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Chair James E. "Trey" Trainor III
Vice Chair Steven T. Walther
Commissioner Ellen L. Weintraub
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

BY E-MAIL

Dear Chair Trainor, Vice Chair Walther, and Commissioner Weintraub,

Please find attached the Reply Brief of GEO Corrections Holdings, Inc. submitted in connection with MUR 7180. We request the opportunity to address the Commission during an oral hearing at the appropriate time with respect to the matters raised in the General Counsel's Brief and this Reply Brief.

Sincerely,

A handwritten signature in blue ink, appearing to be "Jason Torchinsky", written over a light blue rectangular background.

Jason Torchinsky
Michael Bayes

Enclosures

cc: Commission Secretary
Lisa J. Stevenson, Acting General Counsel
Nick Mueller

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I. INTRODUCTION

This matter should never have gotten this far. In November 2016, the Campaign Legal Center made specific allegations in its Complaint that GEO Corrections Holdings, Inc. (“GCH”) “was awarded a total of \$266,666 in U.S. government contracts in Fiscal Year 2015”¹ and made impermissible contributions to certain independent expenditure-only political committees (“Super PACs”). In January 2018, the Commission voted to find “reason to believe” on the basis of assertions made by the Complainant that certain NLRB documents identified GCH as a “federal contractor.” GCH’s response provided clear and convincing evidence to OGC that it did not hold any federal contracts despite the referenced language in the NLRB filing. This matter should have stopped then and there with OGC making a recommendation to dismiss. Instead, and seemingly without Commission authorization, OGC embarked on years of extensive discovery and depositions pursuing a theory of liability which did not even form the basis for the Commission’s reason to believe finding. Now, OGC submits a probable cause recommendation based on a spurious theory it developed *after* GCH repeatedly demonstrated that the specific factual allegations in the Complaint were incorrect.

GCH holds no federal contracts and has not violated the federal contractor prohibition as it is written in the Act and Commission regulations. The General Counsel seeks to attribute the federal contractor status of other entities – either GCH’s parent holding company, or GCH’s wholly-owned subsidiaries – to GCH by applying an alter ego “rule” that does not appear in the Act or Commission regulations. The Act specifically forbids this. Even if the General Counsel’s alter ego theory could escape application of the Act’s “rule of law” provision, the

¹ Attachment A, MUR 7180, Complaint at 4. In a supplemental Complaint filed the following month, the Complainant added that GCH was listed as an “operator” and/or “employer” at three specific facilities and that GCH was “a contractor under 11 CFR 115.1(a)(1)(i).” Attachment A, MUR 7180, Supplemental Complaint at 2-3, 5.

General Counsel’s application of that theory in this matter is inconsistent with Commission and judicial precedent. In addition, the standard applied by the General Counsel is precisely the sort of highly subjective “facts-and-circumstances” test that the Supreme Court has previously forbidden the Commission from using. Finally, even if all of these noted disqualifying considerations are disregarded, application of the federal contractor prohibition to an entity that makes a contribution to an independent expenditure-only committee is unconstitutional under *Citizens United* and *Speechnow.org*. The Commission should dismiss this matter for any or all of these reasons.

II. HISTORY OF THIS PROCEEDING

In our Response to the Complaint, we explained that the Complainant “misidentifies the contracting party, mischaracterize[s] GEO Corrections Holdings, Inc. as a federal contractor, and premises its Initial Complaint on a contract that is not a federal contract.”² We explained that certain information found on USAspending.gov was inaccurate, just as the respondent in MUR 6726 (Chevron) had done, and set forth the actual facts supported with sworn affidavits.³ We explained that the contract identified in the Complaint was not a contract with the federal government at all (it was a contract with a State of Louisiana agency).⁴ We explained that certain NLRB documents referenced by the Complainant incorrectly identified GCH as an employer in certain matters and set forth those facts in sworn affidavits.⁵

OGC did not accept our explanation and instead decided to read the sworn affidavits selectively, quibbled with the tense of certain affirmations, and recommended the Commission

² Attachment B, Response of GEO Corrections Holdings, Inc. at 2. The Campaign Legal Center filed a “supplemental complaint” to address the sloppy research of the first complaint and respond to a GEO spokesman’s statement with additional commentary and legal claims.

³ *Id.* at 3.

⁴ *Id.* at 8-9.

⁵ *Id.* at 3-4.

find reason to believe primarily on the basis of certain NLRB documents.⁶ In what we believe was a hastily taken vote prompted by the Complainant's 120-day lawsuit, the Commission accepted OGC's recommendation.⁷ The Factual and Legal Analysis describes the basis for the vote as follows:

As set forth below, the available information, *including GC Holdings' representation in an unrelated National Labor Relations Board ('NLRB') proceeding that it is a federal contractor*, suggests that GC Holdings may have been a federal contractor when it made its contributions to RAN and to other committees.⁸

In response to the Commission's reason to believe finding, we filed a second Response on March 5, 2018, addressing every issue raised in the Factual and Legal Analysis. This Response included a copy of the actual contract for the operation of the D. Ray James Detention Facility showing that the contracting party was Cornell Companies, Inc., and not GCH, along with further explanation for the mistaken employer identifications in the NLRB matters.⁹ These additional materials bolstered what had already been stated in the initial Response and in its accompanying sworn affidavits, but which OGC chose to disregard or disbelieve. The General Counsel's Brief acknowledges, albeit buried in a footnote, that **"GCH has subsequently provided contracts relating to each of these matters demonstrating that GCH was not the named party on the relevant federal contracts."**¹⁰ Thus, as of our first post-RTB submission, filed March 5, 2018,

⁶ See Attachment C, MUR 7180, Notification with Factual and Legal Analysis.

⁷ The Campaign Legal Center filed suit against the Commission on January 10, 2018, alleging violations of 52 U.S.C. § 30109(a)(8)(A). The Commission voted to find reason to believe on January 23, 2018. The Campaign Legal Center's complaint was dismissed for lack of standing on May 26, 2020. On June 4, 2020, the Campaign Legal Center filed a notice of appeal. As of the date of this filing, that case remains pending at the D.C. Circuit.

⁸ Attachment C, MUR 7180, Factual and Legal Analysis at 2 (emphasis added); *see also id.* at 7 n.33 ("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.").

⁹ Attachment D, Response of GEO Corrections Holdings, Inc. (March 5, 2018) at 1-3.

¹⁰ General Counsel's Brief at 1 n.2 (emphasis added); *see also* General Counsel's Brief at 18 n.88 ("GCH has provided contracts relating to each of these matters demonstrating that GCH was not the named party on the relevant federal contracts.").

the question of whether GCH was in fact a party to any federal contract was conclusively settled. Then and there, this matter should have been closed. Instead, OGC spent the next two years chasing its alter ego theory without apparent authorization by the Commission and notwithstanding the fact that OGC's alter ego theory does not appear in the Act or Commission regulations, and has never served as the basis for finding a federal contractor violation.

By letter dated May 1, 2018, OGC requested extensive additional information concerning "GC Holdings' role in these [NLRB] matters and its role in any federal contract related to these matters," along with extensive document requests.¹¹ Our response letter, dated June 22, 2018, objected to OGC's abusive requests and obstinate refusal to acknowledge the fact that GCH was not a federal contractor even after we submitted sworn statements and the actual contract that was the subject of the Complaint. We stated that OGC's letter "expands the scope of the Commission's inquiry and requests additional materials that have nothing to do with the specific matters raised in the Complaint and addressed in the Factual and Legal Analysis."¹² We further explained that we had already demonstrated, consistent with past matters, that GCH is a "separate and distinct legal entity" and that any finding to the contrary would exceed the Commission's authority, as held in *FEC v. Swallow*.¹³ Throughout its investigation, OGC repeatedly sought to rehabilitate the Complaint after its specific allegations and the factual questions raised in the Factual and Legal Analysis were definitively refuted (as OGC now admits), and, in the process, greatly expanded the scope of this matter beyond what was alleged in the Complaint. Nevertheless, we remained

¹¹ Attachment E, OGC Letter from Nicholas Mueller to Jason Torchinsky and Michael Bayes (May 1, 2018).

¹² Attachment F, Letter of Jason Torchinsky and Michael Bayes to Nicholas Mueller (June 22, 2018) at 2. This letter serves as the basis for our belief that the investigation conducted by OGC may not have been fully authorized by the Commission.

¹³ *Id.*

hopeful that one more submission of documents would satisfy OGC and we provided the requested additional information along with a USB drive containing thousands of pages of documentation.

Our hope was clearly misplaced. On August 6, 2018, OGC yet again requested additional information, including a list of *all* federal contracts that were being negotiated or performed in 2015 or 2016 that were negotiated by employees of GCH, along with information about each such contract.¹⁴ OGC requested yet more information about collective bargaining agreements. As it was clear that OGC was determined to justify a violation regardless of any explanation or documentation we provided, we submitted the requested information without additional comment on September 6, 2018.¹⁵

By letter dated May 3, 2019, OGC forwarded a deposition subpoena signed by Chair Weintraub.¹⁶ OGC deposed Amber Martin, The GEO Group, Inc.'s Executive Vice President, Contract Administration, on June 10, 2019, and Marcel Maier, The GEO Group, Inc.'s Executive Vice President, Tax, on October 8, 2019.¹⁷ A review of the transcripts makes clear that OGC's sole purpose during these depositions was to elicit information it could use in presenting its alter ego theory. Virtually every subject probed by OGC during the depositions appears in the General Counsel's Brief as part of its theory of the case.

On December 4, 2019, OGC informed us that it was "nearing the conclusion of the investigation and considering potential recommendations to the Commission," and asked "whether

¹⁴ Attachment G, Letter of Nicholas Mueller to Jason Torchinsky and Michael Bayes (August 6, 2018). The Complaints identified specific contracts as the basis for its allegations, and the Respondent conclusively demonstrated that those contracts were either *not* federal contracts or were *not* held by GCH. Whether OGC had authority to expand its investigation beyond the specific matters raised in the Complaint is unclear.

¹⁵ See Attachment H, Letter of Jason Torchinsky and Michael Bayes to Nicholas Mueller (September 6, 2018).

¹⁶ See Attachment I, OGC Letter of Nicholas Mueller to Jason Torchinsky and Michael Bayes (May 3, 2019); Deposition Subpoena.

¹⁷ See Attachment J, Deposition Transcript of Ms. Martin (June 10, 2019); Attachment K, Deposition Transcript of Mr. Maier (October 8, 2019).

your client is interested in resolving this matter through pre-probable cause conciliation.”¹⁸ We agreed to discuss the matter with OGC, and spoke by telephone on January 14, 2020. OGC’s attorneys, however, would not disclose with any specificity what OGC was prepared to recommend in terms of a violation, nor even confirm the legal basis for its recommendations. Rather, we were simply offered the opportunity to plead guilty to unspecified charges based on unspecified legal grounds. On February 5, 2020, we informed Mr. Mueller that our client declined to participate further in “conciliating” this matter.

On May 15, 2020, OGC provided us with the General Counsel’s Brief. In it, for the first time in the agency’s history, the General Counsel seeks to impute “federal contractor” status – and the accompanying ban on the ability to make contributions and exercise First Amendment rights – to an entity that does not actually hold a federal contract.

III. THE GENERAL COUNSEL’S APPLICATION OF THE ALTER EGO THEORY IS IMPERMISSIBLE

The fact most significant to this matter is never mentioned in the main body of the General Counsel’s Brief. Rather, only in dense footnotes does the General Counsel actually concede that **GCH did not hold any federal contract at the times the contributions at issue in this matter were made.**¹⁹ GCH’s contributions did *not* violate the terms of the Act or Commission regulations. The General Counsel resorts to its alter ego theory precisely because GCH does *not* hold any federal contract (and never has) and thus has *not* violated the terms of the Act or Commission regulations. OGC’s proposal to apply the alter ego theory here is an attempt to

¹⁸ Attachment L, OGC Letter of Nicholas Mueller to Jason Torchinsky and Michael Bayes (December 3, 2019).

¹⁹ General Counsel’s Brief at 1 n.2 (“GCH has subsequently provided contracts relating to each of these matters demonstrating that GCH was not the named party on the relevant federal contracts.”); *see also* General Counsel’s Brief at 18 n.88 (“GCH has provided contracts relating to each of these matters demonstrating that GCH was not the named party on the relevant federal contracts.”).

expand the scope of the Act, and to the best of our knowledge, the Commission has never used this theory to find a federal contractor violation. Doing so for the first time in an enforcement matter would be unprecedented and is prohibited by the Act.

A. The Alter Ego Theory Violates the Act’s “Rule of Law” Provision and Exceeds the Limited Scope of the Commission’s Statutory Authority

OGC’s alter ego theory is apparently derived from a handful of advisory opinions, although neither the Commission nor OGC has ever explained, in any context, *why* it believes this alter ego theory applies in Section 30118 (formerly Section 441b) and Section 30119 (formerly Section 441c) cases. The Act and its legislative history do not include any language suggesting Congress intended to expand the scope of either provision to purported “alter egos.” Rather, the Commission simply grafted the corporate law concept onto a Section 441b analysis in a 1980 advisory opinion and the theory has lived on and grown in subsequent advisory opinions and enforcement matters. The Commission has never attempted to codify its alter ego theory through formal rulemaking proceedings, and to the best of our knowledge, has never recommended that Congress implement the alter ego theory with legislative changes.

Against this background, OGC does not purport to base its recommendations on any provision of the Act or Commission regulation. The General Counsel’s Brief rests solely on the application of an alter ego theory derived from an advisory opinion. This violates the basic rule that “[w]here the law is of uncertain application, advisory opinions cannot be used as a sword of enforcement.”²⁰ The Act’s “rule of law” provision specifically forbids the Commission from enforcing the law as proposed in the General Counsel’s Brief:

²⁰ 1996 Presidential Audits, Statement of Reasons of Vice Chairman Darryl R. Wold and Commissioners Lee Ann Elliott, David M. Mason, and Karl J. Sandstrom at 3, https://transition.fec.gov/audits/1996/Title_26/BobDole1996PresPrimary.pdf; MUR 5625 (Aristotle International, Inc.); Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 2 n.3 (“Of course, it is well-established that advisory opinions cannot be used as a sword, but instead

Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to the procedures established in section 30111(d) of this title.²¹

Four Commissioners explained that “Congress included an express prohibition in the FECA against the Commission using advisory opinions to establish rules of conduct” and “absent controlling regulations or the authoritative interpretations of the courts, the Commission’s enforcement standard [must] be the natural dictate of the language of the statute itself.”²² As one Commissioner further explained:

The statute expressly requires a rule of law to be initially proposed only as a rule or regulation. This statutory mandate serves to protect the regulated community from being judged by interpretations of the law that did not flow naturally and foreseeably from the law itself, but were the mere product of administrative convenience or preference.²³

Having never been proposed as a regulation pursuant to the Act’s rulemaking requirements, application of the alter ego theory in this matter is prohibited by the Act.

In addition to violating the Act’s “rule of law” requirement, the expansion of the federal contractor prohibition through an alter ego theory is beyond the Commission’s authority. As one court was recently forced to explain, “[t]he FEC’s authority exists no further than the boundaries of the law it was created to enforce.”²⁴ In *Swallow*, the court invalidated a regulation “which

merely a shield from burdensome Commission enforcement action.”); *see also* MUR 5799, Response of Respondent Senator John McCain by Trevor Potter (Sept. 20, 2007) at 9 n.8 (“When enforcing the law, the Commission must recognize that rules of general applicability stem from the statute and duly promulgated regulations, not Advisory Opinions. 2 U.S.C. § 437f(b). While an Advisory Opinion can protect a particular person from a sanction the FEC might otherwise impose where that person relies in good faith on such opinion, 2 U.S.C. § 437f(c)(2), the FEC should not attempt to rely on Advisory Opinions as a sword, for they are not a statutory or regulatory rule of law.”).

²¹ 52 U.S.C. § 30108(d); 11 C.F.R. § 112.4(e). The “rule of law” requirement applies to enforcement matters as well. *See* MUR 5642, Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn II at 4 (“the Commission, by statute and regulation, is prohibited from establishing new regulatory requirements through this or any enforcement matter”).

²² 1996 Presidential Audits, Statement of Reasons of Vice Chairman Darryl R. Wold and Commissioners Lee Ann Elliott, David M. Mason, and Karl J. Sandstrom at 2, 3.

²³ MURs 4553, 4671, 4407, 4544, and 4713, Statement of Reasons of Commissioner Karl J. Sandstrom at 6.

²⁴ *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1118 (D. Utah 2018).

imposed liability under FECA on secondary actors” not mentioned in the Act.²⁵ The Commission’s alter ego theory serves exactly the same purpose – to impose liability on secondary actors that the Act itself does not. If the Commission “had no authority to write a regulation that went beyond the Act itself,”²⁶ then the Commission most certainly has no authority to impose an equitable doctrine with no underlying statutory basis and that has never been implemented as a regulation or even a statement of policy. That the FEC has purported to apply an alter ego theory for many years has no bearing on its validity. As the *Swallow* court opined:

The fact that the FEC is fond of enforcing its own creation is not surprising, nor is it surprising that a number of people accused of providing assistance to others who violated the statute would submit to the Agency’s will, but such administrative proceedings do nothing to inform whether the Commission had the power to make and enforce the regulation in the first place. The fact that an independent agency that is not within any of the three constitutional branches of government can subject private citizens to its will is not remarkable. What is troubling is that the Agency can so easily exercise such improper authority.²⁷

The Commission lacked the authority to expand the scope of the federal contractor provision when it first purported to incorporate the alter ego theory into that provision, and its continued application of that theory is unlawful.

B. The Alter Ego Theory Is Void for Vagueness and Contrary to *Wisconsin Right to Life*

Even if the General Counsel were to concoct some theory for why the “rule of law” requirement in Section 30108(d) does not or should not apply here, the proposed application of OGC’s alter ego theory nevertheless raises clear due process concerns. Indeed, the General Counsel’s Brief acknowledges that **“the Commission has not articulated a test setting forth factors that an entity must satisfy but has instead made the determination based on the**

²⁵ *Id.*

²⁶ *Id.* at 1115.

²⁷ *Id.* at 1117-1118.

specific facts and circumstances presented.”²⁸ This approach, however, is void for vagueness and its use is otherwise prohibited under *Wisconsin Right to Life*.

With respect to the void for vagueness doctrine, the Supreme Court explained:

Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.²⁹

The Due Process Clause “requires the government to advise precisely what conduct is impacted so that the public may tailor its behavior accordingly.”³⁰ The Commission’s existing alter ego doctrine – for which rudimentary standards have been referenced over the years, but no violation has ever been found and articulated – “fails to provide a person of ordinary intelligence fair notice of what is prohibited, [and] is so standardless that it authorizes or encourages seriously discriminatory enforcement.”³¹ The Commission – which is “unique among federal administrative agencies [because] it has as its sole purpose the regulation of core constitutionally protected activity” – operates in an area in which “vagueness and notice concerns carry special weight, since courts must be especially vigilant to prevent the chilling of First Amendment speech.”³²

Even if OGC’s alter ego theory could somehow be grounded in the Act (and it cannot be), and even if it were not “void for vagueness” (which it is), the Supreme Court has repeatedly told the Commission that it may not use complex “facts and circumstances” tests to determine whether an entity may engage in protected speech. When undertaking an alter ego inquiry, “[c]ourts

²⁸ General Counsel’s Brief at 10 (emphasis added).

²⁹ *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253-254 (2012) (internal citation omitted).

³⁰ *United States v. Hoffert*, 2018 U.S. Dist. LEXIS 171400, *11 (W.D. Pa. Oct. 4, 2018).

³¹ *United States v. Williams*, 553 U.S. 285, 304 (2008).

³² *Campaign Legal Ctr. v. FEC*, 312 F. Supp. 3d 153, 164-165 (D.D.C. 2018) citing *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003).

consider a laundry list of factors,”³³ but the standard is not deemed satisfied simply “where a set list of factors are established.”³⁴ In *Wisconsin Right to Life v. FEC*, the Court rejected intent- and effect-based approaches to identifying the functional equivalent of express advocacy, and explained that any standard “must entail minimal if any discovery” and “eschew the open-ended rough-and-tumble of factors which invites complex argument in a trial court and a virtually inevitable appeal.”³⁵ Furthermore, “contextual factors ... should seldom play a significant role in the inquiry” and “the need to consider such [basic] background [information] should not become an excuse for discovery or a broader inquiry of the sort we have just noted raises First Amendment concerns.”³⁶ Subsequently, in *Citizens United v. FEC*, the Court again rejected “an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned.”³⁷

This case is a perfect example of what happens when the agency acts wholly unconstrained by any statutory or regulatory text. When OGC was unable to identify a violation on the basis of the Act or Commission regulations alone, its investigation nevertheless continued and quickly devolved into general discovery that itself was not bounded by any written law and appears to have strayed far beyond the specific issues identified in the Factual and Legal Analysis. OGC now claims to have discovered an alter ego federal contractor “violation” – for the first time in the agency’s history – by employing a “facts and circumstances” standard that consists of cherry-picked factors, some of which the Commission has never mentioned before, drawn from a judicial equitable remedy. Finally, when the “standard” employed consists of a free flowing “facts and circumstances” test, nothing prevents OGC from pursuing one case doggedly (*e.g.*, the present

³³ *Laborers’ Pension Fund v. Lay-Com, Inc.*, 580 F.3d 602, 610 (7th Cir. 2009).

³⁴ *Taylor Steel, Inc. v. Keeton*, 417 F.3d 598, 606 (6th Cir. 2005).

³⁵ *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469 (2007).

³⁶ *Id.* at 473-474.

³⁷ *Citizens United v. FEC*, 558 U.S. 310, 329 (2010).

matter) while appearing to apply far less scrutiny to a very similar matter (*e.g.*, MUR 6726 (Chevron)). Taken together, this is a formula for standardless and arbitrary decision making that is not in any way authorized by the Act or Commission regulation. As the Fourth Circuit explained in the context of a state campaign finance matter, a “‘we’ll know it when we see it approach’ simply does not provide sufficient direction to either regulators or potentially regulated entities. Unguided regulatory discretion and the potential for regulatory abuse are the very burdens to which political speech must never be subject.”³⁸

IV. GEO’S OVERALL CORPORATE STRUCTURE IS A FUNCTION OF THE GEO GROUP’S REIT STATUS

The General Counsel’s brief largely omits discussion of overall GEO corporate structure, of which GCH, a wholly owned subsidiary, is just one part. As of January 1, 2013, The GEO Group, Inc. was organized and operating as a Real Estate Investment Trust (“REIT”).³⁹ GEO’s overall corporate structure is a function of the company’s REIT status, which is governed by complex Internal Revenue Service rules and regulations requiring the separation of certain functions within the broader corporate structure.

The statutory definition of a “Real Estate Investment Trust” totals approximately 33 pages, including commentary and history. Treasury Department regulations governing REITs occupy

³⁸ *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 290 (4th Cir. 2008).

³⁹ See The GEO Group, Inc. 2019 Annual Report, Part II at 4 (“We have been a leading owner, lessor and operator of correctional, detention and reentry facilities and provider of community-based services and youth services in the industry since 1984 and began operating as a REIT for federal income tax purposes effective January 1, 2013. As a result of the REIT conversion, we reorganized our operations and moved non-real estate components into TRSs. Through the TRS structure, the portion of our businesses which are non-real estate related, such as our managed-only contracts, international operations, electronic monitoring services, and other non-residential and community based facilities, are part of wholly-owned taxable subsidiaries of the REIT. Most of our business segments, which are real estate related and involve company-owned and company-leased facilities, are part of the REIT. The TRS structure allows us to maintain the strategic alignment of almost all of our diversified business segments under one entity. The TRS assets and operations will continue to be subject to federal and state corporate income taxes and to foreign taxes as applicable in the jurisdictions in which those assets and operations are located.”). The 2019 Annual report is available at <http://investors.geogroup.com/Cache/IRCache/bede2101-0a2d-3bf8-b4f5-9a1b08af6a45.PDF?O=PDF&T=&Y=&D=&FID=bede2101-0a2d-3bf8-b4f5-9a1b08af6a45&iid=4144107>.

approximately 50 pages of the Code of Federal Regulations.⁴⁰ In total, regulations applicable to REITs and their structure appear in some 112 provisions scattered throughout the Code of Federal Regulations. To say that the regulations governing REITs are “complex” is an understatement. With respect to The GEO Group, Inc., a set of very specific and complex structural relationships is necessary for IRS compliance. For example, there are IRS rules about subsidiaries that hold real estate, subsidiaries that have employees, prohibitions on certain kinds of services (such as certain health care related functions), and myriad other rules, regulations and restrictions.⁴¹

As explained by Mr. Maier during his deposition, GEO’s corporate structure is divided into two basic parts: one part that qualifies for REIT taxation status and one part that does not.⁴² Whether or not a particular entity qualifies for REIT status is largely dependent on whether the entity owns and leases out real estate. The part that does not qualify for REIT status consists of “taxable REIT subsidiaries” (“TRSs”). The REIT side of the structure is entitled to more favorable tax treatment, while the TRSs are subject to ordinary corporate taxation. The TRS side of GEO’s overall structure includes entities that do not base their businesses around real estate holdings, such as GEO’s technology subsidiary, which focuses on electronic monitoring and tracking hardware and related software. GCH does not qualify for REIT status (it does not hold real estate) and is instead a taxable REIT subsidiary.

Mr. Maier’s deposition testimony made clear that the employee sharing agreement that is the focus of the General Counsel’s inquiry a function of GEO’s transition to, and current status as, a REIT.⁴³ “[A] REIT is not allowed to provide services with respect to other entities,” meaning that employees of The GEO Group, Inc. could only provide services to a taxable REIT subsidiary

⁴⁰ See 26 C.F.R. 1.857 *et seq.*

⁴¹ See, e.g., 26 U.S.C. §§ 856, 857, 858 and 859.

⁴² Attachment K, Maier Dep. at 19.

⁴³ *Id.* at 38-39.

subject to “certain thresholds ... that would be very difficult to administer.”⁴⁴ However, a TRS may provide services to a REIT. Thus, corporate employees are employed by GCH, and they may permissibly provide services to The GEO Group, Inc., which “reimburses [GCH] at arm’s length ... on a reasonable basis.”⁴⁵ This structure allows for more efficient use of labor resources, as common corporate functions can be shared among the various businesses. For example, rather than each business maintaining its own accounts payable or payroll staff, GCH employees performing those functions can be utilized by each entity on an as-needed basis. This type of cost-sharing arrangement is common in large corporations, including REITs.

The IRS has issued numerous Private Letter Rulings discussing the tax treatment of cost sharing arrangements between REITs and their TRSs.⁴⁶ For example, in 2015, the IRS issued a Private Letter Ruling to a corporation that intended to reorganize as a REIT. Among the issues raised was the following employee sharing arrangement:

For administrative convenience and to avail itself of economies of scale with respect to employment costs, Taxpayer [the REIT] intends to have certain employees who will perform services both for Taxpayer and for its TRSs. Taxpayer and its TRSs will enter into employee sharing agreements under which these employees will be shared and the employing entity will be reimbursed for an allocable share of the employee costs, including salaries, benefits, and other compensation, costs associated with payroll administration, and allocable overhead costs including office supplies, furniture and equipment. The reimbursement will be solely for costs, determined on the basis of the relevant amount of time such employees spend performing services on behalf of each employer or a similar reasonable allocation method.⁴⁷

⁴⁴ *Id.* at 39.

⁴⁵ *Id.* at 42.

⁴⁶ *See, e.g.*, IRS Private Letter Ruling 200510002 (discussing “[t]he amounts paid by Trust to the TRSs as reimbursement for Trust’s allocable share of expenses related to personal, general, and administrative overhead, as well as Trust’s share of the costs of customary services performed by the TRSs on the Trust’s behalf pursuant to the reimbursement and cost sharing arrangements”); *see also* IRS Private Letter Rulings 201528006, 201537020, 200028014, 200525013, 201314002.

⁴⁷ IRS Private Letter Ruling 201537020 (Sept. 11, 2015); *see also* IRS Private Letter Ruling 201528006 (July 10, 2015) (“For administrative convenience and to avail itself of economies of scale with respect to employment costs, certain employees may perform services for both Controlled [the proposed REIT] and Controlled Sub [the proposed TRS] following the Transactions [allowing for REIT election]. For example, Distributing 1 expects that Controlled’s collective human resources, legal, accounting, and other administrative departments will be located in either Controlled or Controlled Sub, and the personnel in those departments will provide services to both Controlled

The IRS approved this arrangement and noted that “neither Taxpayer nor the TRS will profit under any cost-sharing arrangement,” and thus, reimbursement payments received under such cost-sharing arrangements will not be treated as gross income for purposes of tax provisions that require a REIT to derive specified percentages of its gross income from specified real estate sources.⁴⁸

Critically, the GEO corporate group is *not* structured for any of the illicit purposes identified in piercing the veil cases (*e.g.*, to defraud creditors or allow shareholders to treat the companies as their personal piggy banks), but rather, to efficiently further the group’s overarching interests in a manner that *complies with applicable tax laws*.⁴⁹ To the best of our knowledge, OGC has never considered a REIT structure in this context before, so naturally, the facts do not align perfectly with past matters. But, rather than consider the underlying purposes of the piercing the veil doctrine, OGC has instead chosen to unreasonably conclude that any fact that differs from previous matters, no matter how slightly and no matter the reason, must necessarily be treated as evidence of alter ego status.

The General Counsel’s Brief takes the position that an entity that does not actually hold a federal contract is nevertheless disqualified from exercising its First Amendment rights because of the nature of the corporate structure within which it exists, merely because another entity within that structure does hold federal contracts. Yet, that organizational structure reflects, and was designed to comply with, federal tax laws. Thus, legal compliance with one set of laws serves as

and Controlled Sub pursuant to an employee sharing agreement (the ESA). . . . The service recipient will reimburse the employer for the service recipient’s allocable share of the employee’s costs The amount of the reimbursements will be computed periodically and will be determined on the basis of the relative amount of time the employees spend performing services on behalf of the employer versus the service recipient (or pursuant to another reasonable allocation method).”).

⁴⁸ See IRS Private Letter Ruling 201537020 (Sept. 11, 2015).

⁴⁹ A copy of The GEO Group’s organizational chart is included as Attachment N.

the basis for finding that the Respondents cannot comply with another set of laws. The General Counsel does not attempt to explain this bizarre result, where it uses tax compliance as the justification for using a corporate law doctrine to find a campaign finance violation.

