



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 15, 2020

VIA ELECTRONIC MAIL

Jason Torchinsky, Esq.
Michael Bayes, Esq.
Holtzman Vogel Josefiak Torchinsky, PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186
jtorchinsky@hvjt.law
mbayes@hvjt.law

RE: MUR 7180
GEO Corrections Holdings, Inc.

Dear Messrs. Torchinsky and Bayes:

Based on a complaint filed with the Federal Election Commission on November 1, 2016, a supplement to that complaint filed on December 27, 2016 and information supplied by your client, the Commission, on January 23, 2018, found that there was reason to believe your client violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of

MUR 7180 (GEO Corrections Holdings, Inc.)
Letter Enclosing General Counsel's Brief
Page 2

the General Counsel ordinarily will not give extensions beyond 20 days and may require that your clients toll the running of the statute of limitations before granting such an extension.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64919 (Nov. 19, 2007) and Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted. If you request a probable cause hearing, the Commission may request that you toll the statute of limitations in connection with that hearing. *See* 72 Fed. Reg. at 64,920.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement. If we are unable to reach an agreement after 30 days, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty. *See* 52 U.S.C. § 30109(a)(6)(A).

Should you have any questions, please contact Nick Mueller, the attorney assigned to this matter, at nmueller@fec.gov or (202) 694-1577.

Sincerely,

Lisa J. Stevenson

Lisa J. Stevenson
Acting General Counsel

Enclosure
Brief

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5)
6 GEO Corrections Holdings, Inc.) MUR 7180
7)
8)
9)

10
11 **GENERAL COUNSEL’S BRIEF**

12 **I. STATEMENT OF THE CASE**

13 This matter was generated by a complaint alleging that GEO Corrections Holdings, Inc.
14 (“GCH”) violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by
15 making contributions to independent expenditure-only political committees while being a federal
16 contractor. GCH is a subsidiary of The GEO Group, Inc. (the “GEO Group”), and parent to a
17 number of other entities all in the GEO family of companies. A number of these companies hold
18 federal contracts. The Commission found there was reason to believe that GCH had made
19 government contractor contributions, and this Office conducted an investigation.¹

20 The evidence developed during the investigation establishes that the management,
21 finances, and governing policies of GCH; its parent, the GEO Group; and its subsidiaries,
22 including GEO Reentry Services, LLC (“GEO Reentry”), were so tightly interwoven that GCH
23 should not be considered separate and distinct from these affiliates, but rather constitute the same
24 entity for purposes of the Act’s prohibition on contributions by federal contractors.²

¹ Factual & Legal Analysis, MUR 7180 (GEO Corrections Holdings, Inc.) (“F&LA”); Certification, MUR 7180 (Jan. 23, 2018).

² The Commission found reason to believe in this matter based in part on GCH’s representation in unrelated National Labor Relations Board (“NLRB”) matters that it holds federal contracts. F&LA at 2, 8-9. GCH has subsequently provided contracts relating to each of these matters demonstrating that GCH was not the named party on the relevant federal contracts. However, as the Commission noted, an entity may nonetheless be prohibited from making a contribution if it is not “separate and distinct” from related entities that hold federal contracts. F&LA at 6.

1 Accordingly, this office is prepared to recommend that the Commission find probable cause to
2 believe that GCH violated 52 U.S.C. § 30119.

3 **II. FACTS**

4 **A. The GEO Family**

5 The GEO family of companies consists of at least 90 entities collectively operating
6 correctional and detention facilities and providing related services throughout the world.³ The
7 GEO Group is the publicly traded parent company of the GEO family of companies.⁴ It is
8 incorporated in Florida and located in Boca Raton, Florida.⁵ According to the GEO Group's
9 2016 Annual Report, 48% of the company's \$2.5 billion in revenues come from federal
10 contracts.⁶

11 In 2013, the GEO Group reorganized the corporate structure of the GEO family of
12 companies so that the companies could be reclassified as a Real Estate Investment Trust
13 ("REIT").⁷ This change was made at its shareholders' request in order to reduce tax liabilities.⁸
14 To qualify for this favorable tax treatment as a REIT, the GEO Group had to largely separate its

³ See GEO Group Organizational Chart (Feb. 1, 2016); Resp. to Complaint at 3-4 (Jan. 20, 2017); The GEO Group, Inc., 2016 Annual Report at 3 (Feb. 24, 2017), <https://www.sec.gov/Archives/edgar/data/923796/000119312517056831/d320699d10k.htm>.

⁴ See GEO Group Organizational Chart; The GEO Group, Inc., 2016 Annual Report at 1.

⁵ Resp. to Complaint at 4; Compl. at 3; The GEO Group, Inc. 2016 Florida Profit Corporation Annual Report (Apr. 25, 2016).

⁶ The GEO Group Inc., 2016 Annual Report at 25; Deposition of Marcel Maier, Vice President of Taxation at 76 (Oct. 8, 2019) ("Maier Dep.").

⁷ Resp. to Complaint at 4; see GEO Group, IRS Private Letter Ruling (2013). A REIT is a type of entity which allows 100 or more investors to jointly invest in income producing real estate, and, if the entity meets a series of criteria, obtain more favorable tax treatment than investors in an ordinary corporation. See generally 26 U.S.C. § 856. The real estate held by a REIT is commonly residential and commercial properties but may include other real estate. According to Vice President of Taxation, Marcel Maier, the GEO Group was "the first corrections-space REIT entity." Maier Dep. at 29.

⁸ Maier Dep. at 19-20; see *id.* at 19-22 (explaining that as a REIT shareholders would only be subject to one layer of taxation, "very similar to a partnership or an S Corporation").

1 real estate business from its non-real estate business, including services provided at its facilities.
2 Companies in the GEO family were thus separated into “REIT subsidiaries” (“real estate
3 businesses”) and “taxable REIT subsidiaries” (“service providers”).

4 GCH, a wholly-owned subsidiary of the GEO Group, is also incorporated in Florida and,
5 since the 2013 reorganization, has operated as a holding company for more than two dozen
6 service provider subsidiaries in the GEO family.⁹ GCH is located in the same building in Boca
7 Raton as its parent company.¹⁰ The service providers owned by GCH “are involved in operation,
8 management, and construction of private correctional and detention facilities, community reentry
9 facilities, inmate transportation, and electronic monitoring and tracking.”¹¹

10 In addition to acting as a holding company, GCH also plays a central role in the
11 management and control of the GEO Group and many other domestic GEO companies. GCH
12 has no contracts with entities outside the GEO family.¹² Through an “employee sharing
13 agreement,” described in detail below, GCH operates as the sole employer of the management
14 and other corporate employees of the GEO Group and various other GEO companies.¹³ GCH
15 has annual receipts in excess of \$250 million, though none of these funds are generated by
16 providing goods or services to entities outside the GEO family.¹⁴

⁹ Resp. to Complaint at 4; GEO Group Organizational Chart.

