

12 In support of their allegations, complainants assert that GC Holdings is a federal
 13 contractor based on documents GC Holdings filed with the NLRB in which it represented that it
 14 holds federal contracts.³³ Complainants also rely on information on a government website,
 15 USAspending.gov, that indicates GC Holdings has a federal contract in Louisiana.³⁴

³⁰ Factual and Legal Analysis at 6, MUR 6726 (Chevron) (citing MUR 6403) (Alaskans Standing Together. et al.). See also Advisory Op. 2005-01 (Mississippi Band of Choctaw Indians); Advisory Op. 1998-11 (Patriot Holdings LLC) (superseded on other grounds).

³¹ Advisory Op. 1998-11 (Patriot Holdings LLC) at 5.

³² See Factual and Legal Analysis at 6, MUR 6726 (Chevron Corp.) (parent corporation was separate and distinct from contracting subsidiary where entities were separately incorporated and under direction and control of separate management); Advisory Op. 1998-11 (holding company was separate and distinct from its contractor subsidiaries where holding company did not pay salary or expenses of its subsidiaries and would not be held liable if its subsidiaries breached contracts with federal government); Advisory Op. 2005-01 (Indian tribe and its subsidiary corporation were separate and distinct from each other where subsidiary was separately incorporated, owned separate property, maintained separate management, and did not intermingle contractor funds with other tribal funds); Advisory Op. 1999-32 (Tohono O’odham Nation) (Indian tribe and its subordinate entity were separate and distinct from each other where the subordinate had its own bank account, employees, personnel policies, employee benefits and legal counsel).

³³ Compl. at 3-4.

³⁴ *Id.* at 4.

1 Complainants maintain that in a matter before the NLRB in 2013, GC Holdings is
2 identified as the employer and contractor for the Georgia Detention Facility, a federal prison.³⁵
3 Indeed, according to its brief in that matter, GC Holdings explicitly affirms that it was a federal
4 contractor:

5 [GC Holdings] is a large operator of prisons and other correctional facilities. *It*
6 *has contracts with several state and federal agencies, such as the Federal Bureau*
7 *of Prisons and Immigrations and Customs Enforcement, Department of Homeland*
8 *Security.* The D. Ray James Detention Facility [Georgia Detention Facility] is a
9 secure facility and is operated pursuant to a contract with the Federal Bureau of
10 Prisons. The D. Ray James Facility houses approximately 2,800 inmates.³⁶
11

12 In addition, the brief describes in detail GC Holdings' negotiations with employees who were
13 members of a union at the Georgia Detention Facility.

14 The GEO Respondents do not dispute that GC Holdings made those factual
15 representations before the NLRB. Instead, they argue that Cornell Companies, not GC Holdings,
16 holds the contract for the Georgia Detention Facility and receives funds from the U.S.
17 Department of Justice.³⁷ In support, they rely upon the Affidavit of Amber Martin, Executive

³⁵ *Id.* at 3-4 (citing *GEO Corrections Holdings, Inc. (Employer) v. International Union, Security, Police, and Fire Professionals of America* (Petitioner), Case No. 12-RC-097792, available at <https://www.nlr.gov/case/12-RC-097792>).

³⁶ GEO Corrections Holdings, Inc., Brief in Support of Exceptions at 3, *GEO Corrections Holdings, Inc. (Employer) v. International Union, Security, Police, and Fire Professionals of America* (Petitioner), Case No. 12-RC-097792 (May 28, 2013), available at <https://www.nlr.gov/case/12-RC-097792> (also available as Supp. Compl., Ex A) (emphasis added, internal citations omitted). Although GC Holdings filed its brief in 2013, prior to making its contributions in 2015 and 2016, the GEO Group obtained ownership of the Georgia Detention Facility when it acquired Cornell Companies in 2010, and the contract with the federal government appears to have been ongoing since then. *See* GEO Resp. at 3. Because the GEO Respondents cannot sufficiently rebut why GC Holdings asserted that it was the employer for the federal facility in its statement before the NLRB, the Commission believes that the facts support a reasonable inference that GC Holdings was a federal contractor for as long as the Georgia Detention Facility has been under the GEO Group's ownership.