V. PIERCING THE VEIL AND ALTER EGO DOCTRINE GENERALLY

As the Commission acknowledged in Advisory Opinion 1998-11 (Patriot Holdings), the alter ego theory derives from law related to piercing the corporate veil. As a matter of corporate law, “piercing the veil” is an equitable remedy imposed by courts as an exception to the general rule of limited liability.⁵⁰ It is used under circumstances where the court believes some sort of fraud or other wrongdoing has occurred to allow a creditor to access the funds of a corporation’s owners where a corporate liability exists that the corporation itself cannot pay.⁵¹ As one professor explained:

As a general principle, corporations are recognized as legal entities separate from their shareholders, officers, and directors. Corporate obligations remain the liability of the entity and not of the shareholders, directors, or officers who own and/or act for the entity. “Piercing the corporate veil” refers to the judicially imposed exception to this principle by which courts disregard the separateness of the corporation and hold a shareholder responsible for the corporation’s action as if it were the shareholder’s own. The boundaries of this exception are usually stated in broad terms that offer little guidance to judges or litigants in subsequent cases.⁵²

How and why the Commission injected a judicial equitable remedy into two statutory provisions establishing two contribution source prohibitions has never been fully explained. This

⁵⁰ See *Johnson v. Ross*, 419 Fed. Appx. 357, 363 (4th Cir. 2011) (“Piercing the corporate veil is an equitable remedy, the propriety of which must be examined on an *ad hoc* basis.”) (internal citation omitted); *McKinney v. Gannett Co.*, 817 F.2d 659, 666 (10th Cir. 1987) (“Piercing the veil through the alter ego doctrine is an equitable remedy.”); *Gardemal v. Westin Hotel Co.*, 186 F.3d 588, 594 (5th Cir. 1999) (“the alter ego doctrine is an equitable remedy which prevents a company from avoiding liability by abusing the corporate form”).

⁵¹ See David K. Millon, *Piercing The Corporate Veil, Financial Responsibility, and the Limits of Limited Liability*, 56 Emory L.J. 1305, 1325 (2007) (“Under certain circumstances, courts will disregard or puncture the limited liability shield to hold shareholders personally responsible for obligations the corporation itself lacks the capacity to discharge.”).

⁵² Robert B. Thompson, *Piercing The Corporate Veil: An Empirical Study*, 76 Cornell L. Rev. 1036 (July 1991).

lack of any explanation, however, plays a significant role in the Commission's inconsistent application of the theory over the years.

A. The History of an Alter Ego Theory at the Commission

The Commission's alter ego theory has no basis in the Act and has never been codified in Commission regulations. It first appeared, gratuitously, in a 1980 advisory opinion and has persisted over the years in advisory opinions and the occasional enforcement matter. The Commission has never described the contours of this jurisdictional expansion in detail, and until very recently, the agency never even attempted to premise a violation on this extra-statutory theory.

1. Federal Contractor Provisions in the Act and Commission Regulations

The Act makes it “unlawful for any person ... [w]ho enters into any contract with the United States or any department or agency thereof ... directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use.”⁵³ The Act defines a “person” as “an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.”⁵⁴ The Act imposes liability only on the “person” who “enters into any contract” with the federal government; there is absolutely nothing in the Act that suggests that any other person is capable of violating the contractor provision.

The limited scope of the Act should not be regarded as an inadvertent oversight or an invitation to unilaterally amend the statute. Congress could easily have written or amended the contractor provision to apply to corporate affiliates that meet certain criteria, but did not. More

⁵³ 52 U.S.C. § 30119(a)(1).

⁵⁴ *Id.* § 30101(11).

recently, Congress demonstrated that it knows exactly how to impose secondary liability. For example, BCRA's "soft money" provisions apply not only to federal candidates and officeholders, but also to their "agents" and any entities that are "directly or indirectly established, financed, maintained or controlled" by those candidates and officeholders.⁵⁵ No such language appears in the federal contractor provision.

Commission regulations generally track the statutory language and provide that "[i]t shall be unlawful for a Federal contractor, as defined in § 115.1(a), to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use. This prohibition does not apply to contributions or expenditures in connection with State or local elections." The regulations define a "Federal contractor" using the language of the Act, *see* 11 C.F.R. § 115.1(a), and "person" is defined using the Act's language verbatim, *see* 11 C.F.R. § 100.10. Like the Act, there is nothing in the regulation that suggests that federal contractor status can be imputed to another person.

There is one significant difference between the Act and the Commission's regulation: the Act refers only to contributions, but the regulation refers to both contributions and expenditures. In the 1977 Explanation and Justification, this expansion is linked to the Act's inclusion of the term "indirectly":

It is the Commission's opinion that the use of the term "indirectly" and the phrase "to any person for any political purpose or use" in the original statutory language indicates a Congressional intent to include expenditures as now defined in the Act . . . The inference is that, by the use of the term indirect, Congress intended the prohibition to extend to the spending of funds by a government contractor for

⁵⁵ 52 U.S.C. § 30125(e)(1).

campaign purposes regardless of whether the funds were given to the candidates or spent by the government contractor.⁵⁶

The Commission has never suggested that the term “indirectly” refers to anything other than expenditures.⁵⁷ Any suggestion that the alter ego theory may be lurking in the statutory term “indirectly” is foreclosed by the Commission’s 1977 Explanation and Justification.

2. Development of Alter Ego Theory in Commission Advisory Opinions

The Commission appears to have first referenced an “alter ego” theory in a series of early 1980s advisory opinions involving questions of whether the subsidiaries of Congressionally chartered corporations or national banks could make state or local contributions. In the first of these opinions, the Commission explained:

Although 2 U.S.C. 441b prohibits a federally chartered corporation from making contributions or expenditures in connection with an election for any political office, **there is no language in the statute indicating that the prohibition extends to subsidiary corporations which are not themselves federally chartered corporations.**

Generally, a subsidiary corporation is considered a distinct legal entity, an entity in its own right, apart from its parent. However, where circumstances are such that one corporation is merely an agent, instrumentality, or alter ego of another corporation the notion of separate corporate existence of parent and subsidiary will not be recognized. *See* 18 AM. JUR. 2d Corporations §17 for a discussion of parent and subsidiary corporations.

In view of the general rule regarding parent-subsidiary corporations, and the Act’s failure to expressly extend the prohibitions on federally chartered corporations to their state chartered subsidiary corporations, the Commission concludes that absent circumstances which would result in characterizing Central Capital (the subsidiary state-chartered corporation) and Central Federal (the parent federally chartered corporation) as one entity, Central Capital would not be subject to the prohibition of 441b governing federally chartered corporations.⁵⁸

⁵⁶ Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971 (April 13, 1977) at 121.

⁵⁷ *See* MUR 6403 (Alaskans Standing Together), First General Counsel’s Report at 19 n.6 (“the term ‘expenditure’ was specifically placed in the regulation based on historical use of the term ‘indirect contribution’ as meaning ‘expenditure’”) (emphasis added).

⁵⁸ Advisory Opinion 1980-07 (California Savings and Loan League).

The Commission specifically recognized that “there is no language in the statute indicating that the prohibition extends to subsidiary corporations which are not themselves federally chartered corporations.” The inquiry should have ended here, but for reasons unclear, the Commission went beyond the text of the statute and offered commentary on “the general rule regarding parent-subsidiary corporations” and suggested that an additional, extra-statutory consideration might apply where parent and subsidiary corporations could be “characterize[ed] ... as one entity.” However, there is no evidence in the advisory opinion that the Commission actually conducted any sort of alter ego analysis of the requestors.

In Advisory Opinion 1981-49 (Great Western Financial Corporation), the Commission once again noted that “there is no language in 441b indicating that the prohibition extends to parent holding companies which are not themselves Federally chartered corporations.” The Commission then observed that a wholly owned subsidiary “has other business operations distinct from the operation of [parent corporation] and further, has sources of revenue separate from [parent corporation’s] assets.” Advisory Opinion 1981-61 (Commercial Bankstock, Inc.) involved similar facts and the Commission “conclude[d] in this instance that for purposes of the Act, the holding company may make the proposed contribution to the [state party] only if the contribution is made from funds other than those resulting from the operations of the [national bank], and provided that the contribution will not be made or used, directly or indirectly, in connection with any Federal election.”

In 1995, the Commission summarized its earlier decisions as follows: “In Advisory Opinions 1981-61, 1981-49 and 1980-7, the Commission permitted a holding company of a national bank, a holding company of a federally chartered savings and loan association, and a wholly owned subsidiary of a federally chartered savings and loan association, respectively, to

make contributions in connection with state and local elections, *provided that the funds used to make the contributions did not result from the operation of the federally-chartered entities.*⁵⁹

With respect to the 1995 request, the Commission said only that its “conclusion is predicated upon the presumption that the parent, subsidiary, and sister companies you describe are distinct legal entities, and not merely the agents, instrumentalities or alter egos of their associated state or Federal banks. *See* Advisory Opinion 1980-7.”⁶⁰ The Commission did not conduct any sort of alter ego inquiry and the separateness of the entities was presumed (consistent with the courts’ approach to piercing the veil).

Advisory Opinion 1998-11 (Patriot Holdings) appears to be the first instance in which the Commission considered parent and subsidiary companies in the federal contractor context. The Commission chose to apply the same approach taken in the opinions cited above, and explained:

The Commission reasoned in these opinions that a holding company is considered a distinct legal entity in its own right, apart from its subsidiaries, and that there is no language in section 441b indicating that the prohibition (as to contributions in any election, including State or local elections) extends to parent holding companies which are not themselves national banks, or Federally chartered corporations or banks.⁶¹

The applicable legal standard for when the Commission would disregard the general rule of separateness of parent and subsidiary, as well as the statutory silence that the Commission interpreted as reflecting this rule, was described in two sentences:

The Commission premised this position on the separate identity of a holding company from a subsidiary and the absence of facts which indicated the subsidiary was merely an agent, instrumentality, or alter ego of the holding company. *See* Advisory Opinions 1995-32, 1995-31 and 1980-7. The Commission has further required that the permitted political contributions of the holding company be funded only from revenue not derived from subsidiaries that are prohibited from the same activity by section 441b. *See* Advisory Opinions 1995-32, 1995-31, 1981-61 and 1981-49.⁶²

⁵⁹ Advisory Opinion 1995-32 (Chicago Host Committee).

⁶⁰ *Id.*

⁶¹ Advisory Opinion 1998-11 (Patriot Holdings) at 4.

⁶² *Id.*

In Advisory Opinion 1998-11, the Commission did not base its conclusion on the statute's silence with respect to separate parent or subsidiary companies. Rather, the Commission's statement of the "law" appears to have derived *solely* from the gloss applied in prior advisory opinions: "As is the case with section 441b, the prohibitions of 2 U.S.C. §441c would not extend to an LLC holding company as long as it is, in fact, a separate and distinct legal entity from its Federal contractor subsidiaries."⁶³

Advisory Opinion 1998-11 refers to the alter ego theory, but contains very little explanation of the application of that theory. The Commission merely states:

The facts in the request do not indicate that ASM or PCS are merely agents, instrumentalities, or alter egos of PH. For example, you have stated that PH does not pay the salaries or expenses of either of its Federal contractor subsidiaries. More importantly, the Government contracts entered into by ASM and PCS do not contain clauses or terms which would hold PH liable for breaches by ASM and PCS. The same is true for all the other contracts of the PH subsidiaries.⁶⁴

In the factual recitations, it is noted that PH "has 90% ownership" of the two subsidiaries at issue. (The remaining 10% of each subsidiary was owned by the other subsidiary.⁶⁵) Other facts that might have been deemed relevant were omitted altogether from the Advisory Opinion. For example, the Commission did not mention "[t]he officers and executives of PH direct and control the activities of ASM and PCS and are in fact also the officers and executives of those companies. Additionally, all three companies share the same office."⁶⁶ The advisory opinion contains no discussion of these "overlapping control" considerations. Instead, the Commission emphasized that the entity which owned and controlled two subsidiaries that held federal contracts (Patriot Holdings) was not itself subject to the federal contractor prohibition, but "the source for these

⁶³ Advisory Opinion 1998-11 at 5.

⁶⁴ *Id.*

⁶⁵ *See* Advisory Opinion Request 1998-11.

⁶⁶ *Id.*

Federal contributions must be revenue other than that resulting from the operations of ASM and PCS.”⁶⁷ Overall, almost no attention was paid to the supposed alter ego factors, and the primary consideration was whether the company had revenues separate and apart from its federal contractor subsidiaries.⁶⁸ So long as a separate source of revenues existed, the Commission appeared to be satisfied.

Advisory Opinion 1998-11 is also notable because it is the first instance in which the Commission acknowledged that when it applies its alter ego theory, what it is really doing is examining whether it should “pierce the corporate veil” and impute one entity’s legal status and obligations to another. The Commission observed in a footnote that “[t]he corporate concept of ‘alter ego’ otherwise known as ‘piercing the corporate veil’ has been held to apply to LLCs.”⁶⁹ The advisory opinion cites to *Hollowell v. Orleans Regional Hospital* and refers the reader to this decision “[f]or an outline of the factors that can lead to piercing the corporate veil.”⁷⁰

Further inquiry reveals that the Commission’s most extensive explanation of the alter ego theory up to that time is a citation to a pre-trial motion decision discussing piercing the veil law in Louisiana. The list of factors referenced in *Hollowell* looks nothing like the factors discussed in the General Counsel’s Brief. According to *Hollowell*:

Under Louisiana law, an individual may be held liable for the debts of a corporation under certain circumstances. Thus, while the WARN Act may not provide direct liability for individuals, under Louisiana law an individual may be held liable for damages sustained as a result of a corporation’s unlawful acts, if the business entity is merely an “alter ego” of the individual. In *United States v. Clinical Leasing Servs.*, 982 F.2d 900 (5th Cir. 1992), the Fifth Circuit noted that Louisiana courts focus on the following five elements in deciding whether in fact a corporation is merely an “alter ego” of an individual:

⁶⁷ Advisory Opinion 1998-11 at 5.

⁶⁸ See Advisory Opinion 1999-32 (Tohono) at 6 n.9 (noting that in Advisory Opinion 1998-11 “the holding company had to use revenues other than those provided by its subsidiary Federal contractor companies to make its contributions”).

⁶⁹ Advisory Opinion 1998-11 at 5 n.3.

⁷⁰ *Id.*

- (1) commingling of corporate and shareholder funds;
- (2) failure to follow statutory formalities for incorporation and the transaction of corporate affairs;
- (3) undercapitalization of the corporation;
- (4) failure to provide separate bank accounts and bookkeeping records;
- and
- (5) failure to hold regular shareholder or director meetings.

Clinical Leasing Servs., 982 F.2d at 902. In this manner, Louisiana law permits plaintiffs to hold individuals liable for the debts of a corporation. See generally Glenn G. Morris, *Piercing the Corporate Veil in Louisiana*, 52 LA L.REV. 271 (1991). Louisiana law also permits plaintiffs to hold individual shareholders of a corporation liable for the debts of a corporation where the individuals act through the corporation to “commit fraud or deceit on a third party.” *McDonough Marine Servs. v. Doucet*, 694 So. 2d 305, 308 (La. Ct. App. 1st Cir. 1996).⁷¹

Upon reading the cited *Hollowell* decision, the obvious question to ask is what any of this has to do with the federal contractor contribution prohibition and why the Commission and OGC ever believed it appropriate to read a judicially-created equitable remedy from corporate law into the Act’s federal contractor provision. The Commission’s dubious experience purporting to apply the alter ego standard in a small number of enforcement matters simply reinforces these questions, and the General Counsel’s Brief stands as a high-water mark in this increasingly lawless experiment that has never been explained in any detail.

The General Counsel’s Brief includes a disturbing acknowledgment that should give everyone pause:

In determining whether an entity is ‘separate and distinct’ from a related entity, the Commission has not articulated a test setting forth factors that an entity must satisfy but has instead made the determination based on the specific facts and circumstances presented.⁷²

⁷¹ *Hollowell v. Orleans Reg'l Hosp.*, 1998 U.S. Dist. LEXIS 8184, *27 (E.D.La. May 29, 1998).

⁷² General Counsel’s Brief at 10.

This is a critical, as well as fatal, acknowledgement. OGC proposes to find probable cause against Respondents on the basis of a legal test that the Commission has *never* articulated. Administrative agencies in general, and the FEC in particular, may not enforce their statutes on the basis of the “specific facts and circumstances presented” in light of unarticulated legal standards. The Act’s mandatory rulemaking procedures and “rule of law” requirements are intended to preclude precisely the sort of “we’ll know it when we see it” enforcement practice that the General Counsel proposes here.

B. Judicial Piercing the Veil Doctrine is an Inscrutable Equitable Remedy

The piercing the veil doctrine is an equitable remedy that was created by the courts to “do justice” where the law is supposedly inadequate. As Judge Easterbrook wrote:

Courts occasionally allow creditors to “pierce the corporate veil,” which means that shareholders must satisfy creditors’ claims. “Piercing” seems to happen freakishly. Like lightning, it is rare, severe, and unprincipled. There is a consensus that the whole area of limited liability, and conversely of piercing the corporate veil, is among the most confusing in corporate law.⁷³

Piercing the veil doctrine also has been criticized as consisting of “a dismal morass of repetitive rhetoric masking conclusory evaluation” that has produced “an unprincipled hodgepodge of seemingly ad hoc and unpredictable results.”⁷⁴

In 2013, the U.S. District Court for the District of Columbia explained:

Generally, a corporation is treated as a separate and distinct juridical entity, independent of its owner. Even if it is wholly owned by one individual or entity, a corporation is recognized as an autonomous being. Whether one corporation is the alter ego of another is a question of law to be decided by the court.

To pierce the corporate veil of two corporations and thereby for the purpose of establishing that one is the alter ego of the other, Plaintiff must show by affirmative

⁷³ Frank H. Easterbrook and Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (Winter 1985).

⁷⁴ David K. Millon, *Piercing The Corporate Veil, Financial Responsibility, and the Limits of Limited Liability*, 56 Emory L.J. 1305, 1311, 1327 (2007).

evidence that there is not only unity of ownership and interest between the two corporations, but also use of the corporate form to perpetrate fraud or wrong.

[***]

To assess whether there is a unity of ownership and interest, the court may consider the following factors: (1) the nature of the corporate ownership and control; (2) failure to maintain corporate minutes or records; (3) failure to maintain corporate formalities; (4) commingling of funds and assets; (5) diversion of one corporation's funds to the other's uses; and (6) use of the same office or business location. Piercing the corporate veil of a corporate parent and its subsidiary corporation with separate identities is *a rare exception grounded in equity considerations*. Therefore, the factor that predominates will vary in each case and the decision to pierce will be influenced by considerations of who should bear the risk of loss and what degree of legitimacy exists for those claiming the limited liability protection of a corporation.⁷⁵

Where “the decision to pierce [is] influenced by considerations of *who should bear the risk of loss* and *what degree of legitimacy exists* for those claiming the limited liability protection of a corporation,”⁷⁶ then a court is ultimately free to reach whatever outcome it believes is “just.” This is, fundamentally, what it means to be an “equitable remedy.”

The federal circuit courts of appeals have all issued summaries of the alter ego factors that they consider, and many have acknowledged that clear rules do not exist.⁷⁷ The circuits are in agreement that piercing the corporate veil is a harsh result driven by equitable considerations to which no one factor, or even a set of factors, controls. Thus, while courts frequently produce list of factors and allegedly relevant considerations, these factors and considerations are never dispositive, and the end result is inherently unpredictable and outcome-oriented. Many, perhaps

⁷⁵ *Alkanani v. Aegis Def. Servs., LLC*, 976 F. Supp. 2d 1, 8-9 (D.D.C. 2013) (internal citations and quotations omitted) (emphasis added).

⁷⁶ *Vuitch v. Furr*, 482 A.2d 811, 815-816 (D.C. Ct. of App. 1984) (emphasis added).

⁷⁷ See, e.g., *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 685 (4th Cir. 1976); *Secor Serv. Sys. v. St. Joseph Bank & Trust Co.*, 855 F.2d 406, 414 (7th Cir. 1988); *NetJets Aviation, Inc. v. LHC Communs., LLC*, 537 F.3d 168, 177 (2d Cir. 2008) (“Instead of a firm rule, the general principle guiding courts in determining whether to pierce the corporate veil has been that liability is imposed when doing so would achieve an equitable result.”); *United States v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 694 (5th Cir. 1985) (“[T]here is no litmus test for determining whether a subsidiary is the alter ego of a parent.”).

most, of the numerous factors cited in case law have never been mentioned by the Commission. For example, the General Counsel's Brief purports to examine the "finances" of the respondents, but makes no mention of undercapitalization, dividends, or siphoning of funds.⁷⁸ How can OGC claim to have uncovered an "alter ego" when it has not examined what the courts say are the most important factors in making such a determination? OGC has simply taken the facts at hand, reverse engineered a good-for-this-case-only version of the alter ego standard, and proclaimed that this "standard" yields OGC's preferred result. If the Commission permits this now, then it should expect to see a wholly new standard the next time OGC believes a violation *should be* found. While some courts openly acknowledge this is how the piercing the veil doctrine works in practice,⁷⁹ the Commission is subject to different requirements, including the requirement that it announce in advance the rules it will apply with a certain degree of specificity.

Applying the equitable remedy of piercing the corporate veil falls within the exclusive jurisdiction of the courts.⁸⁰ Courts apply the doctrine to produce a "fair result" when the law is deemed, *in a court's subjective view*, to be inadequate because it does not produce what the court believes is the right outcome.⁸¹ OGC's manufactured version of the alter ego standard bears only

⁷⁸ Entities within the GEO corporate structure file hundreds of tax returns every year at the federal, state and local level – including income tax, employment tax, and property tax filings. OGC requested only a handful of tax returns, and given OGC's apparent lack of familiarity with corporate finance and tax matters, we are surprised by the breadth of OGC's assertions.

⁷⁹ See, e.g., *Flame S.A. v. Freight Bulk Pte Ltd.*, 807 F.3d 572, 587 (4th Cir. 2015) ("because numerous factors can support the conclusion that corporations are alter egos, the inquiry is fact-intensive and specific facts may be relevant in one case and irrelevant in another"); *In re Hillsborough Holdings Corp.*, 176 B.R. 223, 248 (M.D. Fla. 1994) ("A court is not required to examine all factors, and the facts of each case will help dictate those factors that are most relevant to a court's inquiry.").

⁸⁰ See, e.g., *United States v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691 (5th Cir. 1985) ("[i]n such cases, the subsidiary is considered the "alter ego," "agent," or "instrumentality" of the parent company, and the *district court, acting in its equitable capacity, is entitled to pierce the corporate veil.*") (emphasis added); see also *McKinney v. Gannett Co.*, 817 F.2d 659, 666 (10th Cir. 1987) ("Nevertheless, the district court concluded that in these circumstances equity required it to ignore the separate identity of the two corporations and find that Gannett was the alter ego of The New Mexican.").

⁸¹ See *Taylor Steel, Inc. v. Keeton*, 417 F.3d 598, 606 (6th Cir. 2005) ("piercing the corporate veil is an equitable remedy, available not where a set list of factors are established but where maintaining the corporate form would work injustice upon an innocent party.").

a faint resemblance to the piercing the veil doctrine that courts apply. It is little more than a vague notion found in a small handful of advisory opinions and enforcement matters. While the Commission has some discretion in enforcing the Act, it has no authority to impose an equitable remedy in order to expand the scope of the statute to find a violation that would not otherwise exist. In other words, the Commission has no authority to declare the Act inadequate and appeal to equity. The Commission is an administrative agency that has no authority to declare violations in the interest of its own sense of “equity.” In short, this version of alter ego theory is exclusively within the equity law domain of the courts to administer and has no place whatsoever in the enforcement domain of a regulatory agency.

VI. THE GENERAL COUNSEL MISAPPLIES THE ALTER EGO THEORY IN THIS MATTER

The General Counsel’s Brief divides its “alter ego” argument into three broad categories: (1) management and employee sharing; (2) finances; and (3) policies. As discussed below, nearly all of the factors that the General Counsel claims demonstrate the “alter ego” status of GCH have previously been considered by the Commission in matters where no alter ego was found to exist, and OGC makes little or no reference to The GEO Group, Inc’s status as a REIT and the impact of that status on the structure and role of GCH. In addition to departing from Commission precedent, the General Counsel’s position is inconsistent with actual piercing the veil case law.

As one federal court explained:

Ties through “stock ownership, shared officers, financing arrangements, and the like” do not, by themselves, establish an alter-ego relationship. Thus, “one-hundred percent ownership and identity of directors and officers are, even together, an insufficient basis for applying the alter ego theory to pierce the corporate veil.” Rather, “the degree of control exercised by the parent must be greater than that normally associated with common ownership and directorship.”⁸²

⁸² *Global 360, Inc. v. Spittin’ Image Software, Inc.*, 2005 U.S. Dist. LEXIS 4092, *28 (N.D. Tex. March 17, 2005) (internal citations omitted).

The General Counsel’s Brief does not discuss in any way what a “normal” degree of control might be or how the complexities of the underlying REIT structure and accompanying regulations might impact the present matter. These failures demonstrate quite clearly that the “alter ego” standard applied by OGC does not conform to the actual doctrine used by courts.

For example, in a piercing the veil case involving Westin Hotel Company and its subsidiary Westin Mexico, the plaintiff claimed “that Westin owns most of Westin Mexico’s stock; that the two companies share common corporate officers; that Westin maintains quality control at Westin Mexico by requiring Westin Mexico to use certain operations manuals; that Westin oversees advertising and marketing operations at Westin Mexico through two separate contracts; and that Westin Mexico is grossly undercapitalized.” The court, however, found that “[t]he record, even when viewed in a light most favorable to [the plaintiff], *reveals nothing more than a typical corporate relationship between a parent and subsidiary.*”⁸³

The General Counsel’s understanding of how parent and subsidiary companies must function in order to comply with the Commission’s unwritten rule appears to exist in a vacuum that gives no consideration to common business practices that are routine and routinely accepted by courts as insufficient to pierce the corporate veil under an alter ego theory. Furthermore, OGC fails entirely to assess the impact of the federal government’s REIT rules on the structure, functions and operations of GCH.

A. GEO Management Structure and Employee Sharing

1. GEO’s Overall Management Structure Is Consistent with Ordinary Parent-Subsidiary Business Practices

According to the General Counsel, the fact that a parent/subsidiary relationship “has been structured such that management decisions are made for the benefit of the whole group of

⁸³ *Gardemal v. Westin Hotel Co.*, 186 F.3d 588, 593 (5th Cir. 1999).

companies pursuant to a unified set of interests, rather than distinct entities each seeking its own ends” is essentially dispositive of their veil piercing theory.⁸⁴ OGC’s claim suggests a fundamental misunderstanding of the law of veil piercing generally. Whether accurate or not with respect to the Respondents, it is an observation that applies to every corporate group. As the Supreme Court recognized in an antitrust case:

A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one. They are not unlike a multiple team of horses drawing a vehicle under the control of a single driver. . . . But in reality a parent and a wholly owned subsidiary *always* have a “unity of purpose or a common design.” They share a common purpose whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent’s best interests.⁸⁵

This observation was made 36 years ago. A more recent decision of the Seventh Circuit similarly recognized that corporate group integration is a normal business practice that does not provide grounds for piercing the veil. The court wrote:

The plaintiffs seem to think that unless a corporate group erects a Chinese wall between affiliates, each affiliate is responsible for the other’s debts. That is nonsense. It is true that one corporation will sometimes own another corporation purely as an investment, with no desire to achieve economies of scale or scope by integrating various functions, such as borrowing, legal advice, back-office operations, personnel policies, and higher management. But that is not the usual case, and is certainly not a condition of limited liability. The corporate veil is pierced, when it is pierced, not because the corporate group is integrated . . . but (in the most common case) because it has neglected forms intended to protect creditors from being confused about whom they can look to for the payment of their claims.⁸⁶

⁸⁴ General Counsel’s Brief at 12; *see also id.* at 18 (“The GEO family of companies has been structured such that management decisions are made for the benefit of the whole rather than each entity seeking its own ends.”).

⁸⁵ *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771-772 (1984); *see also United States v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691 (5th Cir. 1985) (“In some sense, every subsidiary is the alter ego of its parent company. Where the subsidiary is wholly-owned by the parent and has the same directors and officers, operating the subsidiary independently of the parent company not only has little practical meaning, it would also constitute a breach both of the subsidiary’s duty to further the interests of its owner, and of the directors’ and officers’ duty towards the parent company. Nevertheless, our cases are clear that one-hundred percent ownership and identity of directors and officers are, even together, an insufficient basis for applying the alter ego theory to pierce the corporate veil. . . . Instead, we maintain the fiction that an officer or director of both corporations can change hats and represent the two corporations separately, despite their common ownership.”) (internal citations omitted).

⁸⁶ *Papa v. Katy Indus.*, 166 F.3d 937, 943 (7th Cir. 1999).

The version of the alter ego doctrine that appears in the General Counsel's Brief does not reflect basic business practices or the courts' acceptance of such practices within the framework of the piercing the veil doctrine.

OGC concludes that the structuring of the "GEO family of companies ... such that management decisions are made for the benefit of the whole" "indicates that *for purposes of the Act*, GCH is not separate and distinct from the GEO Group or other related entities."⁸⁷ Unless it is OGC's position that some *different* alter ego/piercing the veil standard exists "for purposes of the Act," then OGC's position is plainly contrary to the cases cited above and reflects a failure to recognize that piercing the veil doctrine must accommodate common and ordinary business practices.⁸⁸ For instance, one court recognized that a parent corporation may exercise "prudent oversight of its subsidiary's budgets and recurring expenditures in order to track its investments," and "[s]uch parental oversight of a subsidiary falls within the range of normal parent/subsidiary conduct as a matter of law."⁸⁹ This court also indicated that a parent company's oversight of a subsidiary must be "eccentric" or "contrary to ordinary corporate norms" before it would run afoul of the Supreme Court's *Bestfoods* standard.⁹⁰ The General Counsel does not even attempt to show that GEO's practices are in any way "contrary to ordinary corporate norms." In fact, OGC seems to completely ignore GEO's REIT structure and the various requirements to which GEO entities, including GCH, must adhere.

⁸⁷ General Counsel's Brief at 18 (emphasis added).

⁸⁸ If it is OGC's position that a different alter ego standard applies "for purposes of the Act," then OGC is simply fabricating the "law."

⁸⁹ *S.C. Elec. & Gas Co. v. UGI Utils., Inc.*, 2012 U.S. Dist. LEXIS 61487, *34 (D. S.C. April 11, 2012).

⁹⁰ *Id.*

2. GEO's Employee Sharing Agreement is an Ordinary Business Practice

The General Counsel's Brief devotes considerable space to GCH's employee sharing arrangements with other entities within the corporate group. For example, the General Counsel's Brief claims that "[a]ll of the senior managers throughout the domestic entities in the GEO family work pursuant to this employee sharing agreement," and "[t]hough they are employees of GCH alone, each of these executives holds the same title with, and performs work for most, if not all, domestic entities in the GEO family."⁹¹ GCH is *not* the sole employer for the entirety of the GEO corporate group. Rather, GCH employs approximately 250 management and corporate employees, but within the larger corporate group, there are "almost two dozen employers."⁹² In total, GEO entities combined employ nearly 23,000 people.⁹³ OGC does not attempt to examine *why* just 250 of 23,000 employees might be shared, or whether there is anything unusual about the arrangement.