¹⁰ Maier Dep. at 35-36. In 2016, the GEO Group and GCH were both located in a building leased from a third party. Currently, both are located in a newly constructed headquarters building owned by GCH. *Id.*; Deposition of Amber Martin, Vice President for Contract Administration at 87 (June 10, 2019) (“Martin Dep.”).

¹¹ Resp. to Complaint, Amber Martin Aff. ¶ 5.

¹² Martin Dep. at 30-31, 47.

¹³ *Id.* at 22; Maier Dep. at 40 (“[The GEO Group] does not have a payroll, other than this cost sharing agreement.”). This agreement is also sometimes referred to as a “management services agreement.” *See, e.g.*, Resp. to Complaint at 5.

¹⁴ Resp. to Complaint at 5.

1 GEO Reentry is a service provider subsidiary of GCH that contracts with federal, state,
2 and local governments and describes itself as “the nation’s leader in safe, secure alternatives to
3 detention and reentry services for offenders released to community treatment and supervision.”¹⁵
4 From the point of the 2013 REIT reorganization until 2017, GEO Reentry was a single-member
5 LLC, with 100% of the LLC’s equity interest held by GCH.¹⁶ During this period, GEO Reentry
6 elected to be treated by the Internal Revenue Service (“IRS”) as a disregarded entity for federal
7 tax purposes, and therefore, all of its revenues, including those deriving from federal contracts,
8 appeared on GCH’s federal tax return.¹⁷ In 2017, GEO Reentry was converted to become a
9 jointly-held partnership and began filing its own federal tax return.¹⁸

10 **B. Contributions by GCH**

11 From 2015 to 2017, GCH reportedly made a total of \$945,000 of contributions to various
12 federal political committees:¹⁹

13

¹⁵ Resp. to Complaint at 6; *see* <http://www.georeentry.com/about/>. Although the Complaint did not name GEO Reentry as a respondent in this matter, it joined the response filed by GCH and the GEO Group, presumably because it was the entity named on a contract on which the complaint originally based its allegations against GCH. *See generally* Resp. to Complaint. While other GCH subsidiaries may be similarly situated, the factual record was best developed regarding GEO Reentry, which is undisputedly a federal contractor.

¹⁶ *Id.* at 6.

¹⁷ GEO Resp. to First Request for Information at 7 (June 25, 2018); Maier Dep. at 25-26.

¹⁸ Maier Dep. at 25-26; GEO Resp. to First Request for Information at 7.

¹⁹ FEC, *Contributor Data*, https://www.fec.gov/data/receipts/individual-contributions/?contributor_name=GEO+Corrections+Holdings. Media reports indicated that candidate positions regarding the use of private prisons led the GEO Group to support groups supporting Donald Trump, who voiced support for private prisons. *See, e.g.,* Monsy Alvarado, *et al.*, ‘These People are Profitable’: Under Trump, Private Prisons are Cashing in on ICE Detainees, USA TODAY (Dec. 20, 2019), <https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-detention-private-prisons-expands-under-trump-administration/4393366002/>. Speaking about the GEO Group’s political activity, company representative Pablo Paez stated that the company’s political activities “focus entirely on promoting the issue of public-private partnerships.” Fredreka Schouten, *Private Prisons Back Trump and Could See Big Payoffs with New Policies*, USA TODAY (Feb. 23, 2017), <https://www.usatoday.com/story/news/politics/2017/02/23/private-prisons-back-trump-and-could-see-big-payoffs-new-policies/98300394/>.

1

<u>Recipient:</u>	<u>Date:</u>	<u>Amount:</u>
Conservative Solutions PAC	4/17/2015	\$100,000
Conservative Solutions PAC	11/17/2015	\$10,000
Rebuilding America Now	8/19/2016	\$100,000
Senate Leadership Fund	9/27/2016	\$200,000
Florida First Project	10/25/2016	\$100,000
Rebuilding America Now	11/1/2016	\$125,000
Valor Fund	11/1/2016	\$10,000
Congressional Leadership Fund	3/8/2017	\$100,000
Senate Leadership Fund	4/26/2017	\$100,000
Congressional Leadership Fund	12/12/2017	\$100,000
	Total:	\$945,000

2

3 C. The Integration of GCH in the GEO Family of Companies

4 1. Management & Employee Sharing

5 As discussed above, the GEO Group and GCH have entered into an employee sharing
 6 agreement.²⁰ Pursuant to this agreement, *all* employees performing management and other
 7 corporate functions (such as contracting, information technology, finance, and human resources)
 8 for the GEO Group and GCH's subsidiaries are paid and employed only by GCH.²¹ These
 9 approximately 250 employees are shared by GCH with other companies in the GEO family,
 10 including the GEO Group, to perform work for those companies.²² These other companies

²⁰ Employee Sharing Agreement between The GEO Group, Inc. & GEO Corrections Holdings, Inc. (Jan. 1, 2013) ("Employee Sharing Agreement").

²¹ Maier Dep. at 38, 43, 72; GEO Resp. to First Request for Information at 6; Martin Dep. at 22. The GEO Group and GCH do have separate boards of directors, though the chairman of both boards is CEO George Zoley, who holds an analogous position with the other GEO entities as well. Maier Dep. at 33-34.

²² Martin Dep. at 60.

1 reimburse GCH a prorated portion of the salaries and overhead expenses associated with GCH
2 employing these individuals. GCH receives only these reimbursements and makes no profit
3 from the arrangement, despite “a very large portion . . . maybe 50 percent in some years” of
4 GCH’s incoming cash flow being these reimbursements.²³

5 All of the senior managers throughout the domestic entities in the GEO family work
6 pursuant to this employee sharing agreement.²⁴ Though they are employees of GCH alone, each
7 of these executives holds the same title with, and performs work for most, if not all, domestic
8 entities in the GEO family.²⁵ For instance, George Zoley is the Chairman and CEO of all
9 domestic GEO entities; Brian Evans is the CFO of all domestic GEO entities; Amber Martin is
10 the Vice President for Contract Administration for all domestic GEO entities; and Marcel Maier
11 is the Vice President for Taxation for most, if not all, domestic GEO entities; yet all four are
12 considered employees of GCH alone.²⁶

13 The evidence also indicates that these leaders do not differentiate in any meaningful way
14 between their roles as executives of each of the GEO entities, but instead treat their 20-plus titled
15 positions as one job for one employer.²⁷ Similarly, GEO entities do not invoke the employee
16 sharing agreement by requesting that GCH share a particular employee with them for a period of

²³ Maier Dep. at 43, 54.

²⁴ *Id.* at 40.

²⁵ *Id.*; Martin Dep. at 29-30.