³⁷ GEO Resp. at 3.

1 Vice President for Contract Administration for the parent company, The GEO Group.³⁸ Martin's
2 Affidavit states, "GEO Corrections Holdings, Inc. does not seek, negotiate, hold or perform any
3 federal government contracts, or any government contracts of any kind."³⁹ Martin's averments,
4 however, post-date the contributions mentioned in the Complaint and Supplement, and they are
5 all phrased in the present tense, leaving open the possibility that GC Holdings was the contractor
6 at the time of the contributions. Further, the affidavit lacks supporting information, including
7 any contemporaneous evidence regarding the negotiation, formation, or execution of the contract
8 in question.⁴⁰

9 With respect to the matter filed with the NLRB, the GEO Respondents contend that the
10 Complaint's assertion that GC Holdings operates the Georgia Detention Facility is "factually
11 incorrect."⁴¹ Respondents state that "[i]t is unclear why GEO Corrections Holdings, Inc. is
12 identified as the employer in the NLRB action referenced in the Complaint at Paragraph 6."⁴²
13 GEO Respondents do not, however, explain why GC Holdings filed a brief representing to the
14 NLRB that it was the employer and a federal contractor. Moreover, GC Holdings' identification

³⁸ Martin Aff. ¶ 2 ("The federal government's contract for services at the D. Ray James Detention Facility is with Cornell Companies, Inc. Cornell Companies, Inc., contracts with, and receives funds from, the U.S. Department of Justice.").

³⁹ *Id.* ¶ 6.

⁴⁰ *See La Botz v. FEC*, 889 F. Supp.2d 51, 61-62 (D.D.C. 2012) (reversing and remanding Commission decision that relied on summary, *post hoc* affidavit that also was contradicted by contemporaneous document because Commission's decision was not based on "substantial evidence").

⁴¹ GEO Resp. at 3.

⁴² *Id.*

1 as an employer is not limited to the NLRB proceeding above, as Complainants note that GC
2 Holdings has been identified as such in three other matters before the agency.⁴³

3 The GEO Respondents claim that GC Holdings' statement regarding its federal
4 contractor status before another federal agency should have no bearing on this matter,⁴⁴ but they
5 do not explain how the definition of the term "federal contractor" in the Act and the
6 Commission's regulations is inconsistent with those of other federal agencies. Consequently,
7 because respondents do not sufficiently rebut complainants' allegations or sufficiently explain
8 GC Holdings' own statements to the NLRB, the available information indicates that GC
9 Holdings may be a federal contractor.

10 With respect to the information in USAspending.gov, which indicates that GC Holdings
11 was the recipient of \$266,000 in federal contracts in Fiscal Year 2015, GEO Respondents state
12 that the information on that site is not accurate and reflects a "sub-award transaction" between
13 GC Holdings' wholly-owned subsidiary, GEO Reentry, and the Louisiana Department of Public
14 Safety and Corrections ("LDPSC").⁴⁵ In support, GEO Respondents provided a copy of this
15 contract confirming that the parties to the contract were GEO Reentry and LDPSC.⁴⁶ Because
16 Commission regulations provide that state contracts, even when the funds are derived from
17 federal grants, do not subject a person the federal contractor contribution ban,⁴⁷ this contract

⁴³ Supp. Compl. at 3, n. 9-10 (citing *GEO Corrections Holdings, Inc. v. SPFPA Local 126*, Case No. 12-CA-118124; *GEO Corrections Holdings, Inc.*, Case No. 12-CA-115020; *GEO Corrections Holdings, Inc. v. SPFPA Local 445*, Case No. 19-RC-099484).

⁴⁴ GEO Resp. at 8.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.*, Attach. 4.

⁴⁷ See 11 C.F.R. § 115.1(d).

1 does not demonstrate that GC Holdings is a federal contractor.⁴⁸ It is notable, however, that
2 Respondents attached documents proving that the contract for services in Louisiana was not a
3 federal contract, but they did not attach similarly probative documents regarding the contract at
4 the Georgia Detention Facility.