In IRS Private Letter Ruling 200510002, the agency addressed the following circumstances:

Currently, all of the employees of [Real Estate Investment] Trust are maintained on the payroll of three or more taxable REIT subsidiaries (the TRSs) of Trust. Trust is charged an overall management fee by the TRSs, and reimburses the TRSs for the actual costs of the employees who perform services on behalf of Trust. . . . For customary services that may be performed by the employees of the Trust's TRSs on behalf of the Trust, the Trust and the respective TRS may enter into reimbursement or cost sharing arrangements for the payment of these employees' services. Trust will be responsible for the payment of its share of the cost of these services and expenses. The payments made by Trust are intended to make the TRSs whole and not to generate a profit.

There is nothing unusual about the employee sharing agreements that exist within the GEO corporate group, and the IRS has opined on their tax implications on numerous occasions.

The General Counsel's Brief faults GCH for "not mak[ing] a profit from its participation in [the employee sharing] agreement" and contends that "the absence of a similar markup" over

⁹¹ General Counsel's Brief at 6.

⁹² Attachment K, Maier Dep. at 73.

⁹³ See The Geo Group, Inc., Careers, <https://www.geogroup.com/Careers>.

costs “indicates that the employee sharing agreement is not an arm’s length arrangement.” OGC, in turn, contends this arrangement “[f]urther underscor[es] the integration between the GEO Group and GCH.”⁹⁴ OGC’s analysis on this point is incorrect for multiple reasons. First, the General Counsel’s Brief incorrectly presumes that an “arms length arrangement” must necessarily contain a cost mark up. No such rule of law exists. Second, OGC incorrectly presumes that the entities within a corporate group are somehow required to profit from one another in order to be truly distinct entities. This is an absurd assumption for which OGC provides no evidence. In the present matter, the “at cost” arrangement is another function of the rules that govern the relationships between a REIT and its TRSs. As the Private Letter Ruling quoted above demonstrates, an “at cost” employee sharing arrangement in which a REIT reimburses its TRS for employee services is not unique to the present matter, and has been approved by the IRS. There are practical business reasons for engaging in this practice. Were GCH to “mark up” employee costs, thereby causing The GEO Group, Inc., to pay it more than actual cost for services, the effect would be to transfer non-taxed income from The GEO Group, Inc., to GCH, which would then be required to pay taxes on funds that would otherwise go untaxed or be taxed at a lower rate. The arrangement is administratively convenient for all involved, allows for economies of scale to be captured, and results in more favorable tax treatment. OGC’s conclusions regarding the employee sharing agreements reflect a complete failure to understand the tax and business considerations behind the GEO corporate organizational chart.

The General Counsel’s Brief further claims that GCH “plays a central role in the management and control of the GEO Group and many other domestic GEO companies.” This assertion disregards the GEO corporate group organizational chart. GCH is a *wholly owned*

⁹⁴ General Counsel’s Brief at 16.

subsidiary of The GEO Group, Inc., not vice versa. Through the employee sharing agreement, The GEO Group effectively purchases management and administrative services from GCH, but in no way does GCH manage or control The GEO Group, Inc.

Courts have recognized that shared employees are common among affiliated companies and that cost sharing allocations *actually exist to preserve the separateness of the entities*. As one court explained:

The Special Master is aware that it is not uncommon in the case of affiliated companies, often with total or partial common ownership, for employees to perform work for more than one of the entities (as well as sometimes to share other assets such as office space). However, when that is the case, and **when the affiliated entities want to maintain their separate corporate natures (so as to avoid a piercing or alter ego claim), there usually exists some type of cost sharing allocation**, often accomplished by either an actual payment by one entity to the other, or by an accounting adjustment between the subject entities.⁹⁵

This is, of course, exactly what the GEO companies have done, and OGC draws exactly the wrong conclusions about the employee sharing agreements.

The Commission has considered overlapping management in past matters – and always found it did not matter. This conclusion is consistent with the case law, in which “courts have uniformly held that ... shared corporate officers and directors is insufficient as a matter of law to meet the mere instrumentality test.”⁹⁶ The Supreme Court explained that “it is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary’s acts.”⁹⁷ According to the Tenth Circuit, “[g]enerally, the separate corporate status of a parent corporation and its subsidiary will be recognized. This is true even where the parent corporation owns all the shares in the

⁹⁵ *United States ex rel. Donnelly v. Mortgage Investors Corp.*, 2017 U.S. Dist. LEXIS 219340, *10-11 (N.D. Ga. Jan. 31, 2017).

⁹⁶ *Bulletin Broadfaxing Network, Inc. v. Times Mirror Co.*, 1992 U.S. Dist. LEXIS 6399, *19 (D.D.C. May 13, 1992).

⁹⁷ *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) quoting *American Protein Corp. v. AB Volvo*, 844 F.2d 56, 57 (2d Cir. 1988), cert. denied, 488 U.S. 852 (1988).

subsidiary and the two enterprises share directors and officers as here.”⁹⁸ “It is considered a normal attribute of ownership that officers and directors of the parent serve as officers and directors of the subsidiary.”⁹⁹

In the past, the Commission’s approach to overlapping management and employees was consistent with the federal courts’ treatment of the issue, although no extensive analysis has ever appeared in a public document issued by the Commission. For example, in the request for Advisory Opinion 1998-11, it was noted that “[t]he officers and executives of [Patriot Holdings] direct and control the activities of [subsidiaries] ASM and PCS and are in fact also the officers and executives of those companies.”¹⁰⁰ The Commission apparently found these facts so insignificant that they were relegated to a footnote and dismissed with a statement that “[t]he fact that PH, ASM and PCS share common officers and directors, absent other factors, would be insufficient to establish that ASM And PCS were the alter egos of PH.”¹⁰¹ In MUR 6726 (Chevron), the companies at issue shared a CEO,¹⁰² just like the companies in this matter. The General Counsel’s Brief, however, represents a stark departure from this precedent insofar as overlapping management and employee sharing appear to be the most significant factors for the General Counsel.

3. GEO’s Employee Time Tracking Methods are Reasonable and Reviewed by Accountants

The General Counsel’s Brief incorrectly asserts that “shared employees do not track the time they work for one GEO entity as opposed to another.”¹⁰³ OGC cites to Mr. Maier’s deposition

⁹⁸ *McKinney v. Gannett Co.*, 817 F.2d 659, 665-666 (10th Cir. 1987); *see also In re Alper Holdings USA*, 2008 Bankr. LEXIS 522, *10 (Bankr. S.D.N.Y. Feb. 25, 2008) (“the fact that a parent company and its subsidiary share common employees is insufficient to impose liability on the part of the parent for acts of the subsidiary”).

⁹⁹ *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 548-549 (Cal. Ct. App. 2000).

¹⁰⁰ *See* Advisory Opinion Request 1998-11.

¹⁰¹ *Id.* at 5 n.3.

¹⁰² *See* Attachment M, MUR 6726 (Chevron), First General Counsel’s Report at 9.

¹⁰³ General Counsel’s Brief at 7.

for this claim, but Mr. Maier stated exactly the opposite. Mr. Maier testified that shared employees:

identify broadly what they're doing for the various entities and that is being kept track of, but it's not by the minute, like an attorney would do So essentially, the individual will – one of the key aspects is to differentiate time or performance that is made between our vis-à-vis (phonetic) particular to the GEO Group, Inc. and our other subsidiaries, particularly we call, refer to as, taxable [REIT] subsidiaries, and essentially **an ongoing effort is made to track broadly where the time is spent, in a way that is, that allows us to, on a reasonable basis track the time across those two entities.**¹⁰⁴

Mr. Maier further explained that total work product, the number of the entities for which work is performed, and how time-consuming particular projects may be are also tracked and taken into consideration for purposes of creating appropriate cost allocations.¹⁰⁵ Thus, time is *in fact* tracked for work performed for different entities, just not on the billable hour basis with which attorneys in private practice are familiar. The GEO corporate group has a time tracking and allocation method in place that allows it “to achieve a reasonable allocation.”¹⁰⁶ This allocation methodology is reviewed by an outside public accounting firm which provides assistance and “a report that they agree that this is done on a reasonable basis.”¹⁰⁷ To the best of our knowledge, the Commission has never addressed time tracking methodologies in this context, much less declared that a specific method is required to avoid an alter ego finding. In REIT-related matters, the IRS has considered similar time-tracking and reimbursement methods and approved them for tax purposes. For example, in Private Letter Ruling 201528006, it was noted that under a proposed employee sharing arrangement, “[t]he amount of the reimbursements will be computed periodically and will be determined on the basis of the relative amount of time the employees spend performing services

¹⁰⁴ Attachment K, Maier Dep. at 15 (emphasis added).

¹⁰⁵ *Id.* at 16-17.

¹⁰⁶ *Id.* at 17. Mr. Maier provided examples of how different departments make cost-sharing allocation determinations. *See id.* at 72.

¹⁰⁷ *Id.* at 71.

on behalf of the employer versus the service recipient (or pursuant to another reasonable allocation method).” The time-tracking and allocation method at issue in this matter is entirely consistent with this description.

Where the Commission has addressed tracking employee time, the required method closely resembles GEO’s method. Under 11 C.F.R. § 106.7(d)(1), state and local party “[c]ommittees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election.” When the Commission has considered state party time logs in the enforcement context, the issue has always centered on whether or not the state party kept logs at all. To the best of our knowledge, the Commission has never scrutinized the time keeping and allocation methods of the state parties. Insofar as the General Counsel’s Brief faults GCH’s employee time allocation methods for being insufficiently precise, we note that in the context of state party committee employee logs, the Commission rejected a proposal that would have required a “direct proportionality allocation scheme” on the grounds that it “would be complex and likely to engender confusion, and would be unduly burdensome to State party committees.”¹⁰⁸ Thus, in the most analogous situation, the Commission has rejected precisely the reporting method that OGC contends is needed to avoid alter ego status.

In a variety of other contexts, the Commission routinely calls for the use of a “reasonable accounting method.”¹⁰⁹ The fact that an outside public accounting firm advises the Respondents

¹⁰⁸ Final Rule on State, District and Local Party Committee Payment of Certain Salaries and Wages, 70 Fed. Reg. 75,379, 75,382 (Dec. 20, 2005).

¹⁰⁹ See, e.g., 11 C.F.R. § 300.36(a)(1) (requiring non-federal entities to “demonstrate through a reasonable accounting method” sufficient federal funds); MUR 7246 (Carter), First General Counsel’s Report at 11 (“Thus, if the State Committee used a reasonable accounting method to identify federally permissible funds, it would be permissible for the State Committee to use those funds for non-federal campaign contributions made after Carter became a federal candidate.”); Advisory Opinion 2007-26 (Schock) at 3 (“For example, in Advisory Opinions 2006-38 (Casey State Committee), 2006-25 (Kyl), 2006-21 (Cantwell 2006), and 2006-06 (Busby), the Commission stated that the method described in 11 CFR 110.3(c)(4), which is known as the ‘last in, first transferred’ method, is a reasonable accounting method. . . . This does not preclude the Schock Committee from using a different reasonable accounting method that employs generally accepted accounting principles when identifying remaining donations in

specifically on this matter, and has affirmed that its allocations are “done on a reasonable basis,”¹¹⁰ confirms that the Respondents have a “reasonable accounting method” in place to track employee time allocations. Respondents’ method is consistent with relevant time-keeping guidance issued by both the Commission and the IRS.

4. Contract Negotiation

The General Counsel asserts “that employees of GCH seek and negotiate federal contracts on behalf of other GEO entities pursuant to the employee sharing agreement. Further, GCH employees also decide when to bid on a particular contract.”¹¹¹ The government contractor provision set forth in the Act is wholly unconcerned with who decides to bid and negotiate a federal contractor. Rather, the Act refers to “any person ... who *enters into any contract* with the United States or any department or agency thereof.”¹¹² Under the Act, it is entirely irrelevant who “seeks and negotiates federal contracts.” To the best of our knowledge, the Commission has never raised this issue in any previous matter.

The General Counsel’s claim also ignores the “separate hat” presumption that the Supreme Court has found must be respected. The Court, in a case cited in the General Counsel’s Brief, explained that “courts generally presume ‘that the directors are wearing their ‘subsidiary hats’ and not their ‘parent hats’ when acting for the subsidiary.’”¹¹³ When asked whether he “distinguish[es] whether [he is] working for GCH at a given moment or the GEO Group at a given moment,” Mr. Maier explained, “if I sign a tax return for the GEO Group, Inc., I do that as an officer of the GEO

its campaign account and determining what funds are Federally permissible.); Advisory Opinion 2006-15 (TransCanada) at 4 (“The Commission opined that such donations were permissible, provided the subsidiary could demonstrate through a reasonable accounting method that it had sufficient funds in its accounts, other than funds given or loaned by its foreign national parent corporation, from which the donations were made.”).

¹¹⁰ Attachment K, Maier Dep. at 71.

¹¹¹ General Counsel’s Brief at 8.

¹¹² 52 U.S.C. § 30119(a) (emphasis added).

¹¹³ *U.S. v. Bestfoods*, 524 U.S. 51, 69 (1998).

Group, Inc. If a sign a tax return for GCH or other entities, I do that with respect to that entity. If I sign a power of attorney for a particular entity, I sign it for that particular entity.”¹¹⁴ When an individual who is employed by GCH acts on behalf of another entity pursuant to the employee sharing agreement, that individual is acting on behalf of the other entity in his or her capacity as a representative of that other entity.

The Fifth Circuit explained that courts “maintain the fiction that an officer or director of both corporations can change hats and represent the two corporations separately, despite their common ownership.”¹¹⁵ This should be a concept familiar to the Commission, as it is the same multiple hat theory used in the Act’s agency rules. The Supreme Court stated that “the 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.”¹¹⁶ Here, there is no evidence suggesting that any corporate officer employed by GCH has acted “plainly contrary to the interests of [GCH] yet nonetheless advantageous to [The GEO Group, Inc.]” In the absence of evidence to the contrary, the Commission may not disregard the Supreme Court’s presumption.

B. Corporate Finances

OGC asserts that “GCH does not provide goods or services to any entity outside the GEO family.”¹¹⁷ In this regard, the matter is no different than the Chevron matter. There, OGC noted

¹¹⁴ Attachment K, Maier Dep. at 13.

¹¹⁵ *United States v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691 (5th Cir. 1985).

¹¹⁶ *U.S. v. Bestfoods*, 524 U.S. 51, 70 n.13 (1998); see also *Trinity Indus. v. Greenlease Holding Co.*, 2014 U.S. Dist. LEXIS 61223, *44 (W.D. Pa. May 2, 2014) (“A party arguing in favor of piercing the corporation veil must point to evidence to show the directors purportedly acting for the benefit of the subsidiary corporation were—in actuality—acting solely for the benefit of the parent corporation.”).

¹¹⁷ *Id.* at 8.

that “[t]he Response indicates that Chevron, ‘[a]s a general matter ... does not sell any goods or services.’”¹¹⁸ Chevron’s response indicated that it “owns shares in, allocates capital to, reviews financial and performance goals for, monitors the performance of, and provides general policy guidelines to numerous global subsidiaries and affiliates”¹¹⁹ Chevron Corporation “derives most of its income from the dividends” of “stock of other companies.”¹²⁰ As Mr. Maier explained, GCH’s income derives from its investments in other taxable REIT subsidiaries and includes dividend income.¹²¹

OGC next contends that “GCH and the GEO Group have jointly undertaken substantial debt obligations by entering into a joint credit agreement that provides a \$296.3 million loan and \$700 million of revolving credit.”¹²² Both GCH and The GEO Group, Inc. use the credit agreement for daily, monthly, and longer-term borrowing.¹²³ Each borrows in its own name, and neither has ever paid a debt owned under the borrowing agreement for the other.¹²⁴ That neither has paid the other’s debts under this arrangement is strong evidence that GCH is not “underfunded or undercapitalized,” which is generally regarded as a “critical factor” in any piercing the veil analysis.¹²⁵

The Commission has previously considered similar arrangements and never before found them disqualifying under its alter ego standard. For example, in Advisory Opinion 1998-11 the Commission noted that “PH has a \$10 million line of credit from a bank which is secured by the government contract account receivables held by ASM, and PCS.”¹²⁶ The request indicated “that

¹¹⁸ Attachment M, MUR 6726 (Chevron), First General Counsel’s Report at 3 (quoting Chevron Response at 2).

¹¹⁹ *Id.*

¹²⁰ *Id.* at 4.

¹²¹ Attachment K, Maier Dep. at 22, 52.

¹²² General Counsel’s Brief at 8.

¹²³ Attachment K, Maier Dep. at 74.

¹²⁴ *Id.* at 75.

¹²⁵ See *Gardemal v. Westin Hotel Co.*, 186 F.3d 588, 593, 594 (5th Cir. 1999).

¹²⁶ Advisory Opinion 1998-11 (Patriot Holdings) at 5 n.4.

the purpose of the credit line is to cover the cash flow needs arising from the ASM and PCS Government contracts.”¹²⁷ The Commission, however, did not suggest that this “joint borrowing agreement”¹²⁸ was evidence of alter ego status, but rather, merely warned that the line of credit could not be used “to fund PH’s political activity ... because the line of credit is underwritten and made possible by the Government contract activity of ASM and PCS.”¹²⁹ In Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians), the Commission considered an indemnity agreement that “obligate[d] the Tribe ... to act as co-indemnitor (along with IKBI) for any losses and liabilities on the bonds.”¹³⁰ This did not prevent the Commission from finding that the entities involved were “separate and distinct.” Based on the Commission’s prior guidance, these types of agreements have never before led to, or been part of, alter ego findings.

Finally, OGC finds it significant that “a number of GCH’s subsidiaries, including undisputed federal contractor GEO Reentry, were organized until 2017 as disregarded entities for federal tax purposes. As a result of this particular tax status, GCH acknowledges that during this period of time when many of the contributions at issue were made, the revenues resulting from GEO Reentry’s federal contracts were reported directly on GCH’s federal tax return.”¹³¹ This is irrelevant for several reasons.

First, under the Commission’s precedent, there has never been a rule that the parent or subsidiary company that makes a contribution must have *no* federal contract-derived revenue in its accounts. Instead, the Commission’s standard has always been that “the permitted political contributions of the holding company be funded only from revenue not derived from subsidiaries

¹²⁷ *Id.*

¹²⁸ General Counsel’s Brief at 8.

¹²⁹ Advisory Opinion 1998-11 (Patriot Holdings) at 5 n.4.

¹³⁰ Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 2.

¹³¹ General Counsel’s Brief at 20.

that are prohibited from the same activity.”¹³² Thus, even if GCH had revenues sourced from other companies that derived revenue from federal contracts, that in and of itself would make no difference. The relevant question still would be whether GCH had adequate revenue from other sources to make its contributions, and there is no question that it did. In 2016, approximately 80% of GCH’s revenue derived from non-federal contracting sources.

Second, the District Court for the District of Columbia has considered exactly this circumstance in a piercing the veil case and found it meaningless. As the court explained:

Plaintiff also failed to provide any case law supporting his theory of attributing liability to Aegis LLC because of the existence of a pass-through tax structure of a disregarded entity. Between 2006 and 2008, when 100% of Aegis LLC’s shares were owned by Aegis UK, Aegis LLC was treated as a disregarded entity by the IRS and the taxable income earned by Aegis LLC was reflected in federal and District of Columbia tax returns filed by Aegis UK. In the case of a limited liability corporation with only one owner, the limited liability corporation must be classified as a disregarded entity. 26 C.F.R. § 301.7701-2(c)(2). Instead of filing a separate tax return for the limited liability corporation, the owner would report the income of the disregarded entity directly on the owner’s tax return. *Id.* Moreover, determining whether corporate formalities have been disregarded requires more than just recognizing the tax arrangements between a corporation and its shareholders.¹³³

What OGC has observed is merely a requirement of tax law and not a significant factor for veil piercing purposes.

C. Corporate Policies

The General Counsel contends that “GCH does not have an independent set of corporate policies,” and “[i]nstead, the GEO Group’s corporate policies flow down through all GEO entities.”¹³⁴ According to OGC, “the single set of corporate policies flowing down from the GEO

¹³² Advisory Opinion 1998-11 (Patriot Holdings) at 5; *see also* Attachment M, MUR 6726 (Chevron), First General Counsel’s Report at 8 (“and has sufficient revenue not derived from its contractor subsidiary to make a contribution”).

¹³³ *Alkanani v. Aegis Def. Servs., LLC*, 976 F. Supp. 2d 1, 9-10 (D.D.C. 2013) (internal citations omitted).

¹³⁴ General Counsel’s Brief at 9.

Group demonstrates that the GEO family of companies acts as a collective rather than as a set of related but distinct entities for purposes of the Act’s contractor prohibition.”¹³⁵ The Commission has never made any such declaration and the General Counsel’s Report appears to ascribe far more significance to corporate policies than the Commission has in the past.

The issue of corporate policies was not raised in Advisory Opinion 1998-11. The case cited in Advisory Opinion 1998-11 “[f]or an outline of the factors that can lead to piercing the corporate veil” does not mention corporate policies.¹³⁶ The first mention of corporate or personnel policies appears to be in Advisory Opinion 1999-32 (Tohono O’odham Nation) where the requestor offered separate personnel policies as evidence of its “separate and distinct” status. The Commission accepted this as relevant to its decision to overlook the fact that the Tohono O’odham Nation Utility Authority was not separately incorporated. Later, in MUR 6726 (Chevron), where the parent and subsidiary were separately incorporated, the Commission found the entities at issue to be “separate and distinct” notwithstanding the fact that the parent holding company “provides general policy guidelines to numerous global subsidiaries and affiliates.”¹³⁷ The Commission has never before suggested that separate and varying corporate policies is particularly important, much less required.¹³⁸

In addition to breaking with Commission precedent, the General Counsel’s attempt to make “the presence or absence of separate corporate policies” a significant factor is inconsistent with judicial treatment of that consideration in the parent-subsidiary context. For example, in a 2012 decision, the court noted that “the plaintiffs emphasize the existence of a ‘Code of Conduct’

¹³⁵ *Id.* at 20.

¹³⁶ See *Hollowell v. Orleans Reg'l Hosp.*, 1998 U.S. Dist. LEXIS 8184 (E.D. La. May 29, 1998).

¹³⁷ Attachment M, MUR 6726 (Chevron), First General Counsel’s Report at 3.

¹³⁸ Nor does OGC explain how varying sets of personnel policies would be advisable, logically or legally, as a business matter.

outlining general corporate policy, which was ‘approved by the Verizon Board of Directors’ and issued to all Verizon’ employees Such policies, however, are hallmarks of an ordinary parent-subsidary relationship and, without more, cannot justify piercing the corporate veil or establishing personal jurisdiction over a parent corporation.”¹³⁹ Similarly, in *Gardemal*, the court remarked that a parent company’s requirement that a subsidiary “use certain operations manuals” was part of an overall relationship that was “nothing more than a typical corporate relationship between a parent and subsidiary.”¹⁴⁰

This treatment of corporate policies is perfectly sensible, for if “one-hundred percent ownership and identity of directors and officers are, even together, an insufficient basis for applying the alter ego theory to pierce the corporate veil,”¹⁴¹ then it would make little sense to ascribe much significance to the corporate policies these same directors and officers develop and approve.

VII. THE GENERAL COUNSEL’S ACTIONS AND RECOMMENDATIONS IN THIS MATTER ARE INCONSISTENT WITH PAST ENFORCEMENT MATTERS

The General Counsel’s handling of this matter stands in stark contrast with its handling of another recent matter, MUR 6726 (Chevron). The differences in treatment are so glaring and obvious as to raise due process concerns. As the DC Circuit explained, “[a] long line of precedent has established that agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.”¹⁴² The Commission has no “license to . . . treat like cases differently.”¹⁴³

¹³⁹ *Byard v. Verizon W. Va., Inc.*, 2012 U.S. Dist. LEXIS 44339, *34 (N.D. W.Va. March 30, 2012).

¹⁴⁰ *Gardemal v. Westin Hotel Co.*, 186 F.3d 588, 593 (5th Cir. 1999).

¹⁴¹ *United States v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691 (5th Cir. 1985).

¹⁴² *County of Los Angeles v. Shalala*, 192 F.3d 1005, 1022 (D.C. Cir. 1999) quoting *Transactive Corp. v. U.S.*, 91 F.3d 232, 237 (D.C. Cir. 1996).

¹⁴³ *Airmark Corp. v. Federal Aviation Admin.*, 758 F.2d 685, 691 (D.C. Cir. 1985) quoting *U.S. v. Diapluse Corporation*, 748 F.2d 56, 62 (2d Cir. 1984).

In MUR 6726 (Chevron), the Commission was confronted with a similar parent/subsidiary relationship and an allegation of a federal contractor violation. The contributing entity, Chevron Corporation, did “not sell any goods or services to anyone.”¹⁴⁴ Rather, it held stock in other affiliated companies and “its income is primarily derived from the dividends of those companies.”¹⁴⁵ Chevron Corporation’s activities included “review[ing] financial and performance goals for, monitor[ing] the performance of, and provid[ing] general policy guidelines to numerous global subsidiaries and affiliates, which are separate holding or operating companies.”¹⁴⁶ The role of the Chevron Corporation was very similar to the role played by GCH within the GEO corporate group. Like the Chevron Corporation, GCH derives its revenues from other entities within its corporate group and provides management-related services to those entities. In MUR 6726, however, OGC did not inquire further and recommended the Commission find no reason to believe a violation occurred.

With respect to the funds used to make the contributions at issue, Chevron briefly explained that “Chevron Corporation derived revenue in 2012 from subsidiaries other than Chevron U.S.A. Inc. substantially greater than the sum it contributed to the Congressional Leadership Fund.”¹⁴⁷ OGC agreed, and noted that “Chevron appears to have had sufficient funds not derived from revenue of subsidiaries with federal contracts to make the \$2.5 million contribution to CLF.”¹⁴⁸ GCH has made the same showing, and provided extensive documentation in support of this showing, although the General Counsel’s Brief fails to mention this.

¹⁴⁴ Attachment M, MUR 6726, Response of Chevron Corporation at 2.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Attachment M, MUR 6726, Response of Chevron Corporation at 12.

¹⁴⁸ Attachment M, MUR 6726, First General Counsel’s Report at 9.

In MUR 6726, OGC accepted Chevron’s explanation that Chevron Corporation did not hold any federal contracts without requiring extensive investigation and without requiring Chevron to prove this negative. For example, OGC noted that “[a]lthough we found one contract that could arguably be attributed to Chevron during the relevant time period . . . , Chevron states that the true vendor for this contract was its subsidiary, Chevron U.S.A. Product Company.”¹⁴⁹ A comparison of how OGC responded to this “one contract” in Chevron and the NLRB matters in this case is galling. When compared to the present matter, OGC displayed a total lack of curiosity in MUR 6726 and simply accepted Chevron’s explanation of which entity was “the true vendor for this contract.” Here, the respondents provided sworn statements, as well as the actual contracts at issue, to demonstrate that the references in the NLRB matters were erroneous, yet OGC still treats the issue as evidence of its alter ego theory. Even after being forced to acknowledge “that GCH was not the named party on the relevant federal contracts,” the General Counsel nevertheless speculates that “[i]n 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.”¹⁵⁰

In comparing the records of the two matters, what is clear is that the Office of General Counsel accepted Chevron’s response, notwithstanding its almost cursory explanations in places, but rejected, disregarded, and quibbled with almost everything the Respondents in this matter submitted. In MUR 6726, OGC produced a relatively fair assessment of the facts that was consistent with the level of scrutiny applied in past matters. Here, OGC has acted as a prosecutor determined to find a violation, even if its recommendation would be unprecedented and unsupported by law or regulation. We are accustomed to agency staff exhibiting a bias toward

¹⁴⁹ *Id.* at 8.

¹⁵⁰ General Counsel’s Brief at 18 n.88

enforcement, but OGC has never before recommended finding a federal contractor violation on the basis of the alter ego theory. As MUR 6726 involved substantially similar facts, the respondent in this matter should not be treated differently than the last respondent.¹⁵¹ The General Counsel's Brief fails to carry its burden of justifying this disparate treatment.

VIII. THE FEDERAL CONTRACTOR PROHIBITION CANNOT BE CONSTITUTIONALLY APPLIED TO ENTITIES THAT MAKE CONTRIBUTIONS TO INDEPENDENT EXPENDITURE-ONLY COMMITTEES

The General Counsel believes it was illegal for GCH to make a federal contribution because GCH is the "alter ego" of one or more federal contractors. Setting aside the question of whether the Commission has the authority to impute the contribution of one entity to another, the question of whether a federal contractor may make a contribution to an independent expenditure-only committee is one that no court has yet addressed.

The General Counsel's Brief claims that "[t]he recognized anticorruption and merit-based public administration interests that underlie Congress's decision to prohibit contributions by federal contractors would be undermined if, as GCH contends, an entity such as GCH could make federal contributions while functioning as a single entity with its federal contractor affiliates."¹⁵² The General Counsel cites to *Wagner v. FEC* in support of its contention, but as the General Counsel certainly knows, *Wagner* has no applicability to the matter at hand.

Wagner upheld the federal contractor contribution ban as it applied to individual contractors who sought to make federal contributions to "candidates, parties, or traditional PACs

¹⁵¹ See MUR 6081 (American Issues Project, Inc.), Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Petersen at 23 ("In the absence of such notice from the Commission, the public should be able to rely upon past Commission actions and statements when attempting to comply with the law."); MUR 5651 (Gallagher), Statement of Reasons of Chairman Michael E. Toner and Commissioners David M. Mason and Hans A. von Spakovsky at 8 ("it is important than the Commission enforce FECA consistently, rather than reach different results in matters with materially indistinguishable facts").

¹⁵² General Counsel's Brief at 14-15.

that make contributions to candidates and parties.”¹⁵³ *Wagner* specifically cautions that the plaintiffs did not “challenge the law as the Commission might seek to apply it to donations to PACs that themselves make only independent expenditures, commonly known as ‘Super PACs.’”¹⁵⁴ This distinction is of critical importance because the same court, also sitting *en banc*, held in 2010 that contributions to committees now known as “Super PACs” cannot be limited because **“the government has no anti-corruption interest in limiting independent expenditures.”**¹⁵⁵ Thus, “[i]n light of the [Supreme] Court’s holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption.”¹⁵⁶ It is similarly difficult to see how “merit-based public administration interests” are implicated by contributions to independent expenditure-only committees that play no role in the administration of federal funds, budgets or contracts and are legally prohibited from coordinating activities with candidates and political parties.

While no court has yet ruled on this issue directly, the writing is on the wall. If the anti-corruption rationale does not apply in the independent expenditure context, then there is no viable rationale in support of upholding the federal contractor prohibition as it applies to contributions made to Super PACs. The longtime President of the Complainant in this matter, former Commissioner Trevor Potter, set forth this argument in 2010 in a response filed in MUR 6403.¹⁵⁷

¹⁵³ *Wagner v. FEC*, 793 F.3d 1, 4 (D.C. Cir. 2015) (*en banc*).

¹⁵⁴ *Id.*

¹⁵⁵ *SpeechNow.org v. FEC*, 599 F.3d 686, 693 (D.C. Cir. 2010) (emphasis added).