²⁶ *See* Martin Dep. at 14-17; Maier Dep. at 12. Notably, Maier could not state with certainty whether he was an executive with most or all domestic entities. *Id.*

²⁷ Martin Dep. at 19-20 (“A: It’s all combined” . . . “Q: And you don’t distinguish between when you’re working for which one? A: Right.”); *see also* Maier Dep. at 13 (“Q: . . .[D]o you distinguish whether you’re working for GCH at a given moment or the GEO Group at a given moment? A: I’m not sure how to answer the question other than to say that if I sign a tax return for the GEO Group, Inc., I do that as an Officer of the GEO Group. . .”).

1 time, but instead, the employees work interchangeably for each GEO entity as needed.²⁸ These
2 shared employees do not track the time they work for one GEO entity as opposed to another.²⁹
3 Rather, a general reconciliation is done at the end of the year to estimate the amount of work
4 done for each entity.³⁰ Nor does this sharing process change the employees' general working
5 conditions. These shared GCH employees work from the same office, use the same computers,
6 access the same servers, and receive the same paycheck from GCH, regardless of the entity for
7 which they actually performed work.³¹

8 Marcel Maier, Vice President of Taxation for most, if not all, domestic GEO entities,
9 explains that the GEO entities maintain a single-employer system for "administrative ease."³² It
10 is "just very easy to have one entity of all the employees that, that make management decision[s]
11 and have those costs shared, it just makes it so much easier than having back and forth."³³ Maier
12 explained that the employee sharing agreement is central to the GEO family's operation, and
13 absent this agreement, GCH subsidiaries could not perform services for their clients without
14 changing their operations to include hiring additional staff.³⁴

²⁸ Martin Dep. at 52-53; Maier Dep. at 41.

²⁹ Maier Dep. at 13-17, 41; Martin Dep. at 15 ("Q: Okay. Do you allocate your time in any formal way between which entity you're working for at which time? A: No, I do not.").

³⁰ Maier Dep. at 13-17, 41 (explaining the after-the-fact allocation process). Though Maier states that this allocation is annual, under the terms of the agreement, reimbursement payments are made quarterly. Employee Sharing Agreement at 2-3. Maier also explains that an outside accounting firm reviews their allocation method, to ensure that it "is done on a reasonable basis." Maier Dep. at 71-73.

³¹ Martin Dep. at 61-62.

³² Maier Dep. at 41. When asked a related question regarding whether the "specifics of that agreement" are "dictated by tax law," Vice President for Contract Administration, Amber Martin, explained that these "intra-company agreements" are designed such that they do not inhibit the REIT status of the GEO Group. Martin Dep. at 88-89; *see also* Maier Dep. at 38-40 (explaining why the agreement's structure bears on the GEO Group's REIT status).

³³ Maier Dep. at 41.

³⁴ *Id.* at 78.

1 The evidence also shows that employees of GCH seek and negotiate federal contracts on
2 behalf of other GEO entities pursuant to the employee sharing agreement.³⁵ Further, GCH
3 employees also decide when to bid on a particular contract.³⁶ Similarly, the individuals who
4 decide whether to make contributions to political committees are also GCH employees who hold
5 titles with other federal contracting GEO entities.³⁷

6 **2. Finances**

7 Like the management staffing and structure described above, GCH's finances are also
8 intertwined with the rest of the GEO family of companies. As mentioned above, GCH does not
9 provide goods or services to any entity outside the GEO family. Instead, all its receipts come
10 from its subsidiaries, some of which hold federal contracts, and from other GEO entities
11 reimbursing GCH for employees shared under the agreement.³⁸ Further, GCH and the GEO
12 Group have jointly undertaken substantial debt obligations by entering into a joint credit
13 agreement that provides a \$296.3 million loan and \$700 million of revolving credit.³⁹ Under this
14 agreement, both entities have accepted joint and several liability for any default of the other.⁴⁰
15 The decision to enter into a joint borrowing agreement, rather than entering into separate

³⁵ See GEO Resp. to Second Request for Information, Attachment A (Sept. 7, 2018) (listing contracts negotiated by GCH employees on behalf of other GEO entities that we negotiated or performed in 2015-2016); Martin Dep. at 52.

³⁶ Martin Dep. at 48 (“Q: So if another entity, say GEO Re-Entry Services, we’ll use that as an example, but I’m not limiting it to that. If they were -- if there was a contract that was -- they were considering bidding on, GCH would be involved in the decision on whether they should bid on that? A: Yes. Q: And would GCH be the ones who ultimately determined whether they bid on that? A: Yes.”).

³⁷ *Id.* at 45-46. During her deposition, Amber Martin confirmed that George Zoley, CEO of GCH and all other domestic GEO entities, would be the final approval required to make a \$100,000 contribution to a political committee. Such a decision would not be put before any entity’s board of directors. *Id.* at 87-88.

³⁸ Resp. to Complaint at 5; Employee Sharing Agreement.

³⁹ Second Amended and Restated Credit Agreement, The GEO Group, Inc. and GEO Corrections Holdings, Inc. with BNP Paribas (Aug. 27, 2014).

⁴⁰ *Id.*; Maier Dep. at 66. *But see id.* at 74-75 (noting that the joint and several liability clause has never been invoked by the bank and that neither GCH nor the GEO Group has ever paid a debt for the other).

1 agreements, was made so that GCH and the GEO Group could get the best terms from the
2 bank.⁴¹

3 **3. Policies**

4 GCH does not have an independent set of corporate policies. Instead, the GEO Group's
5 corporate policies flow down through all GEO entities, including GCH.⁴² These policies include
6 corporate policies relating to finances, ethics, and human resources.⁴³

7 **III. LEGAL ANALYSIS**

8 **A. Legal Standard**

9 The Act prohibits federal contractors from "directly or indirectly" making a contribution
10 to any political party, political committee, federal candidate, or "any person for any political
11 purpose or use."⁴⁴ A federal contractor includes any person who is negotiating or performing a
12 contract with the federal government or its agencies for certain enumerated purposes, including
13 the "rendition of personal services."⁴⁵ "When determining whether an entity has made a
14 contribution in violation of [52 U.S.C. § 30119], the Commission first looks to whether the entity
15 met the statutory and regulatory definition of government contractor at the time the contribution
16 was made."⁴⁶

17 With respect to a parent company that has an ownership interest in a federal contractor
18 subsidiary, the Commission has recognized that such parent company may make a contribution

⁴¹ Maier Dep. at 79.

⁴² Martin Dep. at 34.

⁴³ *Id.*

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

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

⁴⁶ Factual & Legal Analysis at 5, MUR 6403 (Alaskans Standing Together).

1 without violating section 30119 if it is a “separate and distinct legal entity” from its federal-
2 contractor subsidiary and “has sufficient revenue derived from sources other than its contractor
3 subsidiary to make a contribution.”⁴⁷ If, however, the subsidiary is merely an agent,
4 instrumentality, or alter ego of the holding company, then the parent company is prohibited from
5 making a contribution.⁴⁸ In an analogous context, when applying the prohibition on
6 contributions by national banks, the Commission has also evaluated whether the entities were
7 separate and distinct to determine whether a subsidiary could make a contributions when its
8 parent entity would be prohibited from doing so.⁴⁹

9 In determining whether an entity is “separate and distinct” from a related entity, the
10 Commission has not articulated a test setting forth factors that an entity must satisfy but has
11 instead made the determination based on the specific facts and circumstances presented.⁵⁰
12 Informing this determination, the Commission has cited the general law of corporations, stating

⁴⁷ Factual & 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) (“AO 2005-01”); Advisory Op. 1998-11 (Patriot Holdings LLC) (superseded on other grounds) (“AO 1998-11”).