5 2. GC Holdings Does Not Appear to Be Separate and Distinct from Its
6 Related Federal Contractor Entities
7

8 Further, even if GC Holdings did not actually hold the contract for the Georgia Detention
9 Facility, it may not be separate and distinct from its related contractor entities.

10 *First*, the factual record indicates that GC Holdings performs substantial management
11 services for the GEO family of companies, including its parent, the GEO Group, which is a
12 federal contractor. As the GEO Respondents state:

13 GEO Corrections Holdings, Inc. is the employer of those individuals
14 engaged in administration and management functions at The GEO
15 Group's corporate headquarters in Boca Raton, Florida. Pursuant to a
16 formal management services agreement, GEO Corrections Holdings, Inc.
17 performs a variety of management services for the GEO Group Family of
18 companies.⁴⁹
19

20 These facts call into question whether GC Holdings is separate and distinct from its
21 related contractor entities.

22 There is also substantial overlap in management between GC Holdings and the other
23 GEO-related entities that are federal contractors. For example, the GEO Group and GC
24 Holdings not only share a CEO, but the overwhelming majority—perhaps even all—of the

⁴⁸ Complainants also rely upon a class action complaint filed against GC Holdings, among other defendants. See Supp. Compl., Ex. B. While that Complaint identified GC Holdings as an operator of correctional facilities in California, GEO Respondents note in their response, GC Holdings and the other defendants denied all allegations in the complaint, and the Commission has found no information indicating whether those facilities in California involved federal or state contracts. GEO Resp. at 7, n. 9.

⁴⁹ GEO Resp. at 5. See also Supp Compl. at 3 (quoting GEO Spokesperson Pablo Paez statement in the *Daily Beast*: "GEO Corrections Holdings employs all of our corporate employees.").

1 eleven directors/officers of GC Holdings appear to hold director/officer positions at the GEO
2 Group.⁵⁰ Although the substantial overlap of directors may not, by itself, be sufficient to
3 establish that the two entities are not separate and distinct, as discussed, GC Holdings also
4 manages and employs personnel at other GEO-related companies.

5 *Second*, the GEO Group and GC Holdings appear to have significant financial ties.⁵¹ In
6 addition to the financial arrangements already described, which provide an undisclosed amount
7 of GC Holdings' revenues, the GEO Group and GC Holdings appear to have taken on substantial
8 debt obligations together, such as entering into a joint credit agreement that provides a \$296.3
9 million dollar loan and a \$700 million dollar revolving credit facility.⁵² This loan, which is

⁵⁰ According to the complaint, the nine out of the eleven offices/directors (including the CEO) of the GC Holdings are also officers/directors of the GEO Group. A review of their corporate filings with the Florida Department of State Division of Corporations (to which complaint cites) shows nine out of eleven directors/officers (including the CEO) of GC Holdings are also officers/directors of the GEO Group. (George C. Zoley, Brian R. Evans, John J. Bulfin, Marcel Maier, Shayn March, Ronald A. Black, Louis V. Carrillo, Thomas Wierdsma, and Ann Schlarb) According to the GEO Group's website an additional member of GC Holdings' officers/directors, J. David Donahue, is also listed as senior vice president and president of the GEO Group. https://www.geogroup.com/management_team. The only member of the director/officer team at GC Holdings that is not listed in either of these locations as part of the GEO Group's officer/director team is Amber Martin. But, Martin submitted an affidavit on behalf of the GEO Respondents indicating that she is the Executive Vice President *for Contract Administration*, for the GEO Group. GEO Resp., Martin Aff. ¶ 1. Thus, every officer/director at GC Holdings appears to hold a senior position at the GEO Group as well.

⁵¹ In an analogous context regarding whether a wholly-owned subsidiary of a federally chartered savings association could make a contribution, the Commission considered the financial independence of two entities in determining whether they are separate and distinct. *See* Factual and Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank) (citing 18 Am. Jur. 2d *Corporations* §§ 54, 61-65 for the proposition that "Courts will disregard the fiction of a separate legal entity when there is such domination of finances, policy and practices by the parent that the subsidiary has no separate existence of its own and is merely a business conduit for its principal."). The Commission concluded that the two entities were not distinct where they shared the same officers and directors, the subsidiary did not have its own employees, and the subsidiary had not conducted its own business in many years. *Id.*

⁵² Supp. Compl. at 5, n. 17. *See* 2015 Annual Report at 19, *supra* n. 7. According to this annual report the credit agreement was entered into "by and among" GC Holdings and the GEO Group. Without inspecting the agreement, it is difficult to know precisely the ways in which this agreement ties the two entities financially, for example, whether the entities agreed to indemnify each other.