¹⁵⁶ *Id.* at 694.

¹⁵⁷ See MUR 6403, Response of Artic Slope Regional Corporation by Trevor Potter at 3, 5 (“[B]anning ASRC’s contributions to Alaskans Standing Together in this context would violate fundamental First Amendment rights recently articulated in *Citizens United*. . . . “2 U.S.C. § 441c(a) is void to the extent it is read to restrict ARSC’s sponsorship of independent expenditures because no ‘compelling interest’ undergirds the provision in this context. *Citizens United* found that anti-corruption aims cannot justify independent-speech restrictions. Other potential ‘compelling interests’ are simply not implicated here. ASRC and its Alaska Native shareholders possess a constitutional right to use non-appropriated funds to independently voice their opinions on elections.”). The General

If the federal contractor prohibition cannot be constitutionally applied to contributions to Super PACs, then this matter must be dismissed because any entity within the larger GEO corporate group, whether it held a federal contract or not, could have lawfully made the contributions at issue.

Thus, even if one were to set aside the question of whether the Commission operates beyond its jurisdiction when purporting to apply its alter ego test, and then concede for the sake of argument that the General Counsel's alter ego analysis is correct, the Commission still cannot find a violation here because applying the federal contractor prohibition in this matter would be unconstitutional. As explained above, however, the Commission has many available options in this matter that would avoid presenting this constitutional issue before the courts.

IX. CONCLUSION

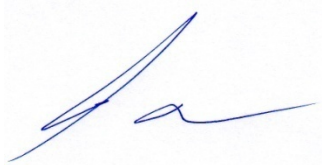
For any or all of the reasons contained herein, this matter should be dismissed. OGC acknowledges that GCH does not, and did not, hold any federal contracts. After the Complainant's specific allegations were shown to be incorrect, OGC nonetheless subjected the Respondents to extensive, abusive discovery requests. The Respondents have amply demonstrated that GCH is legally separate and distinct from any affiliated entity that may hold a federal contract, and that GCH's contributions were lawful under applicable Commission precedent. This brief demonstrates that application of the alter ego standard violates the Act's rule of law provision. We show in this brief that OGC seeks to convert a judicial rule of equity into an administrative rule of law; however, in doing so, in addition to violating the Act's rule of law provision, the standard is rendered void for vagueness and violates the Due Process Clause. Finally, we show that the federal

Counsel's assessment of this argument appears to be redacted from public view in the First General Counsel's Report, see pages 21-22, but it appears likely that the General Counsel included these constitutional considerations in its recommendation to exercise prosecutorial discretion and dismiss under *Heckler v. Cheney*.

contractor provision cannot be constitutionally applied to a corporation that makes a contribution to an independent expenditure-only committee, even if that corporation does hold a federal contract.

Date: July 29, 2020

Respectfully submitted,



Jason Torchinsky



Michael Bayes

Holtzman Vogel Josefiak Torchinsky PLLC
Counsel for Respondents

ATTACHMENT A
COMPLAINT
SUPPLEMENTAL COMPLAINT



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV -4 2016

GEO Corrections Holdings, Inc.
One Park Place, Suite 700
621 N. W. 53rd Street
Boca Raton, FL 33487

RE: MUR 7180

Dear Sir or Madam:

The Federal Election Commission received a complaint that indicates GEO Corrections Holdings, Inc., may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 7180. Please refer to this number in all future correspondence.

The Act affords you the opportunity to demonstrate in writing that no action should be taken against GEO Corrections Holdings, Inc., in this matter. If you wish to file a response, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements should be submitted under oath by persons with relevant knowledge. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. Please note that you have a legal obligation to preserve all documents, records and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

Any correspondence sent to the Commission, such as a response, must be addressed to **one** of the following (note, if submitting via email this Office will provide an electronic receipt by email):

Mail

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Mary Beth deBeau, Paralegal
999 E Street, NW
Washington, DC 20436

Email

CELA@fec.gov

If you have any questions, please contact Mary Beth deBeau at (202) 694-1650 or toll free at 1-800-424-9530. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jeff S. Jordan
Assistant General Counsel
Complaints Examination &
Legal Administration

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Corporate Creations Network, Inc.
11380 Prosperity Farms Road, #221E
Palm Beach Gardens, FL 33410

RECEIVED
FEDERAL ELECTION
COMMISSION
BEFORE THE FEDERAL ELECTION COMMISSION
2016 NOV -1 PM 2: 57

CAMPAIGN LEGAL CENTER
1411 K Street, NW, Suite 1400
Washington, DC 20005
(202) 736-2200

OFFICE OF GENERAL
COUNSEL

CATHERINE HINCKLEY KELLEY
1411 K Street, NW, Suite 1400
Washington, DC 20005
(202) 736-2200

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v.

MUR No. 7180

REBUILDING AMERICA NOW
Ryan Call, Treasurer
P.O. Box 26141
Alexandria, VA 22313

GEO CORRECTIONS HOLDINGS, INC.
621 NW 53rd St, Suite 700
Boca Raton, FL 33487

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that GEO Corrections Holdings, Inc. has made, and Rebuilding America Now (ID: C00618876) may have solicited and has received, contributions from a person who has received a federal government contract, in violation of the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.*
2. Specifically, based on published reports, complainants have reason to believe that GEO Corrections Holdings, Inc. violated FECA’s prohibition on any federal contractor making a contribution to a political committee while negotiating or performing a federal contract, 52 U.S.C. § 30119(a)(1), and that Rebuilding America Now may have violated the ban on

knowingly soliciting a federal contractor to make such a contribution, 52 U.S.C.

§ 30119(a)(2).

3. “If the Commission, upon receiving a complaint ... has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] ... [t]he Commission shall make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

4. Rebuilding America Now is an independent expenditure-only political committee (*i.e.*, a “super PAC”) that filed its statement of organization with the Commission on June 2, 2016.¹ Rebuilding America Now was formed and is led by two former high-level Trump staffers, who appear to have helped develop its communications fewer than 50 days after first *joining* the campaign, despite the so-called “120 day rule” limiting a campaign staffer’s work for a super PAC within 120 days of *leaving* a campaign. *See* 11 CFR § 109.21(d)(5).² Rebuilding America Now was formed at the request of the then-campaign manager of presidential candidate Donald J. Trump, and the Trump campaign has encouraged donors to contribute to Rebuilding America Now,³ and its website

¹ Rebuilding America Now Statement of Organization, FEC Form 1 (filed June 2, 2016), <http://docquery.fec.gov/pdf/186/201607169020674186/201607169020674186.pdf#navpanes=0>.

² Complainants have previously filed a complaint with the Commission alleging Rebuilding America Now has violated FECA by making in-kind contributions to Donald J. Trump for President, Inc. in the form of “coordinated communications,” 11 CFR § 109.21, and republished campaign materials, *id.* § 109.23. *See* MUR 7146. Complainants alleged that Rebuilding America Now’s in-kind contributions exceeded FECA’s \$2,700 limit on contributions by a non-multicandidate political committee to a candidate committee, 52 U.S.C. § 30116(a)(1) and violated FECA’s prohibition on contributions to a candidate committee using corporate funds, 52 U.S.C. § 30118(a) and (b)(2).

³ Alex Isenstadt and Kenneth P. Vogel, *Trump Blesses Major Super PAC Effort*, POLITICO (Jul. 20, 2016), <http://www.politico.com/story/2016/07/trump-super-pac-donors-225892#ixzz4KkGQ03ll>.

(<http://www.rebuildingamericanow.com>) features an endorsement from Trump's running mate stating that contributing to the super PAC is "one of the best ways to stop Hillary Clinton and help elect Donald Trump our next president." Trump has publicly expressed a willingness to headline fundraisers for Rebuilding America Now,⁴ and Donald Trump Jr. is known to have done so.⁵

5. GEO Corrections Holdings, Inc. is a wholly-owned subsidiary of the private prison company GEO Group, Inc. Both GEO Corrections Holdings, Inc. and GEO Group, Inc. are incorporated in Florida at the address 621 N.W. 53rd St., Suite 700, Boca Raton, FL 33487.⁶ George Zoley is the CEO of both GEO Corrections Holdings, Inc. and GEO Group, Inc.⁷ According to GEO Group, Inc.'s 2015 Annual Report, forty-five percent of the company's annual revenues come from federal contracts.⁸
6. GEO Corrections Holdings, Inc. operates the D. Ray James Detention Facility in Folkston, Georgia, according to labor relations cases filed with the National Labor

⁴ Matea Gold, *Trump Reverses His Opposition to Super PACs and Is Now Willing to Headline Events for a Big Money Group*, WASH. POST (Jul. 21, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/07/21/trump-reverses-his-opposition-to-super-pacs-and-is-now-willing-to-headline-events-for-a-big-money-group>.

⁵ Alex Isenstadt, *Trump Super PACs Revving Up for Final Stretch*, POLITICO (Sept. 19, 2016), <http://www.politico.com/story/2016/09/trump-super-pac-rebuilding-america-now-228213>.

⁶ See Florida Department of State Division of Corporations, "Search by Entity Name," <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> ("GEO Corrections Holdings, Inc." and "The GEO Group, Inc.").

⁷ *Id.* Nine of GEO Correction Holdings, Inc.'s eleven directors and officers are shared with GEO Group, Inc. *Id.*

⁸ GEO Group, 2015 Annual Report at 79, (Feb. 25, 2016), <https://www.snl.com/interactive/lookandfeel/4144107/2015AnnualReport.pdf>. The 2015 Annual Report also indicates that GEO Group, Inc. and GEO Corrections Holdings, Inc. are both shared borrowers in a credit agreement consisting of a \$296.3 million loan and a \$700 million revolving credit facility. *Id.* at 19.

Relations Board (NLRB).⁹ A union certification vote at the facility, listing GEO Corrections Holdings, Inc. as the employer, was certified on December 3, 2013.¹⁰

According to the Federal Bureau of Prisons website the D. Ray James Detention Facility is a contracted correctional institution which houses 1,913 federal offenders.¹¹

Additionally, according to USAspending.gov, a U.S. government website that lists some federal contracts and grants, GEO Corrections Holdings, Inc. was awarded a total of \$266,666 in U.S. government contracts in Fiscal Year 2015.¹²

7. On August 18, 2016, the Obama administration announced that it would be ending the Federal Bureau of Prisons' use of private prisons, instructing officials to either decline to renew the contracts for private prison operators when they expire or "substantially reduce" the contracts' scope.¹³ That same day, GEO Group Inc.'s stock dropped 40 percent.¹⁴
8. On August 19, 2016, GEO CEO George Zoley told investors that the Federal Bureau of Prisons had initially extended the company's contract to manage the D. Ray James facility through 2018, then rescinded it; however, according to the *South Florida Sun-*

⁹ See documents filed in GEO Corrections Holdings, Inc., Case No. 12-RC-097792, available at <https://www.nlr.gov/case/12-RC-097792>.

¹⁰ *Id.*

¹¹ Federal Bureau of Prisons website, "CI D. Ray James," <https://www.bop.gov/locations/ci/drj/>

¹² See Recipient Profile: GEO Corrections Holdings, Inc. (FY 2015), USAspending.gov, <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=079242241&FiscalYear=2015>.

¹³ Matt Zaptosky and Chico Harlan, *Justice Department Says It Will End Use of Private Prisons*, WASH. POST (Aug. 18, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/08/18/justice-department-says-it-will-end-use-of-private-prisons/?utm_term=.e5a9890dcd44.

¹⁴ Evelyn Cheng, *Prison Stocks Plunge After Report Justice Department Will End Use of Private Prisons*, CNBC (Aug. 18, 2016), <http://www.cnbc.com/2016/08/18/prison-stocks-plunge-after-report-justice-department-will-end-use-of-private-prisons.html>.

Sentinel, “Zoley indicated that negotiations would likely continue.”¹⁵ Zoley told investors on a conference call that GEO had a “written commitment of interest to extend the [D. Ray James] contract ... It looks like [the Bureau of Prisons] would like to discuss terms and conditions of extension.”¹⁶ The Justice Department similarly told the *Wall Street Journal* that the D. Ray James contract had been rescinded and would be renegotiated.¹⁷

9. That same day, August 19, 2016, GEO Corrections Holdings, Inc. contributed \$100,000 to Rebuilding America Now.¹⁸
10. Trump has praised private prisons (“I do think we can do a lot of privatizations and private prisons. It seems to work a lot better”)¹⁹ whereas his opponent Hillary Clinton has called for their elimination (“I’m glad that we’re ending private prisons in the federal system. I want to see them ended in the state system. You shouldn’t have a profit motivation to fill prison cells with young Americans”).²⁰ According to a September 29,

¹⁵ Marcia Heroux Pounds, *Boca's Geo Group Expects Contract Renewals Despite Federal Plan to End Private Prison Operation, CEO Says*, SUN SENTINEL (Aug. 19, 2016), <http://www.sun-sentinel.com/business/careers/fl-geo-prisons-response-20160819-story.html>.

¹⁶ *Id.*

¹⁷ Austen Hufford, GEO Announced a Prison Contract Extension but U.S. Rescinded It, WALL ST. JOURN. (Aug. 19, 2016), <http://www.wsj.com/articles/geo-says-u-s-rescinded-a-contract-extension-it-just-announced-1471617584>.

¹⁸ Rebuilding America Now, 2016 Quarterly Report at 33, FEC Form 3X (filed October 15, 2016), <http://docquery.fec.gov/pdf/661/201610159032869661/201610159032869661.pdf>. One week earlier, on August 11, 2016, the GEO Group Inc. PAC made a \$50,000 contribution. *Id.* at 54.

¹⁹ Full Transcript: MSNBC Town Hall With Donald Trump Moderated by Chris Matthews, MSNBC (Mar. 30, 2016), <http://info.msnbc.com/news/2016/03/30/35330907-full-transcript-msnbc-town-hall-with-donald-trump-moderated-by-chris-matthews?lite>.

²⁰ Paul R. LaMonica, *Clinton Call for End of Private Prisons Sinks Jail Stocks*, CNN MONEY (Sept. 27, 2016), <http://money.cnn.com/2016/09/27/investing/prison-stocks-hillary-clinton-debate-corrections-corporation-america-geo-group/>; see also Dina Gusovsky, *A Billion-Dollar-Plus Industry Clinton May Sentence to Death*, CNBC (Mar. 4, 2016),

2016 article in *The Daily Beast*, “a Trump victory could be a much-needed lifeline for the industry—while a Clinton win could cripple the businesses that contract with the feds to house prisoners.”²¹

SUMMARY OF THE LAW

11. “Contribution” is defined as “any gift ... of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i).
12. Federal law prohibits a federal contractor from making any “contribution to any political party, committee, or candidate for public office” at any time between the commencement of negotiations for a federal contract and the completion of performance or termination of negotiations for the contract. 52 U.S.C. § 30119(a)(1).
13. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).
14. This statutory federal contractor ban is implemented by the regulation at 11 C.F.R. § 115.2, which provides that it is unlawful for a “Federal contractor ... to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use.” *Id.* The prohibition applies during the period between when a request for proposals is sent out (or when contractual negotiations commence) and the

<http://www.cnbc.com/2016/03/04/a-billion-dollar-plus-industry-clinton-may-sentence-to-death.html>.

²¹ Betsy Woodruff, *Is Donald Trump Private Prison Companies' Last Hope?*, DAILY BEAST (Sept. 29, 2016), <http://www.thedailybeast.com/articles/2016/09/29/is-donald-trump-private-prison-companies-last-hope.html>.

completion of performance of the contract or the termination of negotiations. 11 C.F.R. § 115.1(b)(1-2).

15. Commission regulations define a “federal contractor” as any person who “[e]nters into any contract with the United States or any department or agency thereof” for “[t]he rendition of personal services” or for “furnishing any material, supplies, or equipment,” 11 C.F.R. § 115.1(a)(1)(i-ii), and where payment for performance of the contract is “made in whole or in part from funds appropriated by the Congress,” *Id.* § 115.1(a)(2).
16. The prohibition applies equally to a federal contractor making contributions to political parties, political committees, and candidates. 52 U.S.C. § 30119(a)(1), 11 C.F.R. § 115.2. In 2011, the Commission ruled that the government contractor prohibition applies to federal contractors who make contributions to independent expenditure-only political committees (*i.e.*, “super PACs”) following the U.S. Supreme Court’s decision in *Citizens United v. FEC*²² and the D.C. Circuit Court of Appeals decision in *SpeechNow.org v. FEC*.²³ MUR 6403 (Alaskans Standing Together) Notification with Factual and Legal Analysis to Ahtna, Inc. and NANA Regional Corporation, Inc. (Nov. 10, 2011), at 5, 9.²⁴ The Commission emphasized that a contractor making a contribution to a political committee to fund independent expenditures is not *itself* making an expenditure; therefore, a contribution to such a committee falls “squarely within the statute’s prohibitions.” *Id.* at 9.
17. The federal contractor ban was recently upheld unanimously by the *en banc* D.C. Circuit in *Wagner v. Fed. Election Comm’n*, 793 F.3d 1 (D.C. Cir. 2015) (*en banc*), *cert. denied*

²² 130 S.Ct. 876 (2010).

²³ 599 F.3d 686 (D.C. Cir. 2010).

²⁴ Available at <http://eqs.fec.gov/eqsdocsMUR/11044304942.pdf>.

sub nom. Miller v. Fed. Election Comm'n, 136 S. Ct. 895 (2016). In a decision authored by Judge Merrick Garland, the *en banc* court stressed that “the record offers every reason to believe that, if the dam barring contributions were broken, more money in exchange for contracts would flow through the same channels already on display.” *Id.* at 18.

CAUSES OF ACTION

COUNT I: GEO GROUP HAS VIOLATED THE BAN ON FEDERAL CONTRACTORS MAKING CONTRIBUTIONS

18. Federal law and Commission regulations prohibit a federal contractor from making any contribution to any political committee during the period in which a federal contract is being negotiated or performed. 52 U.S.C. § 30119(a)(1), 11 C.F.R. Part 115.
19. Based on U.S. government websites and published reports, *supra* ¶ 6, GEO Corrections Holdings, Inc. is a federal contractor within the meaning of FECA and its implementing regulations. *See* 11 C.F.R. §§ 115.1(a-b).
20. GEO Corrections Holdings, Inc. appears to have been performing and/or negotiating federal contracts at the same time that it made its \$100,000 contribution to Rebuilding America Now, based on that political committee’s reports filed with the Commission. Specifically, on the same day the contribution was made, George Zoley—CEO of both GEO Group Inc. and GEO Corrections Holdings, Inc.—told shareholders and reporters that the company was continuing to negotiate a contract extension for a facility operated by GEO Corrections Holdings, Inc., the D. Ray James facility in Georgia.²⁵
21. Therefore, based on public information, there is reason to believe that GEO Corrections Holdings, Inc., as a federal contractor, violated the federal contractor contribution ban by

²⁵ Pounds, *Boca's Geo Group Expects Contract Renewals Despite Federal Plan to End Private Prison Operation, CEO Says*, SUN SENTINEL (Aug. 19, 2016), *supra* note 15.

making a “contribution to any political ... committee,” namely Rebuilding America Now, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).

22. More generally, the contribution in this instance implicates the issues that the longstanding federal contractor contribution ban has sought to prevent. GEO Corrections Holdings, Inc. made its contribution just *one day* after the U.S. Department of Justice announced it would be phasing-out its contracts with private prison companies, and *on the same day* that the DOJ announced that it was rescinding and renegotiating a contract at a GEO Corrections Holdings, Inc. facility. By contributing to a super PAC closely associated with Donald J. Trump²⁶—the only presidential nominee to endorse private prisons—GEO Corrections Holdings, Inc. presumably sought to influence the federal government contracting process and to ensure that under the next administration the federal government would continue to offer it contracts.
23. As the *Wagner* court noted, the contractor contribution ban is particularly salient in presidential elections, because “[t]he Executive Branch is . . . an obvious site of potential corruption in the contracting process, since its agencies are the ones that ultimately award contracts.” 793 F.3d 15-16. In this instance, the next president will set administration policy on contracting with private prisons—including whether to maintain the Obama administration’s plans to phase-out private prison contracts. Additionally, the *en banc Wagner* court noted that the FECA Amendments of 1974 and 1976, which strengthened the contractor contribution ban and incorporated it into FECA, were enacted in response

²⁶ See ¶4, *supra*. Additionally, as described *supra* at note 2 and the complaint filed in MUR 7146, there is reason to believe that Rebuilding America Now’s expenditures have constituted coordinated communications that under FECA are treated as in-kind contributions to the Trump campaign.

to the “disturbing examples” of former President Richard Nixon channeling contracts to political supporters and extracting contributions from existing contractors, 793 F.3d 12-16, and that “in government contracting, the risk of quid pro quo corruption and its appearance, and of interference with merit-based administration, has not dissipated,” *id.* at 18.

COUNT II: REBUILDING AMERICA NOW MAY HAVE VIOLATED THE BAN ON SOLICITING CONTRIBUTIONS FROM FEDERAL CONTRACTORS

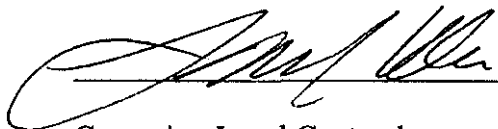
24. Federal law and Commission regulations prohibit any person from knowingly soliciting a federal contractor to make any “contribution to any political ... committee” while the contractor is negotiating a federal contract or during the performance of their contract. 52 U.S.C. § 30119(a)(2), 11 C.F.R. §§ 115.2(c).
25. GEO Corrections Holdings, Inc. is a federal contractor that was performing and/or negotiating federal contracts at the time that it made a \$100,000 contribution to Rebuilding America Now. The company’s status as a contractor is widely known, as its business model relies largely on federal and state government contracts. GEO Corrections Holdings, Inc.’s contribution was made on the same day as several other contributions from Florida-based corporations, suggesting that the contribution was made at a Florida fundraiser where Rebuilding America Now agents solicited contributions.
26. Therefore, there is reason to believe that Rebuilding America Now may have violated the ban on knowingly soliciting a federal contractor to make a “contribution to any political . . . committee” while the contractor is negotiating a federal contract or during the performance of their contract. 52 U.S.C. § 30119(a)(2), 11 C.F.R. §§ 115.2(c).

PRAYER FOR RELIEF

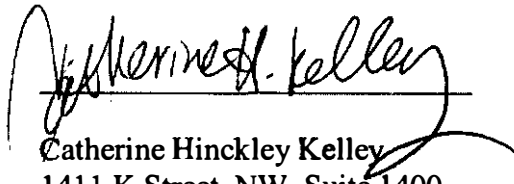
27. Wherefore, the Commission should find reason to believe that GEO Corrections Holdings, Inc. and Rebuilding America Now have violated 52 U.S.C. § 30101, *et seq.* and Commission regulations, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

November 1, 2016

Respectfully submitted,



Campaign Legal Center, by
Lawrence M. Noble
1411 K Street, NW, Suite 1400
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(202) 736-2200



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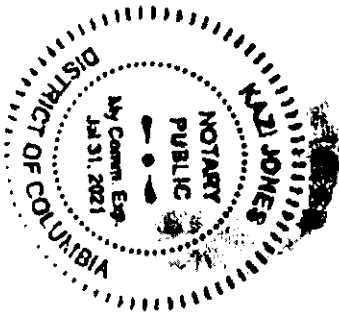
Counsel to the Campaign Legal Center

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

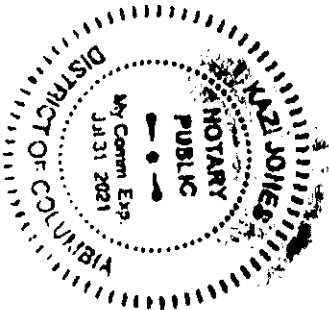


Lawrence M. Noble

Sworn to and subscribed before me this 1 day of November 2016.

Notary Public

For Complainant Catherine Hinckley Kelley



Catherine Hinckley Kelley

Sworn to and subscribed before me this 1 day of November 2016.

Notary Public

**DESCRIPTION OF PRELIMINARY PROCEDURES
FOR PROCESSING COMPLAINTS FILED WITH THE
FEDERAL ELECTION COMMISSION**

999 E Street, NW
Washington, D.C. 20463
FAX (202) 219-3923

Complaints filed with the Federal Election Commission shall be referred to the Enforcement Division of the Office of the General Counsel, where they are assigned a MUR (Matter Under Review) number and forwarded to Complaints Examination & Legal Administration ("CELA") for processing. Within five days of receipt of the complaint, the Commission shall notify all respondents referenced in the complaint, in writing, that the complaint has been filed, and shall include with such notification a copy of the complaint. Simultaneously, the complainant shall be notified that the complaint has been received. The respondents shall then have 15 days to demonstrate, in writing, that no action should be taken against them in response to the complaint. If additional time is needed in which to respond to the complaint, the respondents may request an extension of time. The request must be in writing and demonstrate good cause as to why an extension should be granted. Please be advised that not all requests are granted.

After the response period has elapsed, cases are prioritized and maintained in CELA. Cases warranting the use of Commission resources are assigned as staff becomes available. Cases not warranting the use of Commission resources are dismissed.

If a case is assigned to a staff person, the Office of the General Counsel shall report to the Commission, making recommendations based upon a preliminary legal and factual analysis of the complaint and any submission made by the respondent. The report may recommend that the Commission: (a) find reason to believe that the complaint sets forth a possible violation of the Federal Election Campaign Act of 1971, as amended, (hereinafter the "Act"); or (b) find no reason to believe that the complaint sets forth a possible violation of the Act and, accordingly, close the file.

If, by an affirmative vote of four Commissioners, the Commission determines that there is reason to believe that a respondent has committed or is about to commit a violation of the Act, the Office of the General Counsel shall open an investigation into the matter. During the investigation, the Commission has the power to subpoena documents, to subpoena individuals to appear for deposition, and to order written answers to interrogatories. A respondent may be contacted more than once by the Commission during this phase.

If during this period of investigation, a respondent indicates a desire to enter into conciliation, the Office of the General Counsel may recommend that the Commission enter into conciliation prior to a finding of probable cause to believe that a violation has been committed. Conciliation is an attempt to correct or prevent a violation of the Act by informal methods of conference and persuasion. Most often, the result of conciliation is an agreement signed by the Commission and the respondent. The Conciliation Agreement must be adopted by four votes of

the Commission in order to become final. After signature by the Commission and the respondent, the Conciliation Agreement is made public within 30 days of closing of the entire file.

If the investigation warrants, and no conciliation agreement has been entered into prior to a probable cause to believe finding, the General Counsel must notify the respondent of his/her intent to recommend that the Commission proceed to a vote on probable cause to believe that a violation of the Act has been committed or is about to be committed. The General Counsel shall send the respondent a brief setting forth his/her position on the legal and factual issues of the case. A response brief stating respondent's position on the issues may be submitted within 15 days of receipt of the General Counsel's Brief. Both briefs are then filed with the Commission Secretary and considered by the Commission. Thereafter, if the Commission determines, by an affirmative vote of four Commissioners, that there is probable cause to believe that a violation of the Act has been committed or is about to be committed, the Commission must conciliate with the respondent for a period of at least 30 days, but not more than 90 days. If the Commission is unable to correct or prevent any violation through conciliation, the Office of the General Counsel may recommend that the Commission file a civil suit to enforce the Act against the respondent. Therefore, the Commission may, upon the affirmative vote of four Commissioners, institute civil action for relief in the United States District Court.

See 52 U.S.C. § 30109 and 11 C.F.R. Part 111.

September 2014



FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

FAX 202-219-3923

MUR # _____

Name of Counsel: _____

Firm: _____

Address: _____

Telephone: _____ Fax: _____

E-mail: _____

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date	Signature (Respondent/Agent)	Title
------	------------------------------	-------

RESPONDENT: _____

(Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: _____
(Please Print)

Telephone (H): _____ (W): _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

NOV 07 2016



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jason Torchinsky, Esq.
Michael Bayes, Esq.
Steve Roberts, Esq.
Holtzman Vogel Josefiak Torchinsky, PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186

DEC 27 2016

RE: MUR 7180
GEO Corrections Holding, Inc.
The GEO Group, Inc.

Dear Messrs. Torchinsky, Bayes, and Roberts:

On November 4, 2016, your clients were notified that the Federal Election Commission received a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time, your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On December 20, 2016, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. If you wish to consider this information in your response to the allegations, you are hereby afforded an additional 15 days to do so, or we will assume any previous response is also intended for this correspondence.

Any correspondence sent to the Commission must be addressed to one of the following (note, if submitting via email, this Office will provide an electronic receipt by email):

Mail
Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Mary Beth deBeau, Paralegal
999 E Street, NW
Washington, DC 20463

OR
Email
CELA@fec.gov

If you have any questions, please contact Mary Beth deBeau on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

A handwritten signature in blue ink that reads "Jeff S. Jordan" followed by a stylized flourish or initials.

Jeff S. Jordan
Assistant General Counsel
Complaints Examination &
Legal Administration

Enclosure

1. Complaint Supplement



RECEIVED
FEDERAL ELECTION
COMMISSION
DEC 20 AM 10:33

1411 K Street, NW, Suite 1400 · Washington, DC 20005
tel (202) 736-2200 · fax (202) 736-2222
www.campaignlegalcenter.org

CELA

December 20, 2016

Submitted via email

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Mary Beth deBeau, Paralegal
999 E Street NW
Washington, DC 20463
CELA@fec.gov

RE: MUR 7180

Dear Ms. deBeau:

On November 1, 2016 the Campaign Legal Center filed a complaint (MUR 7180) with the Commission alleging that GEO Corrections Holdings, Inc. had made, and the political committee Rebuilding America Now may have solicited and had received, contributions from a person who has received a federal government contract, in violation of 52 U.S.C. § 30119(a)(1) and (2). We write today to provide additional information relevant to the Commission's consideration of this case.

The complaint described how GEO Corrections Holdings, Inc., a wholly-owned subsidiary of the private prison company GEO Group, Inc., had contributed \$100,000 to Rebuilding America Now on August 19, one day after the federal Bureau of Prisons announced it would be ending its use of private prisons. Subsequent reports indicate that GEO Corrections Holdings, Inc. contributed an additional \$125,000 to Rebuilding America Now on November 1, 2016.¹

¹ Rebuilding America Now, 2016 Post-General Report at 13, FEC Form 3X (filed December 08, 2016), <http://docquery.fec.gov/pdf/740/201612089039950740/201612089039950740.pdf>.

Other reports filed with the Commission indicate that GEO Corrections Holdings, Inc. additionally gave \$200,000 to the Senate Leadership Fund on September 27, 2016,² and previously gave \$100,000 to Conservative Solutions PAC on April 17, 2015.³

Published reports also provide further information as to the nature of GEO Corrections Holdings, Inc.'s status as a federal government contractor.