⁴⁸ AO 1998-11 at 5.

⁴⁹ 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 prohibition is relevant here because the Commission adopted the separate and distinct test from matters in the bank context stating that “[t]he Commission is of the opinion that this analysis should apply” in the contractor prohibition context as well. *See* AO 1998-11 at 4-5; *see also* Factual & Legal Analysis at 2, MUR 6168 (Park Federal Savings Bank); Advisory Opinion 1980-07 (California Savings & Loan League).

⁵⁰ *See* Factual & Legal Analysis at 6, MUR 6726 (Chevron) (parent corporation was separate and distinct from contracting subsidiary where entities were separately incorporated and under direction and control of separate management); AO 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); AO 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) (“AO 1999-32”) (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).

1 that “[c]ourts will disregard the fiction of a separate legal entity when there is such domination of
2 finances, policy and practices by the parent that the subsidiary has no separate existence of its
3 own and is merely a business conduit for its principal.”⁵¹ Among the circumstances that the
4 Commission has considered in past matters are common ownership;⁵² common management and
5 control;⁵³ the separation of finances, including accepting liability for the debts and contracts of
6 related entities;⁵⁴ separate employees;⁵⁵ following the formalities of separate incorporation;⁵⁶
7 and separate corporate policies.⁵⁷

8 **B. GCH is not a Separate Legal Entity from its Related Federal Contractor**
9 **Entities for Purposes of the Act’s Federal Contractor Contribution**
10 **Prohibition**

11
12 The evidence in this matter demonstrates that GCH is part of a family of companies with
13 management, operations, policies, and finances so thoroughly integrated that GCH should not be
14 considered a separate and distinct legal entity for purposes of the Act’s regulation of
15 contributions by federal contractors. Accordingly, because many of these related entities are
16 undisputedly federal contractors, GCH also functioned as a federal contractor for purposes of the
17 prohibition. As discussed below, a number of factors support this conclusion, including:

⁵¹ Factual & Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank) (citing 18 Am. Jur. 2d
Corporations § 65).

⁵² See, e.g., Factual & Legal Analysis at 2, 6, MUR 6726 (Chevron); Factual & Legal Analysis at 3, MUR
6168 (Park Federal Savings Bank); AO 1998-11 at 1; AO 1999-32 at 2.

⁵³ See, e.g., Factual & Legal Analysis at 2, 6, MUR 6726 (Chevron); Factual & Legal Analysis at 3, MUR
6168 (Park Federal Savings Bank); AO 1998-11 at 5, n.3; AO 1999-32 at 2; AO 2005-01 at 2, 4.

⁵⁴ See, e.g., Factual & Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank); AO 1998-11 at 5;
AO 1999-32 at 2; AO 2005-01 at 4.

⁵⁵ See, e.g., Factual & Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank); AO 1998-11 at 5;
AO 1999-32 at 2, 5; AO 2005-01 at 2, 4.

⁵⁶ See, e.g., Factual & Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank); AO 1999-32 at 5;
AO 2005-01 at 2, 4.

⁵⁷ See, e.g., Factual & Legal Analysis at 2, MUR 6726 (Chevron); AO 1999-32 at 2, 5; AO 2005-01 at 2, 4.

MUR 7180 (GEO Corrections Holdings, Inc.)
General Counsel's Brief
Page 12 of 24

1 (1) extensive overlap in management and control, underlined by the use of a single employer
2 across entities; (2) transactions not conducted at arm's length; (3) interwoven finances; and (4) a
3 single set of corporate policies established by the parent company and applied throughout the
4 GEO family of companies, including at GCH.

5 The management structure of the GEO family of companies is not one in which there is
6 separate control and decision-making by purportedly separate entities.⁵⁸ Rather, the GEO family
7 of companies has been structured such that management decisions are made for the benefit of the
8 whole group of companies pursuant to a unified set of interests, rather than distinct entities each
9 seeking its own ends.⁵⁹

10 With almost no exceptions, employees of GCH — who include all of the GEO Group's
11 top executives — made final decisions for all GEO domestic companies, including such critical
12 decisions as relevant here regarding the pursuit of federal contracts and the making of political
13 contributions.⁶⁰ And the evidence shows that, with very few exceptions, those same people
14 performed their jobs as if they were working for a single business enterprise. As a result of its
15 employee sharing agreement, GCH is the sole employer of corporate and management
16 employees throughout the domestic GEO family.⁶¹ Employees, including senior managers,

⁵⁸ See Factual & Legal Analysis at 2, 6-7, MUR 6726 (Chevron) (considering the degree to which entities are “under direction and control of their own management”); AO 2005-01 (considering that Tribal Council members of Indian Tribe were not permitted to serve on the board of its subsidiary corporation as a factor in favor of finding that the entities were separate and distinct). *But see* AO 1998-11 at 5, n.3 (noting that entities sharing “common officers or directors, *absent other factors*, would be insufficient to establish” that entities were not separate and distinct) (emphasis added) (citing *United States v. Bestfoods*, 524 U.S. 51 (1998)).

⁵⁹ See 18 C.J.S. Corporations § 29 (“Where there is such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own and is but a business conduit for its principal, the affiliated corporations may be deemed to be a single business enterprise, and the corporate veil pierced under the ‘single business enterprise’ doctrine.”).

⁶⁰ See Martin Dep. at 27-28, 86-88 (also noting that expenditures under \$10 million do not need board approval).

⁶¹ Maier Dep. 40 (“Q: All corporate management employees of GEO Group are employed by GCH and shared pursuant to this agreement? A: Yes”). *But see id.* at 68, 77-78 (noting that GCH's subsidiaries have other

1 though employed only by GCH, perform work across the GEO family of companies, and the
2 senior managers hold the same title at most, if not all, of the domestic GEO entities. The
3 Commission has repeatedly noted such an overlap in employees as a factor when determining
4 whether affiliate companies are separate and distinct entities.⁶²

5 Further, the evidence depicts a decision-making process under which the control of
6 purportedly separate entities was centralized. All day-to-day operations at the corporate
7 headquarters for the GEO Group, GCH, and its subsidiaries are conducted by the same
8 individuals. These individuals may be acting on behalf of different companies at different times,
9 but they are nominally employees only of GCH and accountable only to GCH.⁶³

10 This comprehensive overlap also extends to the employees seeking federal contracts on
11 behalf of GCH's parent, the GEO Group. For instance, Amber Martin is the Vice President for
12 Contract Administration at all domestic GEO entities. When the GEO Group bids on federal
13 contracts, Martin and her staff negotiate, draft, and administer these federal contracts on behalf
14 of the GEO Group, but she and her staff are nominally employed by, paid by, and accountable to

employees, besides corporate and management employees, who are employed directly by the subsidiaries, such as guards at a facility).