1 larger than GC Holdings’ annual revenues of \$250 million, provides further support for the
2 conclusion that the companies may not be separate and distinct.⁵³

3 The Commission notes that unlike previous matters, GC Holdings, the contributing
4 entity, is not simply the parent corporation of a federal-contractor subsidiary (GEO Reentry), but
5 is itself a subsidiary of the parent company, GEO Group, and a sister company to Cornell
6 Companies, both of which are federal contractors.⁵⁴ Although the Commission has not had the
7 opportunity to apply the “separate and distinct” test to these circumstances, the Commission has
8 never stated that this test is limited to the situation in which the parent of a federal-contractor
9 subsidiary makes the contribution. Here, where GC Holdings appears to exercise significant
10 management control throughout the entire GEO family of companies, the Commission believes
11 that this test is appropriately applied throughout the GEO network of companies.⁵⁵

⁵³ GEO Respondents also point to other criteria indicating financial entanglement that are appropriate to consider including: whether the parent company pays the salaries or expenses of its subsidiary, whether the terms of the federal contract hold the parent liable for the breach of the subsidiary, whether the companies have separate bank accounts, employees, personnel policies, and employee benefits. GEO Resp. at 12-13. GEO Respondents do not address or provide facts regarding these issues.

The GEO respondents also indicate that in 2013, the GEO family of companies underwent a corporate restructuring as part of a conversion to a Real Estate Investment Trust (“REIT”). GEO Resp. at 4. As a REIT, subsidiary companies doing non-real estate work are treated differently than the real-estate subsidiary companies for tax purposes. Under 26 U.S. C. § 856(i), real-estate subsidiaries are not treated as separate corporations from their parent company. The Commission has yet to specifically consider how a REIT structure affects whether an entity is separate and distinct from a related contractor entity. And GEO Respondents have provided no information to explain which category of subsidiary GC Holdings falls into; thus, it is unclear from the present record how the REIT structure affects GC Holdings’ status as a federal contractor.

⁵⁴ See Chart, *supra* p. 5.

⁵⁵ The Commission also reached a similar conclusion when applying the contribution ban on national banks under 52 U.S.C. § 30118. See Advisory Op. 1995-32 (Chicago Host Committee). In that context, the Commission has determined that contributions from entities related to banks—whether “the holding company, subsidiary company and sister company”—are permissible only when the entities in question are “distinct legal entities, and not merely the agents, instrumentalities or alter egos of their associated state or Federal banks.” *Id.* at 3. The analogy to the bank contribution ban is particularly apt as the Commission cited the application of the separate and distinct test in the bank context when adopting the test in the present context. See Advisory Op. 1998-11 at 4-5.

1 Because the Commission concludes that that GC Holdings do not appear to be separate
2 and distinct from its related contractor entities, the Commission does not analyze here whether
3 GC Holdings had sufficient revenue from other non-contracting sources.⁵⁶

4 3. Conclusion

5 The facts here indicate that GC Holdings may have been prohibited from making a
6 political contribution as a federal contractor. First, GC Holdings represented to the NLRB that it
7 was a federal contractor. Second, GC Holdings does not appear to be separate and distinct from
8 the GEO-related companies that are federal contractors because it manages and acts as the
9 employer for those federal contractor companies, it has extensive overlap in senior management
10 with its federal contractor parent company, and it has significant financial ties with those federal
11 contractor entities. Therefore, the Commission finds is reason to believe that GH Holdings
12 violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

⁵⁶ The Commission notes that the GEO Respondents contend that one of GC Holdings' wholly owned subsidiaries, GEO Corrections and Detentions, LLC, does not hold federal contracts, and in 2016, earned \$7.8 million.