CLC's November 1 complaint described how, according to publicly-available records, GEO Corrections Holdings, Inc. appears to be a federal contractor as that term is defined at 11 C.F.R. § 115.1(a). GEO Corrections Holdings, Inc. operates the D. Ray James Detention Facility in Folkston, Georgia, according to labor relations cases filed with the National Labor Relations Board (NLRB).⁴ A union certification vote at the facility, listing GEO Corrections Holdings, Inc. as the employer, was certified on December 3, 2013.⁵

A brief filed by GEO Corrections Holdings, Inc. in those proceedings states that the entity:

is a large operator of prisons and other correctional facilities. (Tr. 20:4 11). It has contracts with several state and federal agencies, such as the Federal Bureau of Prisons and Immigration and Customs Enforcement, Department of Homeland Security. (Id.) The D. Ray James Detention Facility is a secure facility and is operated pursuant to a contract with the Federal Bureau of Prisons. (Id.)⁶

² Senate Leadership Fund, 2016 October Monthly at 17, FEC Form 3X (filed October 20, 2016), <http://docquery.fec.gov/pdf/799/201610209034170799/201610209034170799.pdf>.

³ Conservative Solutions PAC, 2015 Mid-Year Report at 14, FEC Form 3X (filed July 31, 2016), <http://docquery.fec.gov/pdf/272/201507319000511272/201507319000511272.pdf>.

⁴ See documents filed in *GEO Corrections Holdings, Inc. v. Int'l Union, Security, Police, & Fire Professionals of America (SPFPA)*, Case No. 12-RC-097792, available at <https://www.nlr.gov/case/12-RC-097792>.

⁵ *Id.*

⁶ Br. in Supp. Of GEO Corrections Holdings, Inc.'s Exceptions to the H'rg Officer's Report & Recommendations on Objections to Election at 1, 3, NLRB Case No. 12-RC-097792 (May 28, 2016), <http://apps.nlr.gov/link/document.aspx/09031d458126047e>. Attached as Ex. A (emphasis added).

In response to press inquiries about the complaint, GEO spokesperson Pablo Paez claimed that the union had made an “error” in identifying GEO Corrections Holdings as the employer in the NLRB proceedings, telling the *Daily Beast*:

“The D. Ray James facility’s federal contract has never been with GEO Corrections Holdings; nor have any of our contracts . . . The entity houses all of our administrative functions and as a holding company it has no operations. GEO Corrections Holdings employs all of our corporate employees. GEO Corrections Holdings does not employ any of our facility employees.”⁷

Yet, if the union made an error in identifying GEO Corrections Holdings Inc. as the respondent employer in NLRB proceedings, GEO had the opportunity to correct that “mistake,” yet failed to do so. Instead, GEO acknowledged in signed documents that GEO Corrections Holdings Inc. was the facility’s “employer” and declared that it has “contracts with several state and federal agencies, such as the Federal Bureau of Prisons and Immigration and Customs Enforcement.”⁸

Additionally, a review of public documents on the NLRB website shows that—despite Paez’s claim that “GEO Corrections Holdings does not employ any of our facility employees”—GEO Corrections Holdings Inc. has been listed as the “employer” in multiple labor relations cases in federally-contracted facilities,⁹ including a union certification vote¹⁰ at the Tacoma, Washington “Northwest Detention Center,” an immigration detention facility operated by GEO under contract with U.S. Immigration and Customs Enforcement.¹¹

⁷ Betsy Woodruff, *Did Private Prison Operator Illegally Boost Trump?*, DAILY BEAST (Dec. 14, 2016), <http://www.thedailybeast.com/articles/2016/12/14/did-private-prison-contractor-illegally-boost-trump.html>.

⁸ See *supra* note 6 and Ex. A.

⁹ See NLRB case page, *GEO Corrections Holdings, Inc. v. SPFPA Local 126*, Case No. 12-CA-118124, <https://www.nlr.gov/case/12-CA-118124>; *GEO Corrections Holdings, Inc.*, Case No. 12-CA-115020, <https://www.nlr.gov/case/12-CA-115020>.

¹⁰ See NLRB case page, *GEO Corrections Holdings, Inc. v. SPFPA Local 445*, Case No. 19-RC-099484, <https://www.nlr.gov/case/19-RC-099484>.

¹¹ See GEO Group website (archived), “Northwest Detention Center,” <https://web-beta.archive.org/web/20160208164922/http://www.geogroup.com/maps/locationdetails/52>; see also Miriam Jordan, *Immigrant Detention System Could Be in Line for an Overhaul*, WALL ST. JOURN. (Sept. 27, 2016), (noting “ICE signed a new contract last year with GEO Group to operate

Paez also told the *Daily Beast*:

“although GEO Corrections Holdings Inc., the company that made the donation, is a wholly-owned subsidiary of the GEO Group, it is a non-contracting legal entity and has no contracts with any governmental agency.”¹²

However, available records indicate that GEO Corrections Holdings, Inc. is indeed a contracting legal entity that holds contracts with multiple government agencies.

In addition to the NLRB cases described above, the Florida Department of Financial Services website (<https://facts.fldfs.com/Search/ContractSearch.aspx>) lists GEO Corrections Holdings, Inc. as the “Vendor” for at least six contracts with the State of Florida valued at tens of millions of dollars.

Additionally, a class action employment lawsuit filed in California in 2014 described GEO Corrections Holdings, Inc. as an “operator of detention and community re-entry facilities in California.”¹³ In its answer to that complaint, GEO Corrections Holdings, Inc. did not contest this description of its operations, but instead claimed that it did not employ the plaintiff nor any other member of the class.¹⁴

What’s more, even if GEO Corrections Holdings, Inc. is the administrative arm of an entity that holds federal contracts (since according to Paez it “houses all of our administrative functions”), it is still a federal contractor for purposes of FECA. If GEO Corrections Holdings, Inc. is executing the administrative functions of a federal contract,

the Northwest Detention Center in Washington for another decade, renewable each year”) <http://www.wsj.com/articles/immigrant-detention-system-could-be-in-line-for-an-overhaul-1475004244>.

¹² Woodruff, *supra* note 7.

¹³ See Exhibit B, Decl. of Michelle Rapoport in Supp. Of Def.’s Notice of Removal, *Victor Lopez v. GEO Group, Inc. et al*, No. 2:14-cv-14-06639 at 4-5, C.D. Cal. (attaching Class Action Complaint for Violations of the California Labor Code and Wage Orders, and California Business and Professions Code §§ 17200, *et seq.* in the Superior Court of California in and for the County of Los Angeles (Case No. BC 552481)) (emphasis added).

¹⁴ See *id.* at 29 (attaching Def.’s Answer to the Compl.) (emphasis added); see also *id.* at 40-41 (attaching Def.’s Notice of Errata, which declines to correct plaintiff’s description of GEO Corrections Holdings, Inc. as an “operator of detention and community re-entry facilities”).

using funds appropriated by Congress, it is involved in the rendition of personal services to the federal government, and is thus a contractor under 11 CFR 115.1(a)(1)(i).

Finally, even if GEO Corrections Holdings Inc. were to offer evidence that it does not itself hold federal contracts, and is not rendering personal services pursuant to a federal contract, its contribution is nonetheless prohibited under the federal contractor ban.

This case is distinguishable from MUR 6726, where the Commission held that a contribution from the parent company Chevron was not rendered impermissible based on its subsidiary Chevron U.S.A. holding a federal contract. MUR 6726, Factual and Legal Analysis (Mar. 11, 2014). In that case, the Commission found that the parent company was legally distinct from its subsidiary given that it was registered in a different state and that its directors and officers did not overlap, and since the parent company contributor earned only a small percentage of its revenue from federal contracts. *Id.* at 6-7.

Here, in contrast, the subsidiary and parent are nearly indistinguishable. Both are incorporated at the same address, in the same state,¹⁵ and with significant overlap between officers and directors.¹⁶ The contribution here is coming from a subsidiary, rather than the parent company, and the parent company derives nearly half of its revenue from government contracts.¹⁷ Indeed, GEO Group Inc. tells investors that “we are dependent on government appropriations.”¹⁸ Because GEO’s business model depends on

¹⁵ Both GEO Corrections Holdings, Inc. and GEO Group, Inc. are incorporated at the address 621 N.W. 53rd St., Suite 700, Boca Raton, FL 33487. *See* Florida Department of State Division of Corporations, “Search by Entity Name,” <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (“GEO Corrections Holdings, Inc.” and “The GEO Group, Inc.”).

¹⁶ Nine of GEO Correction Holdings, Inc.’s eleven directors and officers are shared with GEO Group, Inc. *Id.* George Zoley is the CEO of both GEO Corrections Holdings, Inc. and GEO Group, Inc. *Id.*

¹⁷ The GEO Group, Inc., 2015 Annual Report at 79, (Feb. 25, 2016), <https://www.snl.com/interactive/lookandfeel/4144107/2015AnnualReport.pdf>. The 2015 Annual Report also indicates that GEO Group, Inc. and GEO Corrections Holdings, Inc. are both shared borrowers in a credit agreement consisting of a \$296.3 million loan and a \$700 million revolving credit facility. *Id.* at 19.

¹⁸ The GEO Group, Inc. Annual Report (Form 10-K), at 35, (Feb. 25, 2016), <https://www.sec.gov/Archives/edgar/data/923796/000119312516478864/d43877d10k.htm>.

government contracts, GEO Corrections Holdings, Inc.'s revenue presumably is derived in large part from federal contracts.

As noted in the original complaint, “By contributing to a super PAC closely associated with Donald J. Trump—the only presidential nominee to endorse private prisons—GEO Corrections Holdings, Inc. presumably sought to influence the federal government contracting process and to ensure that under the next administration the federal government would continue to offer it contracts.” (Compl. ¶22.)

Now that Trump has won the election, the President-elect is in the process of setting policy on contracting with private prisons like those operated by GEO—including whether to maintain the outgoing Obama administration’s plans to phase-out private prison contracts.

It is critical that the Commission expedite the resolution of this matter in order to protect the integrity of the contracting process and the purposes behind the 75-year-old contractor contribution ban.

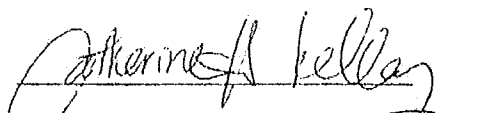
As the *en banc* D.C. District Court noted in *Wagner v. FEC* when it unanimously upheld the federal contractor contribution ban in 2015, “[t]he Executive Branch is . . . an obvious site of potential corruption in the contracting process, since its agencies are the ones that ultimately award contracts.” 793 F.3d 1, 15-16 (D.C.Cir. 2015) (*en banc*) *cert. denied sub nom. Miller v. Fed. Election Comm'n*, 136 S. Ct. 895 (2016).

Please do not hesitate to contact us if we can provide any additional information.

Respectfully submitted,



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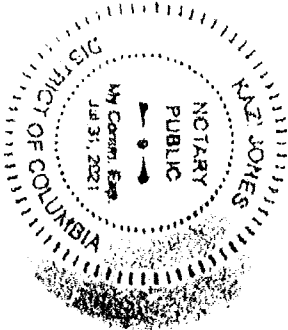
Counsel to the Campaign Legal Center

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

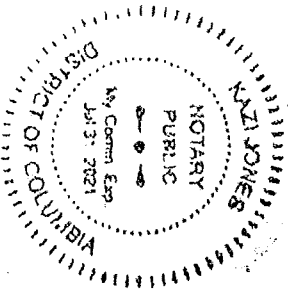


Lawrence M. Noble

Sworn to and subscribed before me this 20 day of December 2016.

Notary Public

For Complainant Catherine Hinckley Kelley



Catherine Hinckley Kelley

Sworn to and subscribed before me this 16 day of December 2016.

Notary Public

EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 12

GEO Corrections Holdings, Inc.,

Employer,

v.

International Union, Security, Police and
Fire Professionals of America (SPFPA),

Petitioner.

CASE 12-RC-097792

**BRIEF IN SUPPORT OF GEO CORRECTIONS HOLDINGS, INC.'S
EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND
RECOMMENDATIONS ON OBJECTIONS TO ELECTION**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Employer GEO Corrections Holdings, Inc. ("GEO" or "Company") respectfully files this Brief in support of its Exceptions to the Hearing Officer's Report and Recommendations on Objections to Election ("Report") issued in the above-captioned matter.

I. STATEMENT OF THE CASE

This matter arises out of a representation election conducted on March 20, 2013 by Region 12 of the National Labor Relations Board ("the Board") among employees of GEO at its D. Ray James Detention Facility in Georgia to determine whether the International Union, Security, Police and Fire Professionals of America ("SPFPA" or "Union") would become the employees' bargaining representative. Prior to the election, Regional Director Margaret J. Diaz approved a Stipulated Election Agreement ("Agreement") between GEO and the SPFPA which set forth the details of the election, including identifying the following job classifications that were eligible to vote:

Included: All full time and regular part time corrections officers, food service officers and transportation officers employed by the Employer at its facilities located at 3262 Highway 252, Folkston, Georgia.

Excluded: All other employees, office clerical employees, professional employees and supervisors as defined in the act.

(Stipulated Election Agreement, Board's Ex. 1(i)).

On March 27, 2013, GEO timely filed Objections to the Conduct of the Election and Conduct Affecting the Election. GEO's objections are as follows:

Objection 1: SPFPA, by its agents, representatives, and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by coercing and intimidating employees during the critical period before the election, which interfered with the employees' ability to exercise their free and uncoerced choice in the election.

Objection 2: During the election, and during the critical period before the election, SPFPA, by its agents, representatives, and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by advising employees and GEO's designated observer that certain employees who were included in the unit pursuant the Stipulated Election Agreement were not eligible to vote in the election.

Objection 3: During the election, one of SPFPA's designated observers interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by improperly monitoring employee voting and discriminatorily challenging only those votes SPFPA perceived as "no" votes.

Objection 4: During the election, one of SPFPA's designated observers abused the NLRB processes and intimidated employees by challenging all perceived "no" votes, so that employees who did not support SPFPA would be required to include their names on votes, thereby losing their right to a secret ballot election, which such conduct interfered with the employees' ability to exercise their free and uncoerced choice in the election and interfered with the conduct of the election.

Objection 5: By the foregoing and other unlawful misconduct, SPFPA and its agents, representatives and/or supporters destroyed the necessary laboratory conditions and interfered with the holding of a free and fair election among the employees on March 20, 2013, and such conduct substantially and materially affected the outcome of the election.

On April 10, 2013, the Regional Director issued its Report on Objections and Order Directing a Hearing. A hearing was held in Jacksonville, Florida on April 24-27 before Hearing Officer Gregory Powell from Region 11. The Hearing Officer's Report, issued on May 14, 2013, recommended that all of the Employer's objections be overruled. GEO files these Exceptions to the Hearing Officer's finding that the Petitioner did not engage in objectionable conduct requiring the overturning of the election results and rerun of the election.

II. BRIEF STATEMENT OF THE FACTS

A. Background

GEO is a large operator of prisons and other correctional facilities. (Tr. 20:4-11).¹ It has contracts with several state and federal agencies, such as the Federal Bureau of Prisons and Immigration and Customs Enforcement, Department of Homeland Security. (Id.) The D. Ray James Detention Facility is a secure facility and is operated pursuant to a contract with the Federal Bureau of Prisons. (Id.) The D. Ray James Facility houses approximately 2,800 inmates. (Tr. 21:1-2).

B. The Stipulated Unit

On February 15, 2013, more than one month prior to the election, GEO and the Union entered into a Stipulated Election Agreement which provided that three classifications of GEO employees would be permitted to vote in the election: corrections officers, food service officers, and transportation officers. (See Board Ex. 1(i)). Corrections officers at the D. Ray James Detention Facility are charged with maintaining the general security of the facility. (Tr. 19:13-16). These officers are posted at various stations throughout the facility, including inmate dormitories, the entry point, the outside grounds, the drug testing and investigation unit, and the

¹ Citations to the Report are denoted as "Report p. ___"; Transcript citations are denoted as "Tr. ___"; Board Exhibits are denoted as "Board Ex. ___" and Employer Exhibits are denoted as "Co. Ex. ___".

armory, among other locations. (Tr. 20:14-16; 21:8-13; 149:20-24; 152:4-6; 193:16-20; 200:20-24). The officers perform varying duties, such as monitoring prisoners during recreational time and supervising prisoners on work duty, including but not limited to inmate grounds keeping. (Tr. 152:4-6, 14-16; 200:20-24). Rotation of duty post varies as some posts are rotated weekly and others only every few months. (Tr. 174-24). Despite varying job duties for each post, all of the employees are classified as corrections officers. (Tr. 152:14-16; 193:16-20). Accordingly, all the corrections officers were covered by the Stipulated Election Agreement and were eligible to vote in the election.

The two remaining employee job classifications in the Stipulated Election Agreement were the food service officers and the transportation officers. The food service officer job duties include supervising inmates who are assigned to cafeteria duty and monitoring inmates during meal periods. (Tr. 19:17-18). The transportation officers, who are armed at all times, are charged with monitoring employees while moving them on and off the secure facility. (Tr. 19:18-20; 21:19-21).

C. The Union's Objectionable Conduct

In the days and weeks prior to the election, Officer Pamela Paolantonio and several Union supporters harassed and coerced GEO employees to vote in favor of SPFPA in the election. For example, in the days prior to the election, Officer Cynthia Moody was cornered by Officers Linda Dowling and Paolantonio in the control room on two occasions and prohibited from gaining access to the facility until she talked to them about the Union. (Tr. 326:15 – 327:18; 327: 22 – 328:25). Officer Lisa Kirkland was harassed and intimidated by Union supporters Officers Paolantonio, Kimberly Harmon, Amanda Newman and Elizabeth Peeples both on Facebook and while on her post to vote in favor of the Union. (Tr. 100:8 – 101:7; 104:10-16; 103:18-23). Officer Laurie Zawadowicz was harassed and intimidated by Union

supporters in person, at work and over the Internet, and, as a result of the Union's conduct did not vote in the election. (Tr. 377:18-24).

It is undisputed that in the weeks prior to the election, several Union supporters, including Officers Paolantonio, Newman, and Holcomb, told the food service officers they were not eligible to vote, despite the fact that the Stipulated Election Agreement clearly stated that these employees were included in the Stipulated Unit. (Tr. 51:18-23; 276:12-22). Union election observer Officer Paolantonio also told GEO's election observer, Aaron Jolly, in the days prior to the election, that food service officers were not permitted to vote in the election. (Tr. 28:19 – 29:5). When Mr. Jolly disagreed, Ms. Paolantonio responded that Mr. Jolly was incorrect. (Id.)

On the day of the election, Officer Paolantonio challenged all but two of the food service officers votes and defended her actions by stating she had her "marching orders." (Tr. 32:4-16). Although the plan to discourage food service officers from voting in the election was carried out by Ms. Paolantonio, and several other Union supporters within the facility, it was endorsed by the Local SPFPA President. Indeed, SPFPA Local President Daniel Lloyd admitted to GEO employee Sandra Goodwin that although the Union knew the food service officers were covered by the Stipulated Election Agreement, the Union challenged the food service officers because it was unsure of how they would vote in the election. (Co. Ex. 2).

D. Election Results

The election took place on March 20. The initial results of the election were 114 votes in favor of the Union, 85 votes against the Union, 31 votes challenged, and 31 employees did not vote. (Tr. 22:9-15). Of the challenges, 30 were entered by the Union and one was entered by the Board Agent. The Union and GEO were able to resolve some of the challenges resulting in the final tally being 117 votes in favor of the Union, 102 votes against the Union, 11 votes remaining challenged, and 31 employees did not vote. (Tr. 22:9-15). GEO filed these objections as a result

of the Union supporters' conduct on the day of and immediately prior to the election.

III. ARGUMENT

The above facts prove a pattern of deceptive and manipulative conduct proliferated by Union agents and third-party SPFPA supporters who unlawfully influenced the outcome of the election. These employees actively spread false rumors about voting eligibility and harassed and intimidated employees to support the Union, thereby interfering with the election process in an effort to ensure a higher turnout of pro-Union employees.

In spite of irrefutable record evidence demonstrating numerous instances of Union misconduct during the critical period which affected the results of the election, the Hearing Officer overruled each of GEO's Objections. Upon close examination, it is evident that the Report is fraught with erroneous conclusions. The Hearing Officer misapplied controlling law concerning agency status and the standard for third-party conduct, and failed to give due consideration to testimony he credited from Company witnesses. In light of these faulty conclusions, the Board must reverse the Hearing Officer's findings, set aside the election results, and order a new election.

A. The Hearing Officer Erroneously Concluded that Officer Pamela Paolantonio's Conduct did not Reasonably Tend to Interfere with Employees' Free and Uncoerced Choice in the Election.

1. The Hearing Officer Erroneously Concluded that Officer Pamela Paolantonio was not a Union Agent.

GEO excepts to the Hearing Officer's conclusion that Union Election Observer Pamela Paolantonio was not a Union agent. (Report p. 5). The Hearing Officer's contention that Ms. Paolantonio could not be a SPFPA agent because she was not employed by the Union and did not admit to being directed by the Union simply ignores the legal standards for determining whether an individual is an agent of the Union. (Id.)

In deciding whether an individual is an agent of the Union, the Board applies common law agency principles. Dr. Rico Perez Products, 353 NLRB 452, 463 (2008). Courts have concluded that under the National Labor Relations Act (the “Act”), agency principles must be expansively construed, particularly when questions of union responsibility are presented. Pratt Towers, Inc., 338 NLRB No. 8, slip op. at 12 (2002). The question of whether the specific acts performed were actually authorized or subsequently ratified by the Union is not controlling; rather, the final inquiry is always whether the amount of association between the Union and the employee organizers is significant enough to justify charging the Union with the conduct. See International Brotherhood of Electrical Workers, 343 NLRB 1486, 1498 (2004). If there is apparent authority or a reasonable basis for the belief that the union authorized the alleged agent to perform the acts in question, then agency principles impute liability to the union. Bloomfield Health Care Center, 352 NLRB 252, 256 (2008). When the individuals committing misconduct are union agents, the Board will set aside the election results when the conduct “reasonably tend[ed] to interfere with the employees’ free and uncoerced choice in the election.” Id.

Notably, during the three-day hearing, the Union did not refute GEO’s evidence that Officer Paolantonio was instrumental in discouraging food service officers from voting, recruiting employees to sign Union authorization cards and attend union events, challenging employees covered both by the Stipulated Election Agreement and the Excelsior List, and asking GEO employees how they planned to vote. (Tr. 32:4-16; 102:12-21; 103:12-17; 312:21-25; 363:18-24; 423:15 – 424:4). 103:11-15; Tr. 423:11-23). Such actions gave GEO employees reasonable basis to believe Ms. Paolantonio acted as an agent of the Union. See Beaird-Poulan Division, Emerson Electric Co., 247 NLRB 1365, 1380-01 (1980) (“Alone among the union adherents, Williams enjoyed a position in which employees looked to him as a spokesman for the

Union when he purported to speak on its behalf Williams helped to initiate the campaign . . . he was looked upon by the employees as a person who spoke with inside information and some degree of authority. Therefore, Williams can fairly be considered as a Union agent in making such statements.”). See Cornell Forge Company and International Brotherhood of Boilermakers, 339 NLRB 733, **5 (2003) (in-plant organizers may be agents of the union when they serve as the primary conduits for communication between the union and other employees or are substantially involved in the election campaign). Furthermore, the Union confirmed that Ms. Paolantonio was an agent of the Union when the Local President condoned Ms. Paolantonio’s actions and told Officer Goodwin the SPFPA challenged the food service officers because the Union did not know how they would vote. See Kitchen Fresh, Inc. v. NLRB, 716 F.2d 351, 355 (6th Cir. 1983) (an individual can be held to be a union agent if the union instigated, authorized, solicited, ratified, condoned, or adopted the individual's actions or statements or clothed the individual with apparent authority to act on behalf of the union); see also NLRB v. L&J Equip. Co., Inc., 745 F.2d 224, 233 (3rd Cir. 1984) (agency relationship exists between an employee and a union if “the union cloaked the employee with sufficient authority to create a perception among the rank-and-file that the employee acts on behalf of the union” and did not repudiate the employee’s statements or actions).

The Hearing Officer’s Report all but ignored testimony from GEO’s witnesses that demonstrated Officer Paolantonio acted with apparent authority to represent the Union. However, the subjective view among employees about whether an employee is a representative of a union is relevant to the analysis. Battle Creek Health Sys., 341 NLRB No. 882, 894 (2004). Here, the evidence supports a finding that GEO employees reasonably believed Ms. Paolantonio was an agent for the Union. For example, Officer Jolly testified that when Officer Paolantonio

challenged all but two of the food service officers' votes, she defended her actions to by stating she had her "marching orders," which he understood to mean the Union told her who to challenge. (Tr. 32:4-16). Ms. Paolantonio similarly told Officer Paul Degener that she challenged his vote because she had her "marching orders," which he understood to mean the Union told her who to challenge. (Tr. 312:21-25). She also told Brandi Manning she was "just doing my job" by challenging Ms. Manning's vote, which Ms. Manning understood to mean the Union told Ms. Paolantonio who to challenge. (Tr. 363:18-24). In addition, Darryl Mendyk testified that he believed Ms. Paolantonio received her objections list from the Union. (Tr. 199:3-13). Christina Davis testified that the "Union Director," meaning Ms. Paolantonio, told her prior to the election that the food service officers' votes would be challenged. (Tr. 236:1-7). Finally, Laurie Zawadowicz testified Ms. Paolantonio repeatedly questioned her as to why she did not attend Union meetings. (Tr. 371:14-25).

In sum, the Hearing Officer erroneously held that Ms. Paolantonio was not a Union agent. The clear preponderance of the relevant evidence demonstrates that Paolantonio was an authorized agent acting on behalf of the Union, and that employees reasonably understood her to be the same.

2. The Hearing Officer Improperly Analyzed the Conduct of Ms. Paolantonio under the "Third-Party" Conduct Standard.

The Hearing Officer's conclusion that Ms. Paolantonio was a third-party rather than a Union agent taints his analysis of her conduct. Where misconduct is attributable to third parties the Board will overturn an election only if the misconduct is "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." Westwood Horizons Hotel, 270 NLRB 802, 803 (1984). Certainly this standard sets the bar much higher for parties seeking to overturn election results, as compared to the agency standard outlined above. This standard is

more restrictive, and fundamentally different than the agency standard, which again requires only that the comments and actions by the Union agents “reasonably tend[ed] to interfere with the employees’ free and uncoerced choice in the election.” Bloomfield Health Care Center, 352 NLRB at 256.

3. Ms. Paolantonio’s Conduct Interfered with the Employees’ Free and Uncoerced Choice in the Election.

The Board takes a hardline approach toward improper behavior by an agent of a party to the election. Orleans Mfg. Co., 120 NLRB 630, 633 (1958). “A free and fair choice is impossible if the atmosphere surrounding the election is poisoned by coercive conduct which induces employees to base their vote not upon conviction, but ‘upon fear or ... any other improperly induced consideration.’” NLRB v. L&J Equip. Co., Inc., 745 F.2d 224, 236 (5th Cir. 1984). The Board has long recognized that coercive or intimidating conduct that destroys laboratory conditions, and interferes with employees’ free and uncoerced choice in the election, warrants overturning an election. Sewell Mfg. Co., 1962 NLRB Lexis 147, *11 (1962); Baja’s Place, Inc., 268 NLRB 868 (1984).

Here, Officer Paolantonio sought to prevent the food service officers from voting in the election by intentionally telling them, up through the actual date of the election, that they were not eligible to vote. (Tr. 351:21-352:5). Officer Paolantonio likewise intimidated her coworkers in an effort to coerce them to vote for the Union. To that end, in the days prior to the election, Ms. Paolantonio cornered Officer Moody in the control room of the facility on two occasions and prohibited her from gaining access to the facility until Ms. Moody agreed to discuss the Union. (Tr. 326:15 – 327:18; 327: 22 – 328:25). During these meetings, Officer Paolantonio quoted scripture to Ms. Moody in an effort to intimidate her and told Ms. Moody she would be left behind and not protected if she failed to support the Union. (Tr. 328:16-25). The harassment

made Ms. Moody concerned for her safety while at work. (Tr. 330:18-23). Ms. Paolantonio also made sexually explicit and inappropriate comments to Officer Wessinger to intimidate her to vote for the Union, stating “you need to get off of your knees and get your own opinion. You need to vote yes.” (Tr. 135:6-21). Finally, Ms. Paolantonio harassed and intimidated several other employees, including Officer Lisa Kirkland, to vote for the Union. (Tr. 102:12-21; 103:5-15, 104:10-21).

The Hearing Officer also wrongly concluded that Ms. Paolantonio’s challenges of 17 food service officers and 5 corrections officers were reasonable and for cause. (Report p. 6, 7, 11, 13, 14, 16). In reaching this determination, the Hearing Officer indicated that Ms. Paolantonio challenged the corrections officers working in grounds services “because she did not believe these two men were corrections officers,” challenged the corrections officer working in the armory “because he basically repaired locks and assisted food service officers in the chow hall facility,” and challenged food service officers because they wore different colored uniforms than Paolantonio did. (Report at 16). Importantly, Ms. Paolantonio never testified at the hearing and her reasoning for challenging the employees is nowhere on the record. Accordingly, the Hearing Officer’s conclusions are based purely on his own speculation and conjecture regarding Ms. Paolantonio’s motives.

Ms. Paolantonio’s aforementioned conduct interfered with these employees’ free and uncoerced choice in the election and, because Ms. Paolantonio is an agent of the Union, warranted overturning the election. Because the Hearing Officer analyzed the conduct of Ms. Paolantonio under the incorrect – and more severe – third-party actor legal standard, his analysis and conclusions must be set aside.

B. The Hearing Officer Erroneously Concluded that the Conduct of Third-Party Union Supporters did not Create a General Atmosphere of Fear and Reprisal Rendering a Free Election Impossible.

GEO excepts to the Hearing Officer's finding that the conduct of third-party Union supporters Harmon, Smith, Peeples, Newman and Huggins did not create an atmosphere of fear and reprisal among GEO's employees. (Report at 12). The Hearing Officer concluded that there was no basis to set aside the election because the employees made no threats of bodily harm. (Report at 10). However, there is no such requirement that a third-party threaten physical bodily harm to employees or their families to set aside an election. Indeed, the Board has reversed elections for third-party conduct short of threatening physical harm. See Smithers Tire & Auto, Testing, 308 NLRB 72, 73 (1992)(sustaining an Employer's objections and ordering a new election after pro-union employees threatened to flatten the tires of employee's automobile). "Realistically speaking, and in order to near if not arrive at the highly desired laboratory conditions for an election, this is the most workable approach. Parties to an election and their well wishers are thus put on notice that prohibited conduct engaged in by anyone may forfeit an election. This then will serve to put a premium on proper deportment by all parties." Teamsters Local 980 (Landis Morgan), 177 NLRB 579, 584 (1969). Conduct which violates the Act is, *a fortiori*, conduct which interferes with an election unless it is so *de minimis* that it is virtually impossible to conclude that the violation could have affected the results of the election. Airstream, Inc., 304 NLRB 151, 152 (1991); Dal-Tex Optical Co., 137 NLRB 1782, 1786 (1962). Therefore, prohibited conduct, including improper deportment, engaged in by anyone may forfeit an election. Landis Morgan, 177 NLRB at 584.