⁶² See AO 1999-32 at 2 (considering that subsidiary hired its own employees as a factor in finding that the entities were separate and distinct); AO 2005-01 at 2 (considering that subsidiary had its own corporate employees as a factor in finding that the entities were separate and distinct); *see also* AO 1998-11 at 5 (considering that the parent company did not pay the salaries of its federal contractor subsidiaries as factor in favor of finding entities separate and distinct); Factual & Legal Analysis at 3, MUR 6168 (weighing subsidiary's lack of employees as a factor in deeming it not separate and distinct from its parent company).

⁶³ Employee Sharing Agreement at §§ 1.2(a), (c) (stating that an employee being shared (or "advanced") under the employee sharing agreement at all times remain employed only by GCH and that GCH controls the right to terminate of any shared employee). Because the same individuals manage both GCH and the GEO Group, and therefore would make decisions relating to the termination of other corporate employees, it is unclear what if any practical effect such a clause giving exclusive power to terminate to GCH has.

1 only GCH.⁶⁴ Moreover, Martin and others who decide to bid on particular federal contracts in
2 the first place are also nominally employed by, paid by, and accountable to only GCH.⁶⁵

3 Similarly, when a GCH subsidiary, such as GEO Reentry, has sought federal contracts,
4 GCH employees bid on and negotiated the contracts, and GEO Reentry then reimbursed GCH
5 for the costs associated with the work of GCH's employees.⁶⁶ Indeed, Martin explained that
6 GCH was ultimately the entity deciding whether GEO Reentry bid on the contract held at the
7 time of the contributions in the first place.⁶⁷ Thus, the evidence shows that GCH decided to bid
8 on the federal contract, and its employees prepared that bid and negotiated the terms of the
9 contract.

10 GCH argues that because it is not ultimately the named contractor, GCH is not subject
11 to the Act's contractor prohibition.⁶⁸ However, "in making an alter ego determination, a court is
12 concerned with reality and not form, and with how the corporation operated."⁶⁹ Here, the
13 evidence shows that, under the Commission's functional analysis and contrary to GCH's
14 arguments, GCH's employees were so heavily involved in selecting, bidding, negotiating, and
15 administering the contracts that GCH should be considered a federal contractor for the purposes
16 of the Act's regulation of contributions by contractors.⁷⁰ The recognized anticorruption and

⁶⁴ Martin Dep. at 14, 36-37, 48, 51; *see* Employee Sharing Agreement at §§ 1.2(a), (c).

⁶⁵ *See* Martin Dep. at 27-28, 48; Employee Sharing Agreement at §§ 1.2(a), (c).

⁶⁶ *See, e.g.*, GEO Resp. to Second Request for Information, Attachment A (listing contract 0974-2016-SA04 between the U.S. Probation Office and GEO Reentry, LLC as a federal contract negotiated by GCH employees pursuant to the employee sharing agreement).

⁶⁷ Martin Dep. at 48; *see supra* note 36.

⁶⁸ *See* GEO Resp. to Reason to Believe at 2; GEO Resp. to First Request for Information at 1.

⁶⁹ 18 C.J.S. Corporations § 24.

⁷⁰ *See supra* note 59; First Gen. Counsel's Rpt., MUR 5628 at 13 (AMEC Construction Management, Inc., *et al*) ("In the context of federal enforcement actions, the corporate parent's liability must be based on its involvement in the subsidiary's activities, and not merely on the fact that the subsidiary corporation is wholly owned by, or maintains overlapping officers and directors with, its parent."); Certification ¶ 3, MUR 5628 (AMEC Construction

1 merit-based public administration interests that underlie Congress's decision to prohibit
 2 contributions by federal contractors⁷¹ would be undermined if, as GCH contends, an entity such
 3 as GCH could make federal contributions while functioning as a single entity with its federal
 4 contractor affiliates.

5 Indeed, when GCH decides to make political contributions, the same comprehensive
 6 overlap between the decision makers at GCH and the rest of the GEO family is present. GCH's
 7 decision to make political contributions is made by the same corporate staff, employed by GCH
 8 but also holding titles with and performing work for various GEO entities.⁷² The person who
 9 signs off on that contribution is George Zoley, CEO of both GCH and the GEO Group.⁷³
 10 Further, based on Martin's explanation of this approval process, a decision to contribute would
 11 appear to be made by Zoley acting in his role as CEO of the GEO Group.⁷⁴

12 Further underscoring the integration between the GEO Group and GCH is the structure of
 13 the employee sharing agreement, which does not appear to have been the result of an arm's

Management, Inc., et al) (approving recommendation to take no action at this time with respect to AMEC's parent companies).

⁷¹ See *Wagner v. FEC*, 793 F.3d 1, 8 (D.C. Cir. 2015) (en banc) (explaining that the federal contractor contribution prohibition is underlined by two important interests: (1) protection against quid pro quo corruption and its appearance; and (2) protection against interference with merit-based public administration).

⁷² Martin Dep. at 45-46, 87-88. Such a decision is not brought to the either the Board of Directors of GCH or the GEO Group where overlap in management between GCH and the GEO Group is not comprehensive. Martin Dep. at 86-88 (also noting that expenditures under \$10 million do not need board approval).

⁷³ Martin Dep. 87-88; see also The GEO Group, Inc., Political Activity and Lobbying Report (2016) at 3, <https://www.geogroup.com/Portals/0/SR/Political%20Engagement/Political%20Activity%20Report%202016.pdf>.

⁷⁴ See Martin Dep. at 33:

Q: Any major decisions of GCH have to be made by the GEO Group, Inc.?

A: Yes. . . .

Q: If GCH made a major expenditure, if they wanted to spend \$10 million on something, would that be one of those decisions that needed to be approved by GCH [sic] -- or by the GEO Group, excuse me.

A: Yes.

Q: What if it was \$100,000?

A: Yes.