GEO further excepts to the Hearing Officer's findings that only one employee testified that altercations with the Union were heated. (Report at 9). During the hearing, multiple GEO employees, including Officers Wessinger, Grayson, Kirkland, Moody and Zawadowicz, testified

that they were harassed and intimidated to vote for the Union by Officers Paolantonio, Smith, Newman, Huggins, and Peeples. Surprisingly, the Hearing Officer's Report did not address the testimony of any of these witnesses. (Report at 9). The flaw is critical to the Hearing Officer's Report. Officers Kirkland, Moody and Wessinger each testified that the actions of the Union supporters caused them to fear for their safety and protection from inmates at work. (Tr. 370:16 – 371:6; 372:23 – 373:15; 375:10-17; 375:23 – 376:3; 104:17-25; 330:2-23). Officers Kirkland and Grayson both testified that they were bullied and harassed by the Union supporters on Facebook and at work. (Tr. 57:17 – 76:11; 104:10-21). Officers Moody, Grayson, Kirkland, Wessinger and Shawn Woods each testified that Union supporters confronted them regarding the votes and subsequently belittled them, called them names, or threatened them with isolation. (Tr. 54:14 – 55:11; 75:17 – 76:11; 135:8 – 136:9; 222:2-23). In addition, the Union supporters vandalized the property of Officer Berke, a known opponent of the Union. (Tr. 120:2-10; 124:13-25).

Moreover, contrary to the Hearing Officer's findings, rumors of these acts of intimidation and vandalism were widely disseminated at the facility, and several employees testified that they were aware of the constant harassment of employees. (Tr. 105:6-25; 309:10-21; 320:1-9; 346:22 – 347:14). Officers Gordon and Moody testified that they were concerned that in the event of an emergency at the facility, Union supporters would refuse to assist those employees who did not vote for the Union. (Tr. 104:11-23; 347:3-8). The Union supporters' conduct had a significant effect on the election and caused Officers Zawadowicz and Porschia Fluker not to vote in the election. (Tr. 80:23 – 81:4; 377:6-24). If these two Officers did not vote due to the Union's conduct, the Region cannot say with certainty that the other 31 Officers who did not vote – a number which could have affected the outcome of the election – did not do so because of the

Union's harassment and intimidation.

C. **The Hearing Officer Erroneously Concluded that the Union's Attempts to Prohibit Food Service Officers from Voting did not Disturb the Laboratory Conditions of the Election.**

GEO excepts to the Hearing Officer's conclusion that the attempts of the Union and its third-party supporters to inhibit food service officers and several corrections officers from voting in the election did not disturb the election results. (Report at 6, 7, 11, 15). At the hearing, the Union did not deny that it intentionally told food service officers they were ineligible to vote, nor did it present any witnesses to refute or explain the admission from SPFPA Local President Daniel Lloyd, that SPFPA only challenged the food service officers because it was unsure of how those Officers planned to vote. The Union did not deny that it challenged only the ballots of perceived no voters in an effort to intimidate those other non-Union supporters from voting in the election. Incredibly, despite these tacit admissions of a Union-endorsed plan to disenfranchise voters, the Hearing Officer concluded that these actions did not affect the course of the election, and therefore did not merit setting the election results aside. (Report p. 12, 16).

In support of his conclusion, the Hearing Officer first determined that food service officers could not have been inhibited from voting based on the Union's actions for two reasons: (1) during the time period prior to the election "there was an issue as to which job classifications would be included in the bargaining unit;" and (2) the Company held meetings and sent letters to the bargaining unit members disabusing them of the Union's misinformation. (Report at 6, 7). The first reason is factually inaccurate. The parties entered into the Stipulated Election Agreement on February 15, more than one month prior to the election. The Agreement clearly stated that the unit included "corrections officers, food service officers, and transportation officers." (Board Ex. 1(i)). Thus there was no dispute regarding the bargaining unit during the critical period prior to the election, other than the one falsely created by the Union. As to the

second reason, although it is true that the Company communicated to food service officers that they were permitted to vote, it does not follow that the Union's conduct could not have compromised the results of the election. Indeed, despite the fact that the Company made several efforts to clarify voter eligibility, the Union repeatedly undermined those efforts. After Officer Gordon received clarification from a supervisor that he could vote in the election, Ms. Paolantonio repeated to him that food service officers would not be allowed to vote, and, if he voted, she would challenge his ballot and it would be rejected. (Tr. 349:18 – 350:8). On a separate occasion three days prior to the election, Officer Huggins told Officer Grayson that she was not allowed to vote in the election and if she voted, the Union would challenge her vote so she would not be counted. (Tr. 58:13 – 54:22). Union supporters continued to tell Food Services Officers they were ineligible to vote up to and on the date of the election. (Tr. 351:21 – 352:5). Thus, it is quite probable that the remaining food service officers who did not vote in election did so because they were uncertain of their eligibility and concerned their votes would be challenged.

The Hearing Officer also erred when he determined that Union's confessed conduct could not have affected the outcome of the election because the Union followed all of the proper procedures for challenging ballots. (Report p. 16). This conclusion overlooks that the Union, through its Local President, admitted to strategically challenging all perceived "no" votes. (See Co. Ex. 2). Although the Board's procedures may permit parties to challenge votes, it certainly cannot condone challenging employees in bad faith to sway an election or disenfranchise voters. That is precisely what the Union did here. The Union's strategy to disenfranchise voters was successful as evidenced by Officer Zawadowicz's testimony that she did not vote in the election because of this conduct. (Tr. 377:6-24).

Importantly, the Board has made clear that the success or failure of the Union's conduct does not determine whether there has been improper interference with employees' Section 7 rights. Garment Workers, ILGWU (Georgetown Dress Corp.), 214 NLRB 706 (1974). Rather, the misconduct is measured by whether it might interfere with, restrain or coerce employees in the exercise of the rights guaranteed them in the Act. Id., see also Steelworkers, Local Union 550, 223 NLRB 854, 855 (1976). Because the Union's conduct might have interfered with or restrained the food service officers' Section 7 rights, the election must be set aside.

IV. CONCLUSION

For all the foregoing reasons, GEO Corrections Holdings, Inc. respectfully requests that the Region decline to adopt the Hearing Officer's Report and Recommendations, that it sustain the Employer's Objections, and that it order a second election.

Respectfully submitted,

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Date: May 28, 2013

EXHIBIT B

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FILED
CLERK, U.S. DISTRICT COURT
AUG 22 2014
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

9 Attorneys for Defendants
10 THE GEO GROUP, INC. D/B/A GEO
11 CALIFORNIA, INC., GEO
12 CORRECTIONS HOLDINGS, INC., AND
13 GEO CORRECTIONS AND DETENTION,
14 LLC

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 VICTOR LOPEZ, on behalf of
18 himself and on behalf of all other
19 similarly situated individuals,

20 Plaintiff,

21 v.

22 THE GEO GROUP, INC. D/B/A
23 GEO CALIFORNIA, INC.; GEO
24 CORRECTIONS HOLDINGS,
25 INC.; GEO CORRECTIONS AND
26 DETENTION, LLC; and DOES 1-
27 50, inclusive,

28 Defendants.

Case No. **CV 14-6639 RSWL-RA**
DECLARATION OF MICHELLE
RAPOPORT IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL

COMPLAINT FILED: July 22, 2014

I, Michelle Rapoport, declare as follows:

1. I am an attorney at law duly licensed to practice in the State of California. I am an Associate with the law firm of Littler Mendelson, P.C., counsel of record for defendants The GEO Group, Inc., d/b/a GEO California, Inc., GEO Corrections Holdings, Inc., and GEO Corrections and Detention, LLC ("Defendants") in this action, and make this declaration in support of Defendants' Notice of Removal. All of the information set forth herein is based on my personal knowledge and, if called as a witness, I could competently testify thereto.

90045
A6024

FILED
Superior Court of California
County of Los Angeles

JUL 22 2014

Sherril R. Carter, Executive Officer/Clerk
By [Signature] Deputy
Maura Soto

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

8 VICTOR LOPEZ, on behalf of himself and on)
9 behalf of all other similarly situated individuals,)
10 Plaintiff,)
11 v.)
12 THE GEO GROUP, INC. D/B/A GEO)
13 CALIFORNIA, INC.; GEO CORRECTIONS)
14 HOLDINGS, INC.; GEO CORRECTIONS AND)
15 DETENTION, LLC; and DOES 1-50, inclusive,)
16 Defendants.)

Case No. BC 552481
CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE AND WAGE ORDERS,
AND CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§17200, et seq.
DEMAND FOR JURY TRIAL

By Fax

16 Plaintiff, on behalf of himself and all other similarly situated individuals, upon information
17 and belief and the investigation of counsel, alleges as follows:

INTRODUCTION

19 1. This is a class action against The GEO Group, Inc. d/b/a GEO California, Inc.,
20 GEO Corrections Holdings, Inc., GEO Corrections and Detention, LLC, and Does 1-50
21 (collectively "GEO" or "Defendants") to challenge their policy and practice of requiring their non-
22 exempt employees to work substantial amounts of time without pay and failing to provide their
23 non-exempt employees with the meal and rest periods to which they are entitled by law and
24 facilities in California.

25 2. Plaintiff and Class Members are non-exempt, hourly employees.
26 Defendants' wage compensation system, Defendants do not pay Plaintiff and Class Member
27 all required pre-shift work activities that are necessary and integral to their overall employment.

07/22/2014

CIT/CASE: BC552481
LEA/DEF#: 510

RECEIPT #: CONS248S011
DATE PAID: 08/22/14 05:48 PM
PAYMENT: \$435.00
RECEIVED: 510
CASE NO: 4435
CASE FILE: 40
CHANGE: 40
CASE: 40

1 responsibilities, such as submitting to searches for banned materials.

2 3. The time that Defendants require their employees to work without compensation is
3 substantial, and deprives Plaintiff and Class Members of many hours' worth of wages (both
4 straight-time and overtime) per week. Additionally, since employees must arrive at work early to
5 submit to unpaid searches, employees are not afforded a meal period within five hours of the start
6 of work activities. Also, if employees leave Defendants' facilities during their meal or rest
7 periods, they must submit to a search during such periods before returning to work.

8 4. As a result of these violations, Defendants are also liable for various other penalties
9 under the Labor Code, and for violation the Unfair Business Practices Act ("UCL"), Business and
10 Professions Code §§17200, *et seq.*

11 5. Plaintiff seeks full compensation on behalf of himself and all others similarly
12 situated for all unpaid wages, unpaid overtime, denied meal and rest periods, and waiting time
13 penalties. Plaintiff further seek penalties, on behalf of himself and the proposed California-law
14 Class, for Defendants' violations of the Labor Code and California Industrial Welfare Commission
15 ("IWC") wage orders, as set forth below. Plaintiff also seeks declaratory and injunctive relief,
16 including restitution. Finally, Plaintiff seeks reasonable attorneys' fees and costs under the
17 California Labor Code, California Code of Civil Procedure § 1021.5, and/or other applicable law.

18 PARTIES

19 6. Plaintiff, Victor Lopez, had been employed by Defendants at their McFarland,
20 California correctional facility within the statutory period in this case. Plaintiff is a resident of
21 Kern County, California.

22 7. Defendant, The GEO Group, Inc. d/b/a GEO California, Inc., is a Florida
23 corporation, and at all times relevant to this complaint has been, upon information and belief, an
24 operator of correctional, detention and community re-entry facilities in California with a principal
25 place of business in Los Angeles County.

26 8. Defendant, GEO Corrections Holdings, Inc., is a Florida corporation, and at all
27 times relevant to this complaint has been, upon information and belief, an operator of correctional,
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1 detention and community re-entry facilities in California.

2 9. Defendant, GEO Corrections and Detention, LLC, is a Florida limited liability
3 company, and at all times relevant to this complaint has been, upon information and belief, an
4 operator of correctional, detention and community re-entry facilities in California.

5 10. The true names and capacities, whether individual, corporate, associate, or
6 otherwise of Does 1-50, inclusive, are unknown to Plaintiff, who therefore sues the Doe
7 Defendants by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of
8 these fictitiously-named Defendants is responsible in some manner for the occurrences and
9 Plaintiff's and the Class' damages as herein alleged. Plaintiff will amend this Complaint to show
10 their true names and capacities when they have been ascertained.

11 11. At all relevant times, upon information and belief, Defendants have done business
12 under the laws of California, have had places of business in California, including in this judicial
13 district, and have employed Class Members in this judicial district. At all relevant times,
14 Defendants have exercised control over the wages, hours and/or working conditions of Plaintiff
15 and Class Members, suffered or permitted Plaintiff and Class Members to work, and/or engaged
16 Plaintiff and Class Members, thereby creating a common law employment relationship.
17 Defendants are "persons" as defined in California Labor Code §18 and California Business and
18 Professions Code § 17201. Defendants are also "employers" as that term is used in the California
19 Labor Code and the IWC's Orders regulating wages, hours and working conditions.

20 JURISDICTION

21 12. This Court has jurisdiction over Plaintiff's and Class Members' claims for unpaid
22 wages and denied meal and rest periods pursuant to the California Labor Code, including Labor
23 Code §§218 and 1194, and the wage orders of the IWC. Jurisdiction is proper in this Court
24 because alleged damages exceed \$25,000.00 and because Plaintiff seeks equitable relief.

25 13. This Court has jurisdiction over Plaintiff's and Class Members' claims for
26 injunctive relief, including restitution of earned wages and benefits, which are the money and
27 property of Plaintiff and Class Members, arising from Defendants' unfair competition under
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1 Business & Professions Code §§17203 and 17204. This Court also has jurisdiction over Plaintiff's
 2 and Class Members' claims for penalties in violation of the Labor Code pursuant to Business and
 3 Professions Code § 17202, as well as pursuant to the applicable Labor Code provisions.

4 **FACTUAL ALLEGATIONS**

5 14. The policies and practices of Defendants, including failure to pay for all hours
 6 worked, the failure to pay overtime wages, failure to afford legally-compliant meal and rest
 7 periods, and failure to pay wages upon termination of employment, at all relevant times have been
 8 substantially similar for Plaintiff and Class Members.

9 15. At the beginning of each work day, prior to the start of paid time, Plaintiff and
 10 Class Members spend substantial amounts of time, for which they are not compensated, waiting to
 11 be searched, and being searched, for banned materials. As a result of this required,
 12 uncompensated work activity which must be performed prior to the start of paid time, employees
 13 regularly are forced to arrive at Defendants' facilities well before the start of their shifts and are
 14 not credited for all time spent working on behalf of Defendants.

15 16. Defendants uniformly failed to afford Plaintiff and Class Members the opportunity
 16 to take duty-free 30-minute meal periods within 5 hours of the start of work activities. Even
 17 assuming that meal periods commenced within 5 hours of the start of paid time, which they
 18 uniformly did not, Defendants required Plaintiff and Class Members to submit to searches if they
 19 left Defendants' facilities, meal periods were not duty-free as required by law. Defendants
 20 continued to exercise control over Plaintiff and Class Members during meal periods. Therefore,
 21 Plaintiff and Class Members were denied the opportunity to take legally-compliant 30-minute
 22 meal periods.

23 17. Plaintiff and Class Members were provided 10-minute rest periods. However, since
 24 Defendants required Plaintiff and Class Members to submit to searches if they left Defendants'
 25 facilities, rest periods were not duty-free as required by law. Defendants continued to exercise
 26 control over Plaintiff and Class Members during rest periods. Therefore, Plaintiff and Class
 27 Members were denied the opportunity to take legally-compliant ten-minute rest periods.

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1 18. Defendants' unlawful conduct has been widespread, repeated, and willful
 2 throughout their California facilities. Defendants knew, or should have known, that their policies
 3 and practices have been unlawful and unfair.

4 **CLASS ACTION ALLEGATIONS**

5 19. Plaintiff brings this case as a class action on behalf of himself and all others
 6 similarly situated pursuant to California Code of Civil Procedure ("CCP") §382. The Class that
 7 Plaintiff seeks to represent is defined as follows:

8 All individuals who are currently employed, or formerly have been employed, as
 9 nonexempt hourly employees at Defendants' facilities in California, at any time within four years
 10 prior to the filing of the original complaint until resolution of this action.

11 20. Class Members are so numerous that joinder is impracticable. Although the exact
 12 number of Class Members is unknown to Plaintiff, Plaintiff avers, upon information and belief,
 13 that the Class includes hundreds, if not thousands, of employees.

14 21. This action has been brought and may properly be maintained as a class action
 15 under CCP §382 because there is a well-defined community of interest in the litigation and the
 16 proposed class is easily ascertainable.

17 22. Questions of law and fact common to the Class include, but are not limited to, the
 18 following:

- 19 i. Whether Defendants, through their policy of requiring their non-exempt
 20 hourly employees to perform substantial work prior to the start of paid time,
 21 failed to pay Class Members all of the wages they are owed in violation of
 22 the California Labor Code;
- 23 ii. Whether Defendants, through their policy of requiring their non-exempt
 24 hourly employees to perform substantial work prior to the start of paid time,
 25 failed to pay Class Members all of the overtime wages they are owed in
 26 violation of the California Labor Code;
- 27 iii. Whether Defendants, through their policy of requiring their non-exempt
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- hourly employees to perform substantial work prior to the start of paid time, failed to pay Class Members all of the overtime wages they are owed in violation of Business and Professions Code § 17200 *et seq.*;
- iv. Whether Defendants, through their policy of requiring their non-exempt hourly employees to perform substantial work prior to the start of paid work time resulted in Plaintiff and Class Members not being afforded their first meal period within 5 hours of the start of work activities;
 - v. Whether Defendants, through their policy of requiring their non-exempt hourly employees to work in excess of five hours per day without affording a duty-free 30-minute meal period, failed to afford Class Members with the meal periods to which they are entitled in violation of Business and Professions Code §17200 *et seq.*;
 - vi. Whether Defendants, through their policy of requiring employees to submit to searches during meal periods if they left Defendants' facilities resulted in a failure to afford Plaintiffs and Class Members with duty-free 30-minute meal periods in violation of the California Labor Code;
 - vii. Whether Defendants, through their policy of requiring their non-exempt hourly employees to submit to searches during rest periods if they left Defendants' facilities, failed to afford Plaintiff and Class Members the opportunity to take duty-free ten-minute rest periods is in violation of the California Labor Code;
 - viii. Whether Defendants' systemic failure to afford Plaintiff and Class Members off-duty meal periods and rest periods was an unlawful, unfair or fraudulent business act or practice in violation of Business and Professions Code § 17200 *et seq.*;
 - ix. Whether Defendants pay, work and meal- and rest-period policies were in violation of Business and Professions Code § 17200 *et seq.*;

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- x. Whether Defendants' policy and practice of failing to pay Class Members all wages due upon the end of their employment violated the California Labor Code;
- xi. Whether Defendants' policy of failing to record all hours worked, and failing to record and compensate non-compliant meal and rest periods, resulted in Plaintiff and Class Members being paid with non-complaint wage statements in violation of the California Labor Code; and
- xii. Whether Defendants' policy and practice of failing to pay Class Members all wages due upon the end of their employment has been an unlawful, unfair or fraudulent business act or practice in violation of Business and Professions Code § 17200 *et seq.*

23. Typicality: Plaintiff's claims are typical of the claims of the Class. Defendants' common course of conduct in violation of law as alleged herein has caused Plaintiff and Class Members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Class.

24. Adequacy of Representation: Plaintiff is a member of the Class, does not have any conflicts of interest with other Class Members, and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff and the Class are competent and experienced in litigating large employment class actions, including large minimum-wage and overtime class actions. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

25. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

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FIRST CAUSE OF ACTION
Failure to Pay Minimum Wages
(Against All Defendants)

26. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

27. From at least the last four years prior to the filing of this complaint to the present, Defendants, and each of them, employed Plaintiff and Class Members as nonexempt hourly employees.

28. During the period beginning from at least four years prior to the filing of this complaint to the present, Defendants, and each of them, paid Plaintiff and Class Members less than the applicable minimum wage for all hours worked.

29. Pursuant to Labor Code §§ 510, 558, 1194 and 1198, Wage Order No. 4-2001 and/or other applicable Wage Orders, and 8 CCR §11080, Defendants, and each of them, were obligated to pay Plaintiff and Class Members at least the minimum wage for all hours worked during the period beginning from at least four years prior to the filing of this complaint to present.

30. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover unpaid minimum wages, subject to proof at trial, plus interest at the legal rate (Civil Code §§ 3287 and 3289) and attorneys' fees and costs.

31. Pursuant to Labor Code §1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in the amount of unpaid minimum wages proved at trial plus interest thereon.

32. Pursuant to Labor Code §558, Defendants, and each of them, are employers and/or persons acting on behalf of an employer, who violated, and who caused to be violated, Labor Code §§ 1194, *et seq.*, Wage Order No. 4 and/or other applicable Wage Orders, and 8 CCR §11080, among other provisions regulating hours and days of work, and are individually subject to civil penalties as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to

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1 recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages.

4 33. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

5 **SECOND CAUSE OF ACTION**

6 **Failure to Compensate for All Hours Worked**

7 **(Against All Defendants)**

8 34. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
9 forth herein.

10 35. California Labor Code §204 provides that wages for all work performed must be
11 paid "twice during each calendar month, on days designated in advance by the employer as the
12 regular paydays."

13 36. Plaintiff and the Class were required by Defendants to work without compensation
14 for work they performed. Thus, Plaintiff and Class Members were forced to perform work for the
15 benefit of Defendants without compensation.

16 37. In violation of state law, Defendants knowingly and willfully refused to perform
17 their obligations to provide Plaintiff and the Class with compensation for all time worked as
18 required by California law. Defendants committed the acts alleged herein knowingly and
19 willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Class, with
20 improper motives amounting to malice, and in conscious disregard of the rights of Plaintiff and the
21 Class. Plaintiff and the Class are thus entitled to recover nominal, actual, compensatory, punitive,
22 and exemplary damages in amounts according to proof at time of trial.

23 38. As a proximate result of the aforementioned violations, Plaintiff and the Class have
24 been damaged in an amount according to proof at time of trial. Pursuant to Labor Code § 218.5
25 and 218.6, Plaintiff and Class Members are entitled to an award of reasonable attorneys' fees and
26 costs and to interest on all due and unpaid wages.

27 39. Pursuant to Labor Code §558, Defendants, and each of them, are employers and/or
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1 persons acting on behalf of an employer, who violated, and who caused to be violated, Labor Code
 2 §§ 1194, *et seq.*, Wage Order No. 4 and/or other applicable Wage Orders, and 8 CCR §11080,
 3 among other provisions regulating hours and days of work, and are individually subject to civil
 4 penalties as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
 5 for each pay period for which the employee was underpaid in addition to an amount sufficient to
 6 recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
 7 underpaid employee for each pay period for which the employee was underpaid in addition to an
 8 amount sufficient to recover underpaid wages.

9 40. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

10 **THIRD CAUSE OF ACTION**

11 **Failure to Pay Overtime Wages**
 12 **(Against All Defendants)**

13 41. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
 14 forth herein.

15 42. California Labor Code §510(a) provides as follows:

16 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
 17 one workday and any work in excess of 40 hours in any one workweek and the first
 18 eight hours worked on the seventh day of work in any one workweek shall be
 19 compensated at the rate of no less than one and one-half times the regular rate of
 20 pay for an employee. Any work in excess of 12 hours in one day shall be
 21 compensated at the rate of no less than twice the regular rate of pay for an
 22 employee. In addition, any work in excess of eight hours on any seventh day of a
 23 workweek shall be compensated at the rate of no less than twice the regular rate of
 24 pay of an employee. Nothing in this section requires an employer to combine more
 25 than one rate of overtime compensation in order to calculate the amount to be paid
 26 to an employee for any hour of overtime work.

27 43. The IWC Wage Order 4-2001(3)(A)(1) states:

28 The following overtime provisions are applicable to employees 18 years of age or
 over and to employees 16 or 17 years of age who are not required by law to attend
 school and are not otherwise prohibited by law from engaging in the subject work.
 Such employees shall not be employed more than eight (8) hours in any workday or
 more than 40 hours in any workweek unless the employee receives one and one-
 half (1 1/2) times such employee's regular rate of pay for all hours worked over 40

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hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime.

44. California Labor Code §1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

45. California Labor Code §200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

46. Defendants' across-the-board policy of requiring Plaintiff and the Class to perform substantial uncompensated work has been unlawful. As a result of this unlawful policy, Plaintiff and Class Members have worked overtime hours for Defendants without being paid overtime premiums in violation of the California Labor Code, IWC wage orders and other applicable law.

47. Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all premium wages for overtime work. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiff and the Class in amounts to be determined according to proof at time of trial, but in an amount in excess of the jurisdictional requirements of this Court.

48. Defendants are liable to Plaintiff and the Class alleged herein for unpaid overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

49. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

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FOURTH CAUSE OF ACTION

Failure to Provide Legally-Compliant Meal and Rest Periods

(Against All Defendants)

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50. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

51. California Labor Code §§226.7 and 512 and the applicable IWC wage orders require Defendants to provide meal and rest periods to their nonexempt, hourly employees. Labor Code §§226.7 and 512 and the IWC wage orders prohibit employers from employing an employee for more than five hours without a meal period of not less than 30 minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes. Section 226.7 and the applicable wage orders also require employers to provide employees ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the 30-minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal or rest period is counted as time worked under the applicable wage orders.

52. Under §226.7(b) and the applicable wage orders, an employer who fails to provide a required meal period must, as compensation, pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Similarly, an employer must pay an employee denied a required rest period one hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided.

53. Despite these requirements, Defendants have knowingly and willfully refused to perform their obligations to afford Plaintiff and the Class an opportunity to take an uninterrupted 30-minute meal period within 5 hours of having commenced work activities. Moreover, even after eventually being released for a meal period, Plaintiff and Class Members were still required to work, and thus were never afforded a full, uninterrupted 30-minute meal period. Additionally, Defendants continued to exercise control over Plaintiff and Class Members during meal and/or

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1 rest periods. Defendants have also failed to pay Plaintiff and the Class one hour of pay for each
 2 off-duty meal and/or rest period that they were not afforded. Defendants' conduct described herein
 3 violated California Labor Code §§226.7 and 512, and the applicable wage orders. Therefore,
 4 pursuant to Labor Code §226.7(b), Plaintiff and the Class are entitled to compensation for the
 5 failure to provide meal and rest periods, plus interest, attorneys' fees, expenses and costs of suit.

6 54. Pursuant to Labor Code §558, Defendants, and each of them, are employers and/or
 7 persons acting on behalf of an employer, who violated, and who caused to be violated, Labor Code
 8 §§ 1194, *et seq.*, Wage Order No. 4 and/or other applicable Wage Orders, and 8 CCR §11080,
 9 among other provisions regulating hours and days of work, and are individually subject to civil
 10 penalties as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
 11 for each pay period for which the employee was underpaid in addition to an amount sufficient to
 12 recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
 13 underpaid employee for each pay period for which the employee was underpaid in addition to an
 14 amount sufficient to recover underpaid wages.

15 55. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

16 **FIFTH CAUSE OF ACTION**

17 **Unpaid Wages and Waiting Time Penalties Pursuant to Labor Code §§201-203**

18 **(Against All Defendants)**

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 20 56. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
 21 forth herein.

22 57. Labor Code §201 provides:

23 If an employer discharges an employee, the wages earned and unpaid at the
 24 time of discharge are due and payable immediately.

25 58. Labor Code §202 provides:

26 If an employee not having a written contract for a definite period quits his or her
 27 employment, his or her wages shall become due and payable not later than 72 hours
 28 thereafter, unless the employee has given 72 hours previous notice of his or

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her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

59. Labor Code §203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

60. Plaintiff and Class Members have left their employment with Defendants during the statutory period, at which time Defendants owed them their unpaid wages. Defendants have willfully refused, and continue to refuse, to pay Plaintiff and Class Members all the wages that were due and owing them upon the end of their employment. As a result of Defendants' actions, the Class has suffered and continues to suffer substantial losses, including lost earnings and interest.

61. Defendants' willful failure to pay Plaintiff and Class Members the wages due and owing them constitutes a violation of Labor Code §§201-202. As a result, Defendants are liable to Plaintiff and Class Members for all penalties owing pursuant to Labor Code §§201-203.

62. Additionally, §203 provides that an employee's wages will continue as a penalty up to thirty (30) days from the time the wages were due. Therefore, the Class is entitled to penalties pursuant to Labor Code §203, plus interest.

63. Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

64. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION

**California Wage Statement Class for Failure to Properly Itemize Pay Stubs
in Violation of California Labor Code §§226(a) and 226(e)
(Against All Defendants)**

65. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

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1. 66. At all times relevant to this Complaint, California Labor Code section 226 was in
2 effect and provided (*inter alia*) that, upon paying and employee his or her wages, the employer
3 must:

4 furnish each of his or her employees ... an itemized statement in writing showing
5 (1) gross wages earned, (2) total hours worked by the employee, except for any
6 employee whose compensation is solely based on a salary and who is exempt from
7 payment of overtime under subdivision (a) of Section 515 or any applicable order
8 of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
9 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
10 deductions, provided, that all deductions made on written orders of the employee
11 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
12 dates of the pay period for which the employee is paid, (7) the name of the
13 employee and his or her social security number, (8) the name and address of the
14 legal entity that is the employer, and (9) all applicable hourly rates in effect during
15 the pay period and the corresponding number of hours worked at each hourly rate
16 by the employee.

17 67. Plaintiff believes, and therefore alleges, that Defendants failed to furnish him, and
18 all others similarly-situated, with proper and accurate itemized written statements containing
19 (without limitation): all the hours that Plaintiff (and others similarly-situated) worked; gross
20 wages earned; net wages earned; total hours worked; and due and owing meal- and rest-period
21 premiums.

22 68. Plaintiff alleges that Defendants' failure to furnish him with proper itemized wage
23 statements was done knowingly and intentionally, and that he (and others similarly-situated)
24 suffered injury thereby. Thus, under California Labor Code section 226(e), Plaintiff (and others
25 similarly-situated) are "entitled to recover greater of all actual damages or fifty dollars (\$50) for
26 the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for
27 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
28 dollars (\$4,000) [per employee]..."

69. Plaintiff is also entitled to, and seeks on behalf of himself and all other similarly
situated individuals, all reasonable attorneys' fees and costs of suit pursuant to Labor Code section
226(e).

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SEVENTH CAUSE OF ACTION

Violation of California Business and Professions Code §§17200, *et seq.*

(Against All Defendants)

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70. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

71. California Business and Professions Code §§17200 *et seq.* (also referred to herein as the "Unfair Business Practices Act," "Unfair Competition Law," or "UCL") prohibits unfair competition in the form of any unlawful, unfair or fraudulent business acts or practices.