MUR 7180 (GEO Corrections Holdings, Inc.)
General Counsel's Brief
Page 16 of 24

1 length transaction.⁷⁵ GCH does not make a profit from its participation in this agreement.⁷⁶
2 Instead, it provides the shared employees' services to other GEO entities at cost. Significantly,
3 GCH employs individuals who are not needed to run its own operations, but who are essential to
4 the operations of other GEO entities, such as the staff who negotiate federal contracts.⁷⁷ In fact,
5 some GEO entities are totally reliant on the employee sharing arrangement; they could not
6 operate in its absence without changing their mode of operation and hiring their own corporate
7 staff to perform these essential functions.⁷⁸

8 In contrast to the "at cost" employee sharing agreement, the GEO Group has other
9 contracts with its service provider subsidiaries to provide non-real estate services to "government
10 tenants" at its facilities. As part of the process of obtaining the IRS's approval of the GEO
11 Group's REIT status, the GEO Group asserted that it would contract for these services at "an
12 arm's length rate."⁷⁹ Thus, under these contracts, the GEO Group pays a markup over and above
13 the service providers' costs.⁸⁰ The contract's markup provision is precisely what GCH's
14 representative points to in order to demonstrate that the GEO Group's agreements with its
15 service provider subsidiaries are at arm's length.⁸¹ In contrast, the absence of a similar markup,

⁷⁵ See TRANSACTION, Black's Law Dictionary (11th ed. 2019) (defining an arm's-length transaction as "[a] transaction between two unrelated and unaffiliated parties" or "[a] transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises").

⁷⁶ Maier Dep. at 43.

⁷⁷ See Martin Dep. at 66 ("Q: GCH doesn't negotiate any federal contracts for itself, correct? A: Correct. Q: But it has a staff of people who have a specialized set of skills to do that, correct? A: Yes.").

⁷⁸ Maier Dep. at 77-78.

⁷⁹ GEO Group, IRS Private Letter Ruling at 5.

⁸⁰ See, e.g., Intercompany Services Agreement between The GEO Group, Inc. & GEO Corrections and Detention, LLC, Exhibit B (Dec. 31, 2012) (including a 10.6% markup above the costs of the services provided). GCH stated that similar compensation language is a feature of all of the GEO Group's services agreements with its service provider subsidiaries. Maier Dep. at 33.

⁸¹ Maier Dep. at 32-33.

1 or some other benefit to GCH in its place, indicates that the employee sharing agreement is not
2 an arm's length arrangement.

3 Rather than being motivated by profit, GCH explains that the purpose of the employee
4 sharing agreement is administrative ease vis-à-vis the GEO family of entities.⁸² It is "just very
5 easy to have one entity of all the employees that, that make management decision[s] and have
6 those costs shared, it just makes it so much easier than having back and forth."⁸³ Such an
7 arrangement may indeed create administrative ease and efficiency when looking at the GEO
8 family as a whole unit, but it does not serve the ends of GCH individually. When asked whether
9 "each entity [is] working for its own end trying to further its interests," GCH's representative
10 responded: "No. The interest is for the GEO Group and the only thing is that they're separate
11 taxable entities. . . ." ⁸⁴ Due to the lack of independent benefit to GCH, the employee sharing
12 agreement is not one that was negotiated at arm's length.⁸⁵

13 The primacy of promoting the GEO family's collective interest, instead of each entity
14 pursuing its independent interest, is further evident by inspecting the signatories to the employee
15 sharing agreement on behalf of GCH and the GEO Group. Each individual signing the

⁸² *Id.* at 41; *see supra* note 32; *see also* Martin Dep. at 74. The Office of General Counsel takes no position on the propriety of this employee sharing agreement or the general structure of the GEO family of companies as they relate to any other area of the law. These internal decisions made for the wellbeing of the GEO family of companies may be lawful and provide administrative benefits; nonetheless, as the Commission precedent makes clear, internal decisions regarding corporate structure may have consequences as to what an entity is permitted do under the Act. *See, e.g.*, 11 C.F.R. § 110.1(g) (explaining that an LLC that elects to be treated by the IRS as a partnership or a corporation will be subject to the corporate contribution prohibition or not based on that decision). *Cf.* Maier Dep. at 23-24 (referencing the tax consequences of organizing as an LLC or as a corporation).

⁸³ Maier Dep. at 41.

⁸⁴ Martin Dep. at 76.

⁸⁵ *See supra* note 75. After stating that he could not think of any benefit to GCH under this agreement, Maier argues that the benefit to GCH is the sharing the cost of employees: "you're paying for what you're using." Maier Dep. at 46-47. When asked why then GCH has a contracting staff "that they don't use for their own purposes . . . that's intended to either benefit the GEO Group, its parent or some of its subsidiaries," he replied: "You know, I, I just can only identify what it is, it is." *Id.* at 47. Finally, he posited that GCH's benefit was that its subsidiaries benefit from the arrangement. *Id.* at 48.

1 agreement holds a position with the other entity.⁸⁶ When asked about this potential conflict of
2 interest, GCH representatives were unable to point to any safeguard or demonstrate how each
3 signatory was sincerely pursuing the interest of the specific entity on whose behalf they signed,
4 rather than benefiting the GEO family as a whole.⁸⁷

5 In these circumstances, the record viewed as a whole demonstrates that the management
6 (and in fact all corporate employees) of the GEO Group, GCH, and GCH's subsidiaries are
7 essentially one and the same.⁸⁸ The GEO family of companies has been structured such that
8 management decisions are made for the benefit of the whole rather than each entity seeking its
9 own ends.⁸⁹ This design, which is undisputed, indicates that for purposes of the Act, GCH is not
10 separate and distinct from the GEO Group or other related entities.

11 In addition to the structural overlap in management and control of the GEO family of
12 companies, the intertwined finances of GCH and the GEO Group also indicate that GCH is not a

⁸⁶ See Employee Sharing Agreement at 7.

⁸⁷ Martin Dep. at 79 (“[The signatory] would be looking at the legalities of this contract to make sure that they were doing the right --- you know, he was doing the right thing for this contract as a GCH employee for the benefit of GCH, for the benefit of the GEO Group.”); Maier Dep. at 50 (“Q: Do you know how they determine or if there are any safeguards in place, how it’s decided that [GEO officer] Mr. Bulfin is signing and solely representing the interests of [GCH] when he signs, not the larger parent group? A: I’m not sure how to best respond to that question, other than in saying is when he signs as Vice President or Secretary of GEO Corrections Holdings, Inc. it’s my understanding he is having the best in mind for that particular subsidiary when making that execution.”).

⁸⁸ The Commission found reason to believe in this matter, in part, based on GCH’s representation in unrelated National Labor Relations Board (“NLRB”) matters that it is itself a federal contractor. F&LA at 2, 8-9, MUR 7180 (GEO Corrections Holdings, Inc.). GCH has provided contracts relating to each of these matters demonstrating that GCH was not the named party on the relevant federal contracts. GCH cites “confusion” relating to the GEO REIT restructuring, “drafting errors,” and simply referring to being “erroneously named” without providing further explanation. GEO Resp. to Reason to Believe at 4 (Mar. 6, 2018); GEO Resp. to First Request for Information at 3-5 (June 25, 2018). In light of the overlap between corporate staff throughout the domestic GEO family, the representation to the NLRB is a further indication that GCH did not, in practice, act as a distinct entity from its parent or subsidiaries.

⁸⁹ See *United States v. Bestfoods*, 524 U.S. 51, 70, n.13 (1998) (regarding corporate officers with dual roles: “[t]he presumption that an act is taken on behalf of the corporation for whom the officer claims to act is strongest when the act is perfectly consistent with the norms of corporate behavior, but wanes as the distance from those accepted norms approaches the point of action by a dual officer plainly contrary to the interests of the subsidiary yet nonetheless advantageous to the parent”).

MUR 7180 (GEO Corrections Holdings, Inc.)
General Counsel's Brief
Page 19 of 24

1 separate and distinct entity.⁹⁰ GCH and the GEO Group have entered into a joint borrowing
2 agreement, including a \$296.3 million loan and \$700 million in revolving credit, in which they
3 accepted responsibility for each other's debts under the agreement.⁹¹ The total amount of credit
4 available under this loan is nearly four times GCH's annual receipts of \$250 million.⁹²
5 Accepting joint liability, particularly in such amounts, undermines the use of separate
6 incorporation to limit liability.⁹³ Correspondingly, in past matters the Commission has noted the
7 maintaining of separate liability as a factor indicating that entities are separate.⁹⁴ Moreover,
8 GCH generates no revenue as a result of providing goods or services to entities outside the GEO
9 family.⁹⁵ The sources of GCH's cash flow are either revenues passed up from its subsidiaries or
10 reimbursements for sharing its employees to other GEO entities.⁹⁶ Such financial dependence on
11 other GEO entities is further indication that GCH is not separate and distinct from the GEO
12 Group or other related entities.

⁹⁰ See AO 1998-11 at 5 (considering that contracts, including government contracts, entered into by subsidiaries that would not hold the parent liable as a factor in determining whether entities were separate and distinct); AO 2005-01 at 2 (considering that Tribe agreed to indemnify the bonds of a tribal corporation but did not intermingle corporate funds with tribal funds in determining whether entities were separate and distinct).

⁹¹ Second Amended and Restated Credit Agreement, The GEO Group, Inc. and GEO Corrections Holdings, Inc. with BNP Paribas at § 2.21.

⁹² Resp. to Complaint at 5.

⁹³ Compare *Radaszewski by Radaszewski v. Telecom Corp.*, 981 F.2d 305, 311 (8th Cir. 1992) ("The doctrine of limited liability is intended precisely to protect a parent corporation whose subsidiary goes broke. That is the whole purpose of the doctrine . . ."); *Dorchen/Martin Assocs., Inc. v. Brook of Boyne City, Inc.*, No. 13-1058, 2013 WL 2418175, at *9 (E.D. Mich. June 3, 2013) ("[T]he purpose of separate incorporation of multiple entities, as noted, is to shield one company from another's liabilities.").

⁹⁴ See, e.g., AO 1998-11 at 5 (noting that none of the subsidiaries contracts contain clauses that would hold the parent company liable for breaches).

⁹⁵ Resp. to Complaint at 5; Maier Dep. at 22 ("It does not have any income in its own right other than as an investor in, in other [service provider] subsidiaries.").

⁹⁶ See also Maier Dep. at 54-55 (estimating that "50% or more" of GCH's total annual receipts are reimbursements pursuant to the employee sharing agreement rather than revenues from some other source).

1 Further, Martin explains that “[t]here are no internal policies for GCH per se”; instead,
2 the corporate policies for the entire GEO family flow down from the GEO Group.⁹⁷ Considering
3 that the corporate employees are the same from entity to entity throughout the GEO family, it
4 may be the case that a single set of policies may create administrative efficiencies for the GEO
5 family as a whole. But the Commission has repeatedly noted the presence or absence of separate
6 corporate policies as indicative of whether related entities are separate and distinct.⁹⁸ Here, the
7 single set of corporate policies flowing down from the GEO Group demonstrates that the GEO
8 family of companies acts as a collective rather than as a set of related but distinct entities for
9 purposes of the Act’s contractor prohibition.

10 Finally, notable in the GEO family of companies’ structure is that a number of GCH’s
11 subsidiaries, including undisputed federal contractor GEO Reentry, were organized until 2017 as
12 disregarded entities for federal tax purposes.⁹⁹ As a result of this status, GCH acknowledges that
13 during this period of time when many of the contributions at issue were made, the revenues
14 resulting from GEO Reentry’s federal contracts were reported directly on GCH’s federal tax
15 return.¹⁰⁰

⁹⁷ Martin Dep. at 34. The lack of an independent human resources policy for GCH is particularly notable considering that GCH’s primary operation appears to be employing a staff for the sole purpose of sharing it with other GEO entities.

⁹⁸ See AO 1999-32 at 2 (considering that entity “establishes its own personnel policies” as a factor in finding whether it was separate and distinct from a related entity); AO 2005-01 at 2 (same). Cf. Factual & Legal Analysis at 2, MUR 6726 (Chevron) (considering that the parent company “provides general policy guidelines” but was ultimately “under direction and control of their own management” in finding whether the parent was separate and distinct from its subsidiary).

⁹⁹ See Maier Dep. at 24 (“it is really, from a federal income tax perspective, in order to essentially combine it”).

¹⁰⁰ GEO Resp. to First Request for Information at 7; Martin Dep. at 44. In Advisory Opinion 2016-20 (Christoph LLC), the Commission considered whether the federal contractor status of an LLC that was a disregarded entity for federal tax purposes was imputed to the individual that was its sole member (“AO 2016-20”). The Commission was divided by a vote of 3-3 on the question. See Certification, AO 2016-20 (Christoph LLC). Three Commissioners supported a draft that would have imputed the status to the sole member of the LLC “[b]ecause of the unity of the member and the LLC in this situation.” AO 2016- 20, Draft A-1 at 4 (quoting Treatment of Limited

1 Despite the substantial evidentiary record that GCH is not separate and distinct from its
2 related federal contractor entities for the purposes of the federal contractor contribution
3 prohibition, GCH has argued that “[t]he *relevant* legal question is whether the two companies are
4 ‘separately incorporated.’”¹⁰¹ Further, at the deposition of GCH representative Marcel Maier,
5 counsel for GCH inquired particularly as to formalities regarding GCH’s disregarded entities. In
6 response, Maier stated that these disregarded entities: (1) have their own bank accounts; (2) have
7 employees of their own (beyond the management and corporate employees shared under the
8 agreement discussed above); (3) pay their own sales, payroll, property, and, in some states, state
9 income taxes; (4) may have their own workers compensation insurance plans; and (5) own their
10 own “fixed assets” (such as vehicles).¹⁰²

11 To the contrary, although separate incorporation is relevant, the Commission has never
12 declared it to be the controlling factor.¹⁰³ Instead, the Commission looks to the facts and

Liability Companies under the Federal Election Campaign Act, 64 Fed. Reg. 37,397, 37,399 (July 12, 1999) (“LLC E&J”). The other three Commissioners supported a draft that would not have imputed contractor status to the sole member of the LLC, noting that the individual member and the LLC were “separate entities under applicable state law.” AO 2016-20, Draft B at 3-4.