72. California Business and Professions Code §17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

73. Labor Code §90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

74. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint, including, but not limited to:

- a. violations of Labor Code §204 pertaining to the payment of wages for all hours worked;
- b. violations of Labor Code §§510 and 1194 and IWC wage orders pertaining to overtime;
- c. violations of Labor Code §§226.7 and 512 and IWC wage orders pertaining to meal and rest periods; and
- d. violations of Labor Code §§201-203.

75. The violations of these laws and regulations, as well as of the fundamental

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1 California public policies protecting wages and discouraging overtime labor underlying them,
 2 serve as unlawful predicate acts and practices for purposes of Business and Professions Code
 3 §§ 17200, *et seq.*

4 76. The acts and practices described above constitute unfair, unlawful and fraudulent
 5 business practices, and unfair competition, within the meaning of Business and Professions Code
 6 §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the
 7 Class wages rightfully earned by them, while enabling Defendants to gain an unfair competitive
 8 advantage over law-abiding employers and competitors.

9 77. Business and Professions Code § 17203 provides that a court may make such
 10 orders or judgments as may be necessary to prevent the use or employment by any person of any
 11 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
 12 prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and business
 13 practices alleged above.

14 78. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
 15 and Class Members have suffered a loss of money and property, in the form of unpaid wages that
 16 are due and payable to them.

17 79. Business and Professions Code § 17203 provides that the Court may restore to any
 18 person in interest any money or property that may have been acquired by means of such unfair
 19 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
 20 Code § 17203 for all wages and payments unlawfully withheld from employees during the four-
 21 year period prior to the filing of this Complaint.

22 80. Business and Professions Code § 17202 provides: "Notwithstanding Section 3369
 23 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or
 24 penal law in a case of unfair competition." Plaintiff and Class Members are entitled to enforce all
 25 applicable penalty provisions of the Labor Code pursuant to Business and Professions Code §
 26 17202.

27 81. Plaintiff's success in this action will enforce important rights affecting the public
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1 interest and in that regard Plaintiff sues on behalf of himself as well as others similarly situated,
2 Plaintiff and the Class seek, and are entitled to, unpaid wages, declaratory and injunctive relief,
3 and all other equitable remedies owing to them.

4 82. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
5 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
6 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
7 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
8 Code of Civil Procedure §1021.5 and otherwise.

9 83. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief as follows:

- 12 1. Damages and restitution according to proof at trial for all unpaid wages, unpaid
- 13 minimum wages, unpaid overtime, and other injuries, as provided by the California Labor Code;
- 14 2. For a declaratory judgment that Defendants have violated the California Labor
- 15 Code and public policy as alleged herein;
- 16 3. For a declaratory judgment that Defendants have violated Business and Professions
- 17 Code §§17200 *et seq.* as a result of the aforementioned violations of the Labor Code and
- 18 California public policy protecting wages;
- 19 4. For preliminary, permanent and mandatory injunctive relief prohibiting Defendants,
- 20 their officers, agents and all those acting in concert with them, from committing in the future the
- 21 violations of law herein alleged;
- 22 5. For an equitable accounting to identify, locate and restore to all current and former
- 23 employees the wages they are due, with interest thereon;
- 24 6. For an order awarding Plaintiff and Class Members compensatory damages,
- 25 including lost wages, earnings and other employee benefits and all other sums of money owed to
- 26 Plaintiff and Class Members, together with interest on these amounts, according to proof;
- 27 7. For an order awarding Plaintiff and the Class penalties, with interest thereon;
- 28

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

The Downey Law Firm, LLC


Eric Rouen
Of Counsel
Counsel for the Plaintiff and the putative class

Dated: July 22, 2014

07/22/2014

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Eric D. Rouen (SBN 2422341) The Downey Law Firm, LLC (Of Counsel) P.O. Box 1021 Unionville, PA 19375 TELEPHONE NO. (610) 324-2848 FAX NO. (610) 813-4579		FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles JUL 22 2014 Sheri K. Carter, Executive Officer/Clerk By <u>[Signature]</u> Deputy Marie Soto
ATTORNEY FOR (Name): Victor Lopez SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Stanley Mosk Courthouse		
CASE NAME: VICTOR LOPEZ v. THE GEO GROUP, INC., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: BC552481 JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filled with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case: Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (38)	Provisionally Complex Civil Litigation (Cal. Rules of Court, Rules 3.400-3.403) <input type="checkbox"/> Antitrust/trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (26) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Other (38)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (17) <input type="checkbox"/> Will of testament (02) <input type="checkbox"/> Other judicial review (39)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
		Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries; or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial post-judgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **Seven**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related cases. (You may use form CM-015.)

Date: **July 22, 2014**

Eric D. Rouen (TYPE OR PRINT NAME) [Signature] (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

By Fax

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use by Judicial Council of California CIV-010 Rev. July 1, 2011

CIVIL CASE COVER SHEET

Page 1 of 2
 Cal. Rules of Court, rule 3.201, 3.220, 3.400-3.403, 3.740
 Cal. Standards of Judicial Administration, sig. 3.10
 www.courtinfo.ca.gov

SHORT TITLE: VICTOR LOPEZ V. THE GEO GROUP, INC., et al.	CASE NUMBER: BC 552481
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CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION) By Fax

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I: Check the types of hearing and fill in the estimated length of hearing expected for this case:
 JURY TRIAL? YES CLASS ACTION? YES LIMITED CASE? YES TIME ESTIMATED FOR TRIAL 14 HOURS / DAYS

Item II. Indicate the correct district and courthouse location (4 steps - if you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|---|---|
| 1. Class actions must be filed in the Stibiley-Mohr Courthouse, central district. | 6. Location of property of permanently damaged vehicle. |
| 2. May be filed in central (other county) or no bodily injury/property damage. | 7. Location where defendant resides. |
| 3. Location where cause of action arose. | 8. Location where defendant's essential functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required, or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in Item III, complete Item IV, sign the declaration.

Auto Tort
Other Personal Injury/Property Damage/Wrongful Death Tort

Civil Case Cover Sheet Category No.	Column B (Check only one)	Applicable Reasons (See Step 3 Above)
Auto (22)	<input checked="" type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 2, 4
Uninsured Motorist (48)	<input checked="" type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death/Uninsured Motorist	1, 2, 4
Asbestos (08)	<input type="checkbox"/> A5070 Asbestos Property Damage	2
	<input type="checkbox"/> A7270 Asbestos Personal Injury/Wrongful Death	2
Product Liability (24)	<input checked="" type="checkbox"/> A7280 Product Liability (not asbestos or toxic environmental)	1, 2, 3, 4, 8
Medical Malpractice (45)	<input type="checkbox"/> A7280 Medical Malpractice/Physicians/Surgeons	1, 4
	<input type="checkbox"/> A7290 Other Professional Health Care Malpractice	1, 4
Other Personal Injury/Property Damage/Wrongful Death (23)	<input type="checkbox"/> A7260 Professional Liability (not slip and fall)	1, 4
	<input type="checkbox"/> A7230 (intentional) Bodily Injury/Property Damage/Wrongful Death (e.g., assault, sexual abuse, etc.)	1, 4
	<input type="checkbox"/> A7270 Intentional Injurious or Emotional Distress	1, 3
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4

SHORT TITLE VICTOR LOPEZ V. THE GEO. GROUP, INC., et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damages/Wrongful Death/Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1,3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 6
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damages Tort	2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input type="checkbox"/> A6024 Other Employment/Compensation Cases <input type="checkbox"/> A6028 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Real Estate Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach - Seller/Buyer (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (no fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller/Buyer <input type="checkbox"/> A6012 Other Promissory Note/Collections Cases	2, 5, 6 2, 5
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 6
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Franchise <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach of insurance/fraud/negligence)	1, 2, 3, 6 1, 2, 3, 5 1, 2, 3, 6
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2
Real Property	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2, 6
Unlawful Detainer	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2, 6
	Unlawful Detainer-Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6
	Unlawful Detainer-Drugs (30)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6

LACIV-108 (Rev. 03/11)
LASO Approved 03-04

**CIVIL CASE COVER SHEET ADDENDUM
AND STATEMENT OF LOCATION**

Local Rule 2.0
Page 2 of 4

SHORT TITLE: VICTOR LOPEZ v. THE GEO GROUP, INC., et al.	CASE NUMBER:
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6106 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 6. 2. 2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2., 6.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6038 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
		<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 8.
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.		
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Miscellaneous Civil Complaints	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
		<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 8.
		<input type="checkbox"/> A6124 Elder/Dependant Adult Abuse Case	2., 3., 9.
		<input type="checkbox"/> A6190 Election Contest	2.
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
		<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

SHORT TITLE: VICTOR LOPEZ v. THE GEO GROUP, INC., et al.	CASE NUMBER:
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Item III. Statement of Location; Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II, Step 3 on Page 1, as the proper reason for filing in the court, location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case. <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: 6100 Center Drive, Suite 825
CITY: Los Angeles	STATE: CA	ZIP CODE: 90045

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: July 22, 2014


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be confirmed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

07/22/2014

1	ELIZABETH STAGGS WILSON, d/b/a Complex Fees Due MICHELLE RAPOPORT, Bar No. 247459 LITTLER MENDELSON, P.C.	2	CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles
3	633 West 5th Street 63rd Floor Los Angeles, CA 90071	3	AUG 21 2014
4	Telephone: 213.443.4300	4	Sherril R. Carter, Executive Officer/Clerk By: Kandace Bennett, Deputy
5	Fax No.: 213.443.4299	5	
6	Attorneys for Defendants THE GEO GROUP, INC. D/B/A GEO CALIFORNIA, INC., GEO CORRECTIONS HOLDINGS, INC., AND GEO CORRECTIONS AND DETENTION, LLC	6	
7		7	
8		8	
9		9	
10		10	
11	VICTOR LOPEZ, on behalf of himself and on behalf of all other similarly situated individuals,	11	Case No. BC552481
12		12	ASSIGNED FOR ALL PURPOSES TO THE HON JUDGE SHEPARD WILEY, JR. DEPT 311
13	Plaintiff,	13	[CLASS ACTION]
14	v.	14	DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT
15	THE GEO GROUP, INC. D/B/A GEO CALIFORNIA, INC.; GEO CORRECTIONS HOLDINGS, INC.; GEO CORRECTIONS AND DETENTION, LLC; and DOES 1-50, inclusive,	15	Trial Date: Not set Complaint Filed: July 22, 2014
16		16	
17	Defendants.	17	
18		18	
19		19	
20		20	
21	Defendants The GEO Group, Inc., d/b/a GEO California, Inc., GEO Corrections Holdings, Inc., and GEO Corrections and Detention, LLC ("Defendants") hereby submit their answer to Plaintiff Victor Lopez's ("Plaintiff") Unverified Class Action Complaint (the "Complaint").	21	
22		22	
23	//	23	
24		24	
25	//	25	
26		26	
27	//	27	
28	//	28	

LITTLER MENDELSON, P.C.
633 West 5th Street
63rd Floor
Los Angeles, CA 90071
213.443.4300

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Exhibit B

GENERAL DENIAL

Defendants generally and specifically deny each and every allegation of the Complaint, and the whole thereof, pursuant to section 431.30 of the California Code of Civil Procedure and further deny that Plaintiff or any class that he purports to represent has been damaged in any sum or at all.

Defendants' general denial is based on the factual contentions which include, but are not limited to, the following: (1) Defendants properly and timely paid employees, including Plaintiff, for all regular and overtime hours worked; (2) Defendants provided employees, including Plaintiff, with legally-compliant meal and rest breaks; (3) Defendants provided employees, including Plaintiff, with complete and accurate wage statements; (4) Defendants' alleged misconduct did not injure or otherwise damage employees, including Plaintiff; (5) Defendants did not engage in unlawful business acts or practices in violation of California Business and Professions Code sections 17200 *et seq.*; (6) Plaintiff's definition of the proposed class is unreasonably broad and over-reaching ("All individuals who are currently employed, or formerly have been employed, as nonexempt hourly employees at Defendants' facilities in California, at any time within four years prior to the filing of the original complaint until resolution of this action."); and (7) Plaintiff will be unable to establish the prerequisites for class certification, including, but not limited to: standing, numerosity, commonality (questions of law or fact common to the class), typicality (Plaintiff's claims are typical of the class), superiority (of the class action mechanism), and class action manageability (of the trial plan).

Defendants reserve their due process rights to receive a determination regarding class certification, and contend that class certification is not appropriate in this instance for the reasons set forth herein as well as for public policy reasons.

Further, GEO Corrections Holdings, Inc., and GEO Corrections and Detention, LLC did not employ Plaintiff or any member of the purported putative class, during the relevant time period.

Finally, given the conclusory nature of the Complaint, Defendants hereby reserve their right to amend or supplement their answer upon further investigation and discovery of facts supporting their defenses.

1 AFFIRMATIVE DEFENSES

2 Defendants assert the following affirmative defenses. In so doing, Defendants do not concede
3 that they have the burden of production or proof as to any affirmative defense asserted below.
4 Further, Defendants do not presently know all facts concerning the facts of this case sufficient to
5 state all affirmative defenses at this time. Accordingly, Defendants will seek leave of this Court to
6 amend this Answer should they later discover facts demonstrating the existence of additional
7 affirmative defenses.

8 **SEPARATE AND AFFIRMATIVE DEFENSE**

9 **(Facts Insufficient to State Any Cause of Action)**

10 1. The Complaint as a whole, and each purported cause of action alleged therein, fail to
11 state facts sufficient to constitute any cause of action against Defendants upon which relief may be
12 granted.

13 **SEPARATE AND AFFIRMATIVE DEFENSE**

14 **(Statute of Limitations)**

15 2. The Complaint as a whole, and each purported cause of action alleged therein, are
16 barred in whole or in part by the applicable statute of limitations, including but not limited to
17 California Labor Code section 203(b), California Code of Civil Procedure sections 338(a) and
18 340(a), and California Business and Professions Code section 17208.

19 **SEPARATE AND AFFIRMATIVE DEFENSE**

20 **(Class Action - Standing)**

21 3. Plaintiff's class allegations are barred, in whole or in part, because Plaintiff lacks
22 standing to assert them.

23 **SEPARATE AND AFFIRMATIVE DEFENSE**

24 **(No Equitable or Injunctive Relief)**

25 4. Plaintiff and putative class members are not entitled to any equitable or injunctive
26 relief as prayed for in the Complaint to the extent that Plaintiff and putative class members are not
27 currently employed by Defendants and have an adequate remedy at law for the alleged conduct of
28 Defendants.

3.

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate)**

3 5. Without admitting any facts pled by Plaintiff, Defendants allege that if Plaintiff and
4 any purported class members have sustained any loss, injury, or damages either as alleged in the
5 Complaint or at all, which Defendants expressly deny, the same were directly and proximately
6 caused or exacerbated by Plaintiff's and all purported class member's own conduct, promises, and
7 representations to Defendants, and failure to take actions to mitigate these losses, injuries, or
8 damages.

9 **SEPARATE AND AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 6. The Complaint, and each purported cause of action alleged therein, are barred
12 because Plaintiff and all purported class members have expressly or impliedly waived the right to
13 assert such causes of action by virtue of their conduct.

14 **SEPARATE AND AFFIRMATIVE DEFENSE**

15 **(Estoppel)**

16 7. By virtue of their conduct, Plaintiff and all purported class members are estopped
17 from asserting any of the causes of action in the Complaint against Defendants.

18 **SEPARATE AND AFFIRMATIVE DEFENSE**

19 **(Laches)**

20 8. Plaintiff and all purported class members are barred from proceeding with this action
21 because Plaintiff and all purported class members are guilty of laches in failing to timely commence
22 this action, which has prejudiced Defendants in their ability to discover adequate witnesses,
23 testimony, facts, and evidence to support Defendants' defenses.

24 **SEPARATE AND AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

26 9. Defendants are informed and believe and thereon allege that Plaintiff and all
27 purported class members, by their own conduct, are guilty of unclean hands, which completely bars
28 or reduces recovery, if any, to which they may be entitled, in accordance with proof at trial.

4.

LITTLER MENDELSON, P.C.
633 West 59th Street
63rd Floor
Los Angeles, CA 90071
213.443.4500

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 (Consent)

3 10. The Complaint, and each purported cause of action alleged therein, are barred
4 because at all times alleged in the Complaint, Plaintiff and all purported class members expressly or
5 impliedly assented to or ratified the conduct alleged to be unlawful.

6 **SEPARATE AND AFFIRMATIVE DEFENSE**

7 (Failure to Exhaust Administrative Remedies)

8 11. Plaintiff and all purported class members failed to exhaust available administrative
9 remedies and are therefore precluded from obtaining any relief under their alleged causes of action
10 in the Complaint.

11 **SEPARATE AND AFFIRMATIVE DEFENSE**

12 (Offset)

13 12. Defendants allege that they have suffered damages by reason of Plaintiff's and all
14 purported class members' conduct, and Defendants have a right to offset their damages against the
15 damages, if any, of Plaintiff and each purported class member.

16 **SEPARATE AND AFFIRMATIVE DEFENSE**

17 (Release)

18 13. The Complaint, and each purported cause of action alleged therein, is barred on the
19 ground that Plaintiff or putative class members have released and waived any and all claims they
20 may have against Defendants.

21 **SEPARATE AND AFFIRMATIVE DEFENSE**

22 (NLRA Preemption)

23 14. The Complaint, and each purported cause of action contained therein, are preempted
24 by section 301 of the Labor Management Relations Act because the resolution of Plaintiff's claims
25 are substantially dependent on analysis of a collective bargaining agreement that governs Plaintiff's
26 and some or all of the putative class members' employment.

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(De Minimus)**

3 15. The Complaint, and each purported cause of action alleged therein, are barred
4 because some or all of the disputed time for which Plaintiff seeks to recover wages purportedly owed
5 is not compensable pursuant to the de minimis doctrine.

6 **SEPARATE AND AFFIRMATIVE DEFENSE**

7 **(Res Judicata and Collateral Estoppel)**

8 16. The Complaint, and each purported cause of action alleged therein, are barred by the
9 doctrines of res judicata or collateral estoppel.

10 **SEPARATE AND AFFIRMATIVE DEFENSE**

11 **(Doctrine of Avoidable Consequences)**

12 17. The Complaint, and each purported cause of action alleged therein, are barred by the
13 doctrine of avoidable consequences.

14 **SEPARATE AND AFFIRMATIVE DEFENSE**

15 **(Discharge)**

16 18. The Complaint, and each purported cause of action alleged therein, are barred
17 because all or a portion of the wages, overtime premiums, interest, attorneys' fees, penalties, or other
18 relief sought by Plaintiff or any putative class members were, or will be before the conclusion of this
19 action, paid or collected, and therefore, Plaintiff's claims have been partially or completely
20 discharged.

21 **SEPARATE AND AFFIRMATIVE DEFENSE**

22 **(Accord and Satisfaction)**

23 19. The Complaint, and each purported cause of action alleged therein, are barred by the
24 doctrine of accord and satisfaction, to the extent that Plaintiff or any putative class members have
25 received, or will receive, compensation for any outstanding wages, penalties, or damages
26 purportedly due.

27
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6.

LITLER MENDELSON, P.C.
633 West 6th Street
8th Floor
Los Angeles, CA 90071
213-413-4300

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(UCL Unconstitutionally Vague)**

3 20. Plaintiff's seventh cause of action is barred because Business and Professions Code
4 section 17200, et seq., is unconstitutionally vague and overbroad as applied to the facts and
5 circumstances of this case, and the Complaint is barred because the prosecution of this action by
6 Plaintiff as representatives of persons allegedly similarly situated or of the general public would
7 constitute a denial of Defendants' due process rights, both procedural and substantive, in violation of
8 the Fourteenth Amendment of the United States Constitution and the Constitution and laws of the
9 State of California.

10 **SEPARATE AND AFFIRMATIVE DEFENSE**

11 **(Good Faith)**

12 21. The Complaint, and each purported cause of action alleged therein, are barred
13 because at all material times, Defendants acted reasonably, in good faith, and without malice based
14 upon all relevant facts and circumstances known by Defendants at the time. All actions taken by
15 Defendants were based on lawful, substantial, and reasonable business concerns or business
16 necessity.

17 **SEPARATE AND AFFIRMATIVE DEFENSE**

18 **(Bona Fide Dispute)**

19 22. As a separate and affirmative defense to Plaintiff's fifth cause of action, Defendants
20 allege that the Complaint fails to state a claim for waiting time penalties under California Labor
21 Code section 203 because at all times relevant and material herein, there was a bona fide, good faith
22 dispute as to Defendants' obligation to pay any wages that may be found to be due.

23 **SEPARATE AND AFFIRMATIVE DEFENSE**

24 **(Still Employed)**

25 23. The Complaint, and each purported cause of action alleged therein, are barred to the
26 extent that any putative class member seeks to recover waiting time and other statutory penalties, to
27 the extent that they remain employed by Defendants as of the time of the filing of this action.

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(No Damage or Harm)**

3 24. The Complaint, and each purported cause of action alleged therein, are barred
4 because neither Plaintiff nor any putative class member has suffered any cognizable damage or other
5 harm as a result of any act or omission of Defendants.

6 **SEPARATE AND AFFIRMATIVE DEFENSE**

7 **(Causation)**

8 25. The Complaint, and each purported cause of action alleged therein, are barred
9 because the alleged losses or harms sustained by Plaintiff and the putative class members, if any,
10 resulted from causes other than any act or omission of Defendants, or from the acts or omissions of
11 Plaintiff or putative class members.

12 **SEPARATE AND AFFIRMATIVE DEFENSE**

13 **(Outside Scope of Authority)**

14 26. As a separate and affirmative defense to all causes of action, Defendants allege that
15 any unlawful or other wrongful acts of any person(s) employed by Defendants were outside of the
16 scope of his or her authority and such acts, if any, were not authorized, ratified, or condoned by
17 Defendants, nor did Defendants know or have reason to be aware of such alleged conduct.

18 **SEPARATE AND AFFIRMATIVE DEFENSE**

19 **(Certification Would Be Denial of Due Process)**

20 27. As a separate and affirmative defense to all causes of action, Defendants allege that
21 certification of a class, as applied to the facts and circumstances of this case, would constitute a
22 denial of Defendants' procedural and rights to trial by jury and to substantive and procedural due
23 process, in violation of the Fourteenth Amendment of the United States Constitution and the Due
24 Process and Equal Protection Clauses of the California Constitution.

25 **SEPARATE AND AFFIRMATIVE DEFENSE**

26 **(Multiple Penalties Unconstitutional)**

27 28. As a separate and affirmative defense, Defendants allege that the claims in the
28 Complaint that seek the imposition of multiple penalties or exemplary damages for the same basic

8.

1 wrongs are unconstitutional in that such relief violates the Due Process clauses of the Constitutions
 2 of both the United States and the State of California.

3 **SEPARATE AND AFFIRMATIVE DEFENSE**

4 **(Constitutional Violations)**

5 29. As a separate and affirmative defense, Defendants allege that the claims in the
 6 Complaint for exemplary or punitive damages cannot be sustained because an award of exemplary or
 7 punitive damages under California law without the same protections that are accorded to all penal
 8 defendants, including protection against unreasonable searches and seizures, double jeopardy and
 9 self-incrimination and the rights to confront adverse witnesses, a speedy trial and the effective
 10 assistance of counsel would violate Defendants' rights under the Fourteenth Amendment to the
 11 United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the
 12 Fourteenth Amendment, and Defendants' rights under analogous provisions of the California
 13 Constitution.

14 **SEPARATE AND AFFIRMATIVE DEFENSE**

15 **(Claims Subject to Arbitration)**

16 30. As a separate and affirmative defense, Defendants allege that Plaintiff's claims are
 17 barred in whole or in part because some or all of those with whom he is allegedly "similarly
 18 situated" entered into an agreement to submit all employment related claims to binding arbitration.
 19 Defendants do not waive their right to enforce the signed arbitration agreements of any alleged
 20 putative class members

21 **SEPARATE AND AFFIRMATIVE DEFENSE**

22 **(Claims Subject to Arbitration on Individual Basis)**

23 31. Plaintiff's claims are barred in whole or in part because some or all of the alleged
 24 putative class may have entered into an agreement to submit all employment related claims to
 25 binding arbitration, which included a valid class action waiver provision. *See AT&T Mobility, LLC*
 26 *v. Concepcion*, 131 S. Ct. 1740 (2011). Defendants do not waive their right to enforce the signed
 27 arbitration agreements of any alleged putative class members.

1 **SEPARATE AND AFFIRMATIVE DEFENSE**

2 **(Federal Enclave Doctrine)**

3 32. As a separate and affirmative defense, Defendants are informed and believe that
4 further investigation and discovery will reveal, and on that basis alleges, that Plaintiff's Complaint
5 and each cause of action set forth therein, or some of them, are barred by the federal enclave
6 doctrine.

7 **SEPARATE AND AFFIRMATIVE DEFENSE**

8 **(Unjust Enrichment)**

9 33. As a separate and affirmative defense, Defendants allege that Plaintiff or members of
10 the members of the putative class members he seeks to represent would be unjustly enriched if
11 allowed to recover on the Complaint.

12 **SEPARATE AND AFFIRMATIVE DEFENSE**

13 **(No Knowledge of Work)**

14 34. As a separate and affirmative defense, Defendants allege that if either Plaintiff or any
15 putative class member "worked" hours for which compensation was not paid, Defendants had no
16 knowledge, or reason to know, of such "work" and such overtime "work" was undertaken without
17 the consent or permission of Defendants.

18 **SEPARATE AND AFFIRMATIVE DEFENSE**

19 **(Failure to Take Breaks Provided)**

20 35. As a separate and affirmative defense, Defendants allege that Plaintiff or members of
21 the putative class Plaintiff purports to represent has no right to a premium payment under California
22 Labor Code section 226.7 because, to the extent, if any, that person did not take breaks, it was
23 because he/she: (1) failed to take breaks that were provided to him/her in compliance with California
24 law; (2) chose not to take rest breaks that were authorized and permitted; or (3) waived his/her right
25 to meal breaks under California Labor Code section 512(a).

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SEPARATE AND AFFIRMATIVE DEFENSE

(No Employment Relationship)

36. As a separate and affirmative defense, Defendants GEO Corrections Holdings, Inc., and GEO Corrections and Detention, LLC each allege that there was no employment relationship between each of them and Plaintiff or any of the putative class Plaintiff purports to represent; therefore, the Complaint, and each of its purported claims, fails to state a claim upon which relief can be granted as to these defendants.

SEPARATE AND AFFIRMATIVE DEFENSE

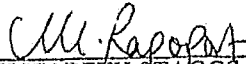
(Reservation of Rights)

37. Defendants may have additional, as yet unstated, defenses available. Defendants reserve the right to assert additional affirmative defenses in the event discovery indicates that they would be appropriate.

WHEREFORE, Defendants pray that:

1. The Complaint be dismissed in its entirety with prejudice, and that Plaintiff and any putative class members take nothing by the Complaint;
2. Judgment be entered against Plaintiff and in favor of Defendants;
3. Defendants be awarded its costs of suit and reasonable attorneys' fees if allowable by law; and
4. The Court award Defendants such other and further relief as it deems appropriate.

Dated: August 21, 2014


 ELIZABETH STAGGS WILSON
 MICHELLE RAPOPORT
 LITTLER MENDELSON, P.C.
 Attorneys for Defendants THE GEO GROUP,
 INC. D/B/A/ GEO CALIFORNIA, INC.; GEO
 CORRECTIONS HOLDINGS, INC.; AND
 GEO CORRECTIONS AND DETENTION,
 LLC

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PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss:

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 633 West Fifth Street, 63rd Floor, Los Angeles, CA 90071.

On August 21, 2014, I served the within documents described as:

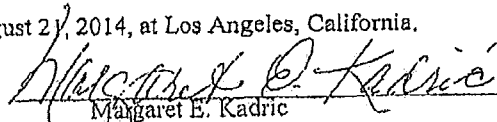
DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT

BY MAIL: I caused such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of Littler Mendelson for collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiff, VICTOR LOPEZ
Eric D. Rouen, Esq. (SBN 242341)
THE DOWNEY LAW FIRM, LLC (*Of Counsel*)
P.O. Box 1021
Unionville, PA 19375
Telephone: 610.324.2848
Facsimile: 610.813.4579
Email: downeyjustice@gmail.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 21, 2014, at Los Angeles, California.


Margaret E. Kadric

Firmwide: 128384426.2 059218.1000

08/22/2014

By Fax - Ace Attorney Service (213) 823-7527

1 of 3

Handwritten signature

1 ELIZABETH STAGGS WILSON, Bar No. 183160
 2 MICHELLE RAPOPORT, Bar No. 247459
 3 LITTLER MENDELSON, P.C.
 633 West 5th Street
 63rd Floor
 Los Angeles, CA 90071
 Telephone: 213.443.4300
 Fax No.: 213.443.4299

CONFORMED COPY
 ORIGINAL FILED
 Superior Court of California
 County of Los Angeles

AUG 22 2014

Sherri R. Carter, Executive Officer/Clerk
 By: R. Pleasant, Deputy

4 Attorneys for Defendants THE GEO GROUP, INC.
 5 D/B/A GEO CALIFORNIA, INC., GEO
 6 CORRECTIONS HOLDINGS, INC., AND GEO
 7 CORRECTIONS AND DETENTION, LLC

8

9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

COUNTY OF LOS ANGELES-CENTRAL CIVIL WEST

11

VICTOR LOPEZ, on behalf of himself and
 on behalf of all other similarly situated
 individuals,

Case No. BCS52481

12

ASSIGNED FOR ALL PURPOSES TO THE
 HON JUDGE SHEPARD WILEY, JR.
 DEPT 311

13

Plaintiff,

14

v.

[CLASS ACTION]

15

THE GEO GROUP, INC. D/B/A GEO
 CALIFORNIA, INC.; GEO
 CORRECTIONS HOLDINGS, INC.; GEO
 CORRECTIONS AND DETENTION,
 LLC; and DOES 1-50, inclusive,

NOTICE OF ERRATA TO DEFENDANTS'
 ANSWER TO PLAINTIFF'S UNVERIFIED
 CLASS ACTION COMPLAINT

17

Trial Date: Not set
 Complaint Filed: July 22, 2014

18

Defendants.

19

20

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEY(S) OF RECORD:

21

PLEASE TAKE NOTICE that Defendants The GEO Group, Inc., d/b/a GEO California, Inc.,

22

GEO Corrections Holdings, Inc., and GEO Corrections and Detention, LLC ("Defendants") filed

23

their Answer to Plaintiff's Unverified Class Action Complaint on August 21, 2014, and

24

misidentified the defendants that may have employed Plaintiff or putative class members in the

25

General Denial and in their thirty-sixth separate and affirmative defense ("No Employment

26

Relationship").

27

///

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///

LITTLER MENDELSON, P.C.
 633 West 5th Street
 63rd Floor
 Los Angeles, CA 90071
 213.443.4300

NOTICE OF ERRATA TO DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Exhibit C

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The third paragraph of the General Denial should read:


“Further, GEO Corrections Holdings, Inc. did not employ Plaintiff or any member of the purported putative class during the relevant time period.” (Answer, p. 2, lines 23-24.)