In any event, the choice of this status under federal tax law is indicative of its structure. *See* LLC E&J at 37,399 (“the Commission believes it can most effectively carry out FECA’s intent by classifying LLCs according to their federal tax status, which most accurately describes whether an LLC’s structure and function are more akin to a ‘corporation’ or a ‘partnership.’”); Maier Dep. at 24-25 (“they were treated as part of, kind of that they were treated as a branch of, of GEO Corrections Holdings, from the federal income tax perspective”). Therefore, GEO Reentry’s election to be treated as a disregarded entity for federal tax purposes, while not dispositive under Commission precedent, is at least consistent with the conclusion that it is not separate and distinct from GCH purposes of the federal contractor prohibition.

¹⁰¹ Resp. to Complaint at 14 (emphasis in original) (citing Factual & Legal Analysis at 6, MUR 6726).

¹⁰² *See* Maier Dep. at 68-70.

¹⁰³ *See* AO 1999-32 at 5 (noting that the fact that a tribe was not separately incorporated from its tribal utility authority was “not necessarily dispositive of the question”). GCH cites Factual & Legal Analysis at 6, MUR 6726 (Chevron), for its premise that separate incorporation is “the *relevant* legal question,” but the Commission has never made such a pronouncement. Moreover, on the same page of the MUR 6726 Factual and Legal Analysis cited by GCH where the Commission listed separate incorporation as a consideration, it also listed the separate state of incorporation, a shared address, and that the companies were “under the direction and control of separate management” as other factors it considered. As discussed throughout this brief, in its consideration of the question of whether two entities are “separate and distinct,” the Commission has not looked to one decisive factor but weighed the specific facts and circumstances of each matter. *See supra* note 50.

1 circumstances of the particular matter. Following the formalities of separate incorporation does
2 not overcome the manner in which the GEO entities actually operate.¹⁰⁴ The record
3 demonstrates not merely a fact or two implying the connection of these entities, but a set of facts
4 and circumstances which, in totality, demonstrate “such domination of finances, policy and
5 practices” that GCH has “no separate existence of its own” apart from the related GEO
6 companies, including the GEO Group.¹⁰⁵

7 The present case is materially distinguishable from other matters in which the
8 Commission found that a parent and subsidiary may be separate and distinct despite some factors
9 indicating otherwise. For instance, in AO 1998-11 the Commission determined that an LLC was
10 separate and distinct from two other LLCs in which it had 90% ownership, that shared common
11 officers and directors, and that had a \$10 million line of credit secured by the receivables from its
12 subsidiaries’ government contracts.¹⁰⁶ The Commission also noted that the parent entity, the
13 contributor, did not pay the salaries or expenses of its federal contractor subsidiaries and had not
14 indemnified any of its subsidiaries’ contracts.¹⁰⁷ The record here, by contrast, demonstrates
15 *complete* ownership overlap, joint and several liability on a substantial joint loan agreement, a
16 unity of personnel policies, and the sharing of not just officers and directors, but a single
17 employer for *all* corporate and management employees.

¹⁰⁴ See 18 C.J.S. Corporations § 24 (“[I]n making an alter ego determination, a court is concerned with reality and not form, and with how the corporation operated.”). Cf. *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 685 (4th Cir. 1976) (“But, in applying the ‘instrumentality’ or ‘alter ego’ doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant’s relationship to that operation.”); *Collins v. United States*, 386 F. Supp. 17, 20 (S.D.Ga.1974), aff’d, 514 F.2d 1282 (5th Cir.) (“The decision to recognize or not to recognize the tax identity of a corporation depends upon what the corporation does, not what it is called . . .”).

¹⁰⁵ Factual & Legal Analysis at 3, MUR 6168 (Park Federal Savings Bank) (citing 18 Am. Jur. 2d *Corporations* § 65).

¹⁰⁶ AO 1998-11 at 5.

¹⁰⁷ *Id.*

1 Nor are Respondents persuasive in relying on AO 1999-32, in which a Tribe set up a
2 separate and distinct entity to provide utility services.¹⁰⁸ The entity at issue in the advisory
3 opinion was not separately incorporated, but no member of the Tribal Council could sit on its
4 board; it hired its own employees; it established its own personnel policies; and it “enjoy[ed] a
5 degree of autonomy in its functions and operations.”¹⁰⁹ The record in the present matter does not
6 demonstrate such autonomy with independent employees or policies. In AO 2005-01, a Tribe
7 had indemnified the bonds of the separate and distinct corporation it owned, but unlike the
8 present matter, the corporation had its own employees, personnel policies, and maintained a
9 prohibition of members of the Tribal Council serving on the corporation’s board.¹¹⁰

10 Most recently, in MUR 6726, the Commission determined that a parent company and its
11 subsidiary were separate and distinct despite sharing a CEO — though apparently otherwise
12 “under the direction and control of their own management” — and the parent “provid[ing]
13 general policy guidelines” to its subsidiaries.¹¹¹ The record in the present matter demonstrates
14 much more extensive overlap of management, control, and policy in addition to the other factors
15 here that were not present in MUR 6726.

16 In each of these matters, the relevant entities had a greater degree of autonomy compared
17 to the GEO family of companies, which the evidence establishes operate as one entity.
18 Considering the facts and circumstances surrounding the structure and practices of the GEO
19 family of companies, GCH did not operate as a separate and distinct entity from its federal

¹⁰⁸ AO 1999-32.

¹⁰⁹ *Id.* at 2.

¹¹⁰ AO 2005-01 at 2.

¹¹¹ Factual & Legal Analysis at 2, 6, MUR 6726 (Chevron).

1 contractor affiliates, including its parent, the GEO Group, and subsidiaries, including GEO
 2 Reentry and accordingly GCH was subject to the Act's contractor contribution prohibition.¹¹²

3 **IV. CONCLUSION**

4 Based on the foregoing, the Office of the General Counsel is prepared to recommend that
 5 there is probable cause to believe that GEO Corrections Holdings, Inc. has violated 52 U.S.C.
 6 § 30119.

7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31

_____ 05/15/2020 _____
 Date

Lisa J. Stevenson

 Lisa J. Stevenson
 Acting General Counsel

Charles Kitcher

 Charles Kitcher
 Acting Associate General Counsel for Enforcement

Stephen Gura

 Stephen Gura
 Deputy Associate General Counsel

Mark Allen

 Mark Allen
 Assistant General Counsel

Nicholas O. Mueller

 Nicholas O. Mueller
 Attorney

¹¹² We note that this conclusion does not prevent employees of any of the GEO entities, including executives, from making contributions in their personal capacities. See 11 C.F.R. § 115.6. Nor does it prevent contributions made from a separate segregated fund such as the GEO Group, Inc. Political Action Committee which has made more than \$2.5 million in contributions and donations to federal, state, and local political committees in the past five years. See 11 C.F.R. § 114.5; FEC, *GEO Group, Inc. Political Action Committee Disbursement Data 2015-2020*, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00382150&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020.