The thirty-sixth separate and affirmative defense should read as follows:

“As a separate and affirmative defense, Defendant GEO Corrections Holdings, Inc. alleges that there was no employment relationship between it and Plaintiff or any of the putative class Plaintiff purports to represent; therefore, the Complaint, and each of its purported claims, fails to state a claim upon which relief can be granted as to this defendant.” (Answer, p. 11, lines 3-7.)

Dated: August 22, 2014

Respectfully submitted,


ELIZABETH STAGGS WILSON
MICHELLE RAPOPORT
LITTLER MENDELSON, P.C.
Attorneys for Defendants THE GEO GROUP,
INC. D/B/A/ GEO CALIFORNIA, INC.; GEO
CORRECTIONS HOLDINGS, INC.; AND
GEO CORRECTIONS AND DETENTION,
LLC

LITTLER MENDELSON, P.C.
633 West 6th Street
63rd Floor
Los Angeles, CA 90071
213 443 4300

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss:

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 633 West Fifth Street, 63rd Floor, Los Angeles, CA 90071.

On August 22, 2014, I served the within documents described as:

NOTICE OF ERRATA TO DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT




BY MAIL: I caused such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am readily familiar with the practice of Littler Mendelson for collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiff, VICTOR LOPEZ
Eric D. Rouen, Esq. (SBN 242341)
THE DOWNEY LAW FIRM, LLC (*Of Counsel*)
P.O. Box 1021
Unlonville, PA 19375
Telephone: 610.324.2848
Facsimile: 610.813.4579
Email: downeyjustice@gmail.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 22/2014, at Los Angeles, California.


Margaret E. Kadric

Firmwide: 128576959, 1 059218.1000

1 ELIZABETH STAGGS WILSON, Bar No. 183160
 2 MICHELLE RAPOPORT, Bar No. 247459
 3 LITTLER MENDELSON, P.C.
 4 633 West 5th Street
 5 63rd Floor
 6 Los Angeles, CA 90071
 7 Telephone: 213.443.4300
 8 Fax No.: 213.443.4299

9 Attorneys for Defendants THE GEO GROUP, INC.
 10 D/B/A/ GEO CALIFORNIA, INC., GEO
 11 CORRECTIONS HOLDINGS, INC., AND GEO
 12 CORRECTIONS AND DETENTION, LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 VICTOR LOPEZ, on behalf of himself and
 16 on behalf of all other similarly situated
 17 individuals,

18 Plaintiff,

19 v.

20 THE GEO GROUP, INC. D/B/A GEO
 21 CALIFORNIA, INC.; GEO
 22 CORRECTIONS HOLDINGS, INC.; GEO
 23 CORRECTIONS AND DETENTION,
 24 LLC; and DOES 1-50, inclusive,

25 Defendants.

Case No. BC552481

ASSIGNED FOR ALL PURPOSES TO THE
 HON JUDGE SHEPARD WILEY, JR.
 DEPT 311

**DEFENDANTS' NOTICE OF FILING
 NOTICE OF REMOVAL**

Complaint Filed: July 22, 2014

26 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

27 PLEASE TAKE NOTICE that on August 22, 2014, Defendants The GEO Group, Inc., d/b/a/
 28 GEO California, Inc., GEO Corrections Holdings, Inc., and GEO Corrections and Detention, LLC,
 filed in the United States District Court for the Central District of California a Notice of Removal
 (the "Notice"), a copy of which is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, by the filing of the Notice, the above-entitled
 action has been removed from this Court to the United States District Court for the Central District

LITTLER MENDELSON, P.C.
 633 West 5th Street
 63rd Floor
 Los Angeles, CA 90071
 213.443.4300

NOTICE OF FILING NOTICE OF REMOVAL

Exhibit D

1 of California pursuant to 28 U.S.C. §1446, and this Court may proceed no further unless and until
2 the action is remanded.

3 Dated: August 22, 2014
4

5
6 ELIZABETH STAGGS WILSON
MICHELLE RAPOPORT
LITTLER MENDELSON, P.C.
7 Attorneys for Defendants THE GEO GROUP,
INC. D/B/A/ GEO CALIFORNIA, INC.; GEO
8 CORRECTIONS HOLDINGS, INC.; AND
GEO CORRECTIONS AND DETENTION,
9 LLC
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LITTLER MENDELSON, P.C.
533 West 5th Street
83rd Floor
Los Angeles, CA 90071
213.443.4300

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 633 West Fifth Street, 63rd Floor, Los Angeles, California 90071. On August 22, 2014, I served the within document(s):

DECLARATION OF MICHELLE RAPOPORT IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL

by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Los Angeles, California addressed as set forth below.


Attorneys for Plaintiff, VICTOR LOPEZ

Eric D. Rouen, Esq. (SBN 242341)
THE DOWNEY LAW FIRM, LLC (*Of Counsel*)
P.O. Box 1021
Unionville, PA 19375
Telephone: 610.324.2848
Facsimile: 610.813.4579
Email: downeyjustice@gmail.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 22, 2014, at Los Angeles, California.


Margaret E. Kadric

Firmwide: 128384453.1 059218.1000

ATTACHMENT B
RESPONSE OF GEO CORRECTIONS HOLDINGS, INC.
JANUARY 20, 2017

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC

Attorneys at Law

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

January 20, 2017

Jeff Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of The GEO Group, Inc., GEO Corrections Holdings, Inc., and GEO Reentry Services, LLC, in MUR 7180

Dear Mr. Jordan,

This response is submitted by the undersigned counsel on behalf of The GEO Group, Inc., GEO Corrections Holdings, Inc., and GEO Reentry Services, LLC, in connection with Matter Under Review 7180. The Complainant submitted an Initial Complaint in early November 2016, which was received by the Respondents on November 7, 2016. The Complainant filed a Supplemental Complaint in late December 2016, a copy of which was received from the Commission on December 29, 2016. Prior to receiving the Supplemental Complaint, the Commission granted a second extension of time to respond until January 20, 2017.

The Initial Complaint alleges that GEO Corrections Holdings, Inc., violated 52 U.S.C. 30119(a)(1) when it made a contribution to Rebuilding America Now. The Supplemental Complaint identifies a second contribution made by GEO Corrections Holdings, Inc., to Rebuilding America Now on November 1, 2016, in the amount of \$125,000 which was disclosed on the Post-General Election Report of Rebuilding America Now filed on December 8, 2016. The Supplemental Complaint also identifies two contributions made by GEO Corrections Holdings, Inc., on September 27, 2016 (\$200,000 to Senate Leadership Fund) and April 17, 2015 (\$100,000 to Conservative Solutions PAC), that the Complainant apparently overlooked earlier.¹

The Complainant's conclusion that GEO Corrections Holdings, Inc. violated the federal contractor contribution prohibition is incorrect. First, GEO Corrections Holdings, Inc. was not a federal contractor during the relevant period. The entity that was a party to the sub-grant contract identified in the Initial Complaint was GEO Reentry Services, LLC. The Supplemental Complaint does not identify any other contract that is alleged to be a federal contract. Second, the entity that was a party to the contract identified in the Initial Complaint, GEO Reentry

¹ Commission records show that GEO Corrections Holdings, Inc., contributed a total of \$645,000 to five committees during 2015-2016.

Services, LLC, did not contract with the federal government, but rather with the Louisiana Department of Public Safety and Corrections. The contract that the Complainant identifies in the Initial Complaint is not a federal contract for purposes of 52 U.S.C. § 30119.

The Complainant misidentifies the contracting party, mischaracterize GEO Corrections Holdings, Inc. as a federal contractor, and premises its Initial Complaint on a contract that is not a federal contract. Recent comments made to the press suggest that the Complainant is either unaware of the applicable law, or has simply chosen to ignore it for the sake of garnering media coverage.² The Supplemental Complaint further clouds the record with several pages of irrelevant information, suggests that other contracts might be at issue without identifying any of those other contracts, and offers at least three theories of liability while providing only the most cursory explanation of how those theories might apply to the often misstated “facts” at hand.

Both the Initial Complaint and the Supplemental Complaint should be dismissed. The Complainant’s factual allegations are incorrect, irrelevant, and/or incomplete. There is no basis for the Complainant’s legal accusations because the underlying factual presentation is inadequate to provide any reason to believe any violation occurred. The Complainant’s poorly-researched and convoluted legal claims may have generated press coverage, but are insufficient to warrant any reason to believe finding by the Commission. As demonstrated below, **GEO Corrections Holdings, Inc. is not a federal contractor, and its contributions to federal committees did not violate the federal contractor contribution prohibition.**

I. BACKGROUND

A. GEO Corrections Holding, Inc. Contributions to Rebuilding America Now

GEO Corrections Holdings, Inc., wrote a contribution check to Rebuilding America Now in the amount of \$100,000 on August 17, 2016, see attached, and that check was evidently received by Rebuilding America Now on August 19, as reflected on Rebuilding America Now’s quarterly report.³ GEO Corrections Holdings, Inc. contributed an additional \$125,000 to Rebuilding America Now on November 1, 2016. Rebuilding America Now is registered with the Commission as an independent expenditure-only committee and may lawfully accepted unlimited contributions from corporations pursuant to *Citizens United v FEC*, *SpeechNow.org v. FEC*, Advisory Opinion 2010-11 (Commonsense Ten), and Advisory Opinion 2010-09 (Club for Growth).

² Betsy Woodruff, *Did Private Prison Contractor Illegally Boost Trump?*, The Daily Beast (Dec. 14, 2016), <http://www.thedailybeast.com/articles/2016/12/14/did-private-prison-contractor-illegally-boost-trump.html> (“The Campaign Legal Center argues that this is a distinction without a difference, and that the federal contractor ban should apply to the company’s subsidiary. ‘GEO Corrections Holdings Inc. and its parent company are indistinguishable,’ Fischer said.”). Mr. Fischer’s statement ignores longstanding Commission precedent, as well as basic tenets of tax and corporate law.

³ The Complainant’s alleged timeline is inaccurate. GEO Corrections Holdings, Inc., wrote the check at issue on August 17, 2016, prior to the Department of Justice’s announcement. See Initial Complaint at ¶ 7.

The Complainant alleges that the contributions made by GEO Corrections Holdings, Inc. to Rebuilding America Now violated the Act's prohibition on contributions by federal government contractors at 52 U.S.C. § 30119(a)(1). The Supplemental Complaint also identifies a 2015 contribution to Conservative Solutions PAC, and a 2016 contribution to Senate Leadership Fund. **During the period in which these contributions were made (April 2015 – November 2016), GEO Corrections Holdings, Inc., did not have, and was not seeking, any contracts with the federal government.** To the extent that information obtained by the Complainant at USAspending.gov indicates that GEO Corrections Holdings, Inc. entered into or held a federal contract in 2015, that information is incorrect.

B. Contract Identified By Complainant

As noted by Complainant, USAspending.gov indicates that GEO Corrections Holdings, Inc. received a “grant” of \$266,666, which is characterized as a “sub-award transaction,” during fiscal year 2015. As has been the case in past enforcement matters, information found on USAspending.gov is not always accurate.

The transaction in the amount of \$266,666 derives from a *state* government contract between the Louisiana Department of Public Safety and Corrections and GEO Reentry Services, LLC. *See* attached contract. On November 30, 2015, the U.S. Department of Justice, Office of Justice Programs, issued a “prime award” grant of \$700,000 to the Louisiana Department of Public Safety and Corrections for the “Louisiana Capital Area Regional Reentry Initiative.” A “sub-award” grant of \$266,666 then made by the Louisiana Department of Public Safety and Corrections to GEO Reentry Services, LLC to provide certain community reentry services in Baton Rouge. GEO Corrections Holdings, Inc. was *not* a party to this contract, and the contract with GEO Reentry Services, LLC, was *not* a federal contract at all.

C. D. Ray James Detention Facility, Georgia

The Complainant asserts that “GEO Corrections Holdings, Inc. operates the D. Ray James Detention Facility in Folkston, Georgia, according to labor relations cases filed with the National Labor Relations Board (NLRB).” Initial Complaint at ¶ 6. This assertion is factually incorrect. (It is unclear why GEO Corrections Holdings, Inc. is identified as the employer in the NLRB action referenced in the Complaint at Paragraph 6.)

The federal government's contract for services in connection with the D. Ray James Detention Facility is not with GEO Corrections Holdings, Inc., but with Cornell Companies, Inc. Cornell Companies, Inc. contracts with, and receives funds from, the U.S. Department of Justice. *See* Affidavit of Ambert Martin at ¶ 2.

Cornell Companies, Inc. was acquired by The GEO Group, Inc. via a “reverse-triangular merger”⁴ in 2010, and is now a wholly-owned subsidiary of The GEO Group, Inc. The GEO Group, Inc. is the sole shareholder of Cornell Companies, Inc. Within The GEO Group family of

⁴ Details of this transaction were reported to the U.S. Securities and Exchange Commission, and are available at <https://www.sec.gov/Archives/edgar/data/923796/000095012310036325/0000950123-10-036325-index.htm>.

companies, GEO Corrections Holdings, Inc. and Cornell Companies, Inc., are both “first level” subsidiaries that are wholly-owned by The GEO Group, Inc. *See* Affidavit of Marcel Maier at ¶¶ 2, 6. Neither GEO Corrections Holdings, Inc., nor GEO Reentry Services, LLC, is a party to any federal contract involving the D. Ray James Detention Facility. *See* Affidavit of Amber Martin at ¶ 3. GEO Corrections Holdings, Inc. and GEO Reentry Services, LLC are both legally separate and distinct from Cornell Companies, Inc.

Contrary to Complainant’s assertions, GEO Corrections Holdings, Inc. does not operate the D. Ray James Detention Facility, and GEO Corrections Holdings, Inc. does not hold any contract, federal or otherwise, to provide services in connection with the D. Ray James Detention Facility. *See* Affidavit of Amber Martin at ¶ 4. (For the same reasons, Complainant’s characterization of the D. Ray James Detention Facility as a “GEO Corrections Holdings, Inc. facility” is also incorrect. *See* Initial Complaint at ¶ 22.)

D. The GEO Group, Inc. – Corporate Structure

As was the case with “Chevron” in MUR 6726 (Chevron Corporation), “GEO” is not a single “integrated organization,” but rather, it is a family of subsidiaries and wholly-owned entities that are separate and distinct legal entities. *See* MUR 6726 (Chevron Corporation), First General Counsel’s Report at 3-4.

The GEO Group, Inc. sits at the top of the larger GEO corporate structure. Beneath The GEO Group, Inc. are several wholly-owned subsidiaries, including GEO Corrections Holdings, Inc. and Cornell Companies, Inc. Both GEO Corrections Holdings, Inc. and Cornell Companies, Inc. have their own subsidiary companies. For example, GEO Reentry Services, LLC is a subsidiary of GEO Corrections Holdings, Inc.

In 2013, The GEO Group family of companies underwent an internal corporate restructuring as part of a complex conversion to a Real Estate Investment Trust (REIT). This conversion required, among other things, a reorganization of certain operations into separate legal wholly-owned operating business units known as “taxable REIT subsidiaries.” Through this structure, non-real estate related businesses are housed within wholly-owned taxable subsidiaries of the REIT, while business segments that are real estate related are part of the REIT.⁵ For present purposes, we note that the existence of various legally separate wholly-owned subsidiaries within The GEO Group, Inc. family of companies is directly related to this REIT restructuring.

1. GEO Corrections Holdings, Inc.

GEO Corrections Holdings, Inc. is incorporated in the State of Florida. GEO Corrections Holdings, Inc. is a wholly-owned subsidiary of GEO Group, Inc., and is a holding company for several operating subsidiaries within The GEO Group family of companies. These subsidiaries are involved in operation, management, and construction of private correctional and detention

⁵ Additional details of this structure are included in the company’s first quarter 2013 publication “Geo World,” which is attached hereto, and is also available at <http://www.geogroup.com/userfiles/337e14c1-4d30-4723-a85d-a02f51816e54.pdf>.

facilities, community reentry facilities, inmate transportation, and electronic monitoring and tracking. *See* Affidavit of Amber Martin at ¶ 5.

GEO Corrections Holdings, Inc. houses and performs a number of administrative functions on behalf of The GEO Group family of companies. For instance, GEO Corrections Holdings, Inc. is the employer of those individuals engaged in administration and management functions at The GEO Group’s corporate headquarters in Boca Raton, Florida. Pursuant to a formal management services agreement, GEO Corrections Holdings, Inc. performs a variety of management services for The GEO Group family of companies. *See* Affidavit of Marcel Maier at ¶ 7. GEO Corrections Holdings, Inc. does not contract with any government entities, and does not provide services of any kind to any entities outside The GEO Group family of companies.⁶ Accordingly, GEO Corrections Holdings, Inc. has no government contracts of any kind. *See* Affidavit of Amber Martin at ¶ 6. The Complainant’s insistence to the contrary is incorrect. *See* Supplemental Complaint at 4 (“available records indicate that GEO Corrections Holdings, Inc., is indeed a contracting legal entity that holds contracts with multiple government agencies”).

As noted, GEO Corrections Holdings, Inc. does not generate income through the sale of goods or services to persons beyond The GEO Group family of companies. Rather, all GEO Corrections Holdings, Inc. revenue derives from its subsidiaries and its intercompany agreements with other entities within the The GEO Group family of companies.⁷ GEO Corrections Holdings, Inc., has receipts in excess of \$250 million annually. These funds are received by other companies within The GEO Group family of companies from their customers and transferred to GEO Corrections Holdings, Inc., for tax, administrative and management purposes. *See* Affidavit of John Tyrrell at ¶ 2.

The annual receipts of GEO Corrections Holdings, Inc. far exceed the amount of the federal contributions at issue in this matter, even after receipts from entities with federal contracts are set aside.⁸ *See* Affidavit of John Tyrrell at ¶ 3.

2. GEO Corrections and Detention, LLC

GEO Corrections and Detention, LLC, a wholly-owned subsidiary of GEO Corrections Holdings, Inc., has numerous state and local government contracts, but does not contract with the federal government. *See* Affidavit of John Tyrrell at ¶ 4. For instance, in 2016, GEO Corrections and Detention, LLC earned in excess of \$7.8 million from the State of Florida for the

⁶ GEO Corrections Holdings, Inc., is similar to Chevron Corporation in this regard. As noted in MUR 6726 (Chevron Corporation), Chevron Corporation “[a]s a general matter ... does not sell any goods or services.” MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 2.

⁷ *See* MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 2 (“Chevron’s primary assets consist of stock of other companies, and Chevron derives most of its income from the dividends of those companies”).

⁸ *See* MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 7 (“Chevron appears to have sufficient funds *not* derived from revenue of subsidiaries with federal contracts to make the \$2.5 million contribution to CLF”) (emphasis in original).

company's operation of Graceville Correctional Facility. *See* Affidavit of John Tyrrell at ¶ 4. Although this non-federal contract (among others) was erroneously attributed to GEO Corrections Holdings, Inc., we note that the revenue derived from this contract far exceeds the total amount of federal contributions at issue.

3. GEO Reentry Services, LLC

As noted above, the government contract valued at \$266,666 that is referenced in the Initial Complaint is held by GEO Reentry Services, LLC. GEO Reentry Services, LLC (then known as GEO Reentry Services, Inc.), was previously a wholly-owned corporate subsidiary of The GEO Group, Inc. In December 2012, as part of the REIT conversion process, GEO Reentry Services, Inc., was converted to its present LLC form, and 100% interest in the entity was transferred from The GEO Group, Inc. to GEO Corrections Holdings, Inc., making GEO Corrections Holdings, Inc. the sole member of GEO Reentry Services, LLC. *See* Affidavit of Marcel Maier at ¶ 3.

GEO Reentry Services, LLC contracts with the federal government, as well as with state and local governments. GEO Reentry Services, LLC is licensed to do business in 18 states, including Louisiana. *See* Affidavit of Marcel Maier at ¶ 5. GEO Reentry Services, LLC employs its own personnel, including operational staff at approximately 25 facilities, and owns office-related property (furniture, computer equipment, office supplies, etc.). GEO Reentry Services, LLC, does not own real property. *See* Affidavit of Marcel Maier at ¶ 4.

4. Cornell Companies, Inc.

Cornell Companies, Inc. was acquired by The GEO Group, Inc. in 2010, and Cornell Companies, Inc. became a wholly-owned subsidiary of The GEO Group, Inc. *See* Affidavit of Marcel Maier at ¶ 2.

Cornell Companies, Inc. remains separately incorporated in the State of Delaware. As noted above, Cornell Companies, Inc. and GEO Corrections Holdings, Inc. are both "first level" subsidiaries that are wholly-owned by The GEO Group, Inc. Cornell Companies, Inc. and GEO Corrections Holdings, Inc. do not have direct financial arrangements with one another, and no revenue from Cornell Companies, Inc. (including revenue derived from federal contracts) is delivered directly to GEO Corrections Holdings, Inc. *See* Affidavit of John Tyrrell at ¶ 5 (It is possible that Cornell Companies, Inc. pays money to one (or more) subsidiary companies within The GEO Group family of companies in exchange for services, and that subsidiary subsequently delivers funds to GEO Corrections Holdings, Inc.) GEO Corrections Holdings, Inc. has multiple wholly-owned subsidiaries, including GEO Corrections and Detention, LLC, that do not contract with the federal government, and which generate their revenue from sources unrelated to any federal contracts. *See* Affidavit of John Tyrrell at ¶ 4. Thus, the funds held by GEO Corrections Holdings, Inc. that were drawn upon to make the contribution to Rebuild America Now unquestionably included funds from sources without any federal contracts that far exceeded the contribution amounts.

II. LEGAL ANALYSIS

As explained below, the Initial Complaint should be dismissed on any or all of the following grounds. The Federal Election Campaign Act, as amended, prohibits a person “[w]ho enters into any contract with the United States or any department or agency thereof” from making a contribution to any political party, committee, or candidate for public office. 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2. The federal contractor contribution prohibition is effective during “the time between the earlier of the commencement of negotiations or when the requests for proposals are sent out, and the later of – (1) The completion of performance under; or (2) The termination of negotiations for, the contract or furnishing of materials, supplies, equipment, land, or buildings, or the rendition of personal services.” 11 C.F.R. § 115.2(b).

“When determining whether a committee has received, or that an entity has made, a contribution in violation of [52 U.S.C. § 30119(a)(1)], the Commission looks first to whether the entity met the statutory and regulatory definition of government contractor at the time the contribution was made.” MUR 6403 (Alaskans Standing Together), First General Counsel’s Report at 14-15.

A. GEO Corrections Holdings, Inc., Was Not a Federal Contractor

As noted above, GEO Corrections Holdings, Inc. does not hold any government contracts (federal, state, or local), and was not a federal contractor at the time the contributions at issue were made. The entry found by Complainant at USAspending.gov is inaccurate. The identified contract was not held by GEO Corrections Holding, Inc., but by GEO Reentry Services, LLC, and the contracting party was not the federal government, but the Louisiana Department of Public Safety and Corrections. *See* attached contract.

The Complainant claims that “GEO Corrections Holdings, Inc. appears to have been performing and/or negotiating federal contracts at the same time that it made its \$100,000 contribution to Rebuilding America Now” Initial Complaint at ¶ 20; *see also* Initial Complaint at ¶ 25. This is incorrect, as GEO Corrections Holdings, Inc. does not perform or negotiate any federal contracts. *See* Affidavit of Amber Martin at ¶ 6.

Information presented in the Supplemental Complaint pertaining to National Labor Relations Board proceedings and a class-action lawsuit in California,⁹ *see* Supplemental

⁹ The Complainant’s characterization of the Respondents’ answer to a class-action complaint filed in California is intentionally dishonest and misleading. The Complainant claims that “[i]n its answer to that complaint, GEO Corrections Holdings, Inc. did not contest this description of its operations [that it is ‘an operator of detention and community re-entry facilities in California’], but instead claimed that it did not employ the plaintiff nor any other member of the class.” *See* Supplemental Complaint at 2 – 4. The referenced answer, which the Complainant attached as an exhibit to its Supplemental Complaint, begins with the following sentence: “Defendants **generally and specifically deny each and every allegation of the Complaint**, and the whole thereof, pursuant to section 431.30 of the California Code of Civil Procedure and further deny that Plaintiff or any class that he purports to represent has been damaged in any sum or at all” (emphasis added).

Complaint at 2 – 4, is irrelevant to the question of whether GEO Corrections Holdings, Inc. sought, held, or performed a federal contract at the time the contributions at issue were made. How GEO Corrections Holdings, Inc. might be characterized in proceedings before another government agency has no bearing on whether GEO Corrections Holdings, Inc. actually is a “federal contractor” for purposes of FECA and Commission regulations.¹⁰ See Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5599 (Feb. 7, 2007) (“the use of the Internal Revenue Code classification to interpret and implement FECA is inappropriate”).

B. The Initial Complaint Does Not Identify A Federal Contract

As noted above, the contract referenced in the Initial Complaint consisted of a sub-award grant from the Louisiana Department of Public Safety and Corrections to GEO Reentry Services, LLC. The contracting parties to the service agreement are Louisiana Department of Public Safety and Corrections, a state agency, and GEO Reentry Services, LLC. Under FEC regulations, this is not a federal contract. Commission regulations state:

The basic contractual relationship must be with the United States or any department or agency thereof. A person who contracts with a State or local jurisdiction or entity other than the United States or any department or agency thereof is not subject to this part, even if the State or local jurisdiction or entity is funded in whole or in part from funds appropriated by the Congress.

11 C.F.R. § 115.1(d).

The original 1977 Explanation and Justification for this provision indicates that this bright-line distinction between federal and state contracts is the product of a 1974 Conference Report discussion of the Medicaid program and questions about whether doctors who received Medicaid payments for services qualified as federal contractors. The Conference Report concludes they are not and explained:

Under so-called Medicaid programs, it is true that doctors may have specific contractual agreements to render medical services, but such agreements are with State agencies and not with the Federal Government. Medicaid programs are administered by State agencies using Federal funds. The House committee did not believe that section 611 prohibiting political contributions by government contractors has any application to doctors rendering medical services pursuant to a contract with a State agency.

Communication From the Chairman, Federal Election Commission, Explanation and Justification of Part 115 – Federal Contractors at 120 (Jan. 12, 1977) *citing* S. Conf. Report 93-1237, 93d Congress, 2d Sess., 68-69 (1974). Like Medicaid programs, criminal justice programs

¹⁰ More specifically, the term “employer” as used in labor law and by the National Labor Relations Board obviously does not equate with “federal contractor,” as used in federal campaign finance law and by the Commission. Compare, for example, the definition of “employer” found in the National Labor Relations Act at 29 U.S.C. § 152(2) with the federal contractor prohibition at 52 U.S.C. § 30119.

are often “administered by State agencies using Federal funds.” Entities that contract with these state agencies are not federal contractors. *See also* Advisory Opinion 1980-26 (Stenholm) (“the prohibitions of 441c would not apply to a situation where, as here, the contractual relationship of the contributor is with another entity that is, in turn, under contract with the Federal Government or an agency thereof”); Advisory Opinion 1975-110 (Treen) (“the Commission concludes that where an individual contracts with a non-Federal agency, he does not become subject to the prohibition of § 611 even if the agency receives Federal aid”).

C. The Supplemental Complaint References Other Specific Contracts, But Still Does Not Identify Any Federal Contract

The Supplemental Complaint alleges that GEO Corrections Holdings, Inc. is listed “as the ‘Vendor’ for at least six contracts with the State of Florida valued at tens of millions of dollars.” Supplemental Complaint at 4. Contracts with the State of Florida, of course, are irrelevant for purposes of the *federal* contractor prohibition, so it is unclear why the Complainant would include this information. Furthermore, the Complainant failed to note in its Supplemental Complaint that a few more “clicks” on the cited Florida Department of Financial Services website (<https://facts.fldfs.com/Search/ContractSearch.aspx>) reveals that the “Vendor” listing is inaccurate and that five of the six referenced contracts were not made with GEO Corrections Holdings, Inc., but with either The GEO Group, Inc. or GEO Corrections and Detention LLC. (The remaining entry is for a non-contractual purchase order for copies of records in the amount of \$35.93.) All of this information was readily available to the Complainant, and it is unclear why the Complainant chose to mislead the Commission on an entirely irrelevant point.

In short, neither the Initial Complaint nor the Supplemental Complaint identifies any specific federal contract.

D. GEO Corrections Holdings, Inc. Is a Separate and Distinct Legal Entity

After inquiring “whether the entity met the statutory and regulatory definition of government contractor at the time the contribution was made,” the Commission next considers the special considerations that arise in the context of related entities. *See* MUR 6403 (Alaskans Standing Together), First General Counsel’s Report at 15 (“In the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contractor subsidiaries, and that it had sufficient funds to make the contributions from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company.”)

The allegations in the Initial Complaint are relatively specific, but as is explained herein, the specific allegations made in the Initial Complaint do not pertain to a federal contractor, and the contract identified in the Initial Complaint is actually a state government contract.

The allegations in the Supplemental Complaint are considerably less specific, but it appears that the Complainant has shifted its focus to the relationship between GEO Corrections Holdings, LLC (the subsidiary) and The GEO Group, Inc. (the parent), and recognizes that GEO Corrections Holdings, Inc., “does not itself hold federal contracts.” Supplemental Complaint at

5. The Complainant appears to assume that The GEO Group, Inc. is a federal contractor for purposes of the Act, but the Complainant does not identify any specific federal contract that The GEO Group, Inc. allegedly holds. The Complainant has not met its burden of “set[ting] forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA.” MUR 4960 (Clinton), Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas.

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.

1. Separate and Distinct Legal Entity Analysis

The facts alleged in the Initial and Supplemental Complaints involve (at least) five different legal entities, several of which the Complainant is unaware: (1) GEO Corrections Holdings, Inc.; (2) GEO Reentry Services, LLC; (3) The GEO Group, Inc., (4) Cornell Companies, Inc.; and (5) GEO Corrections and Detention, LLC.

Each of these companies is a “separate and distinct legal entity.” GEO Corrections Holdings, Inc. holds no federal contracts, and to the extent that any other legal entity within The GEO Group’s broader corporate structure does have a federal contract, that does not convey federal contractor status on GEO Corrections Holdings, Inc. *See* Advisory Opinion 1998-11 (Patriot Holdings) (“the prohibitions of 2 U.S.C. § 441c would not extend to an LLC holding company as long as it is, in fact, a separate and distinct legal entity from its Federal contractor subsidiaries”).

Federal contractor status does *not* extend from a parent company to a subsidiary company when only the parent company contracts with the federal government, so long as the parent and subsidiary are separate and distinct legal entities and the non-contracting subsidiary had sufficient income from its own operations to make the contribution at issue.¹¹ The Commission’s “separate and distinct legal entities” standard has been considered in three basic contexts: (1) corporate parents and subsidiary companies; (2) holding companies and subsidiaries; and (3) entities created by Indian tribes. The legal standard is the same in each case.

With respect to the first context:

The Commission has recognized that if a parent company has an ownership interest in a subsidiary that is a federal contractor, the parent company may make a contribution without violating section [30119] if it is a “separate and distinct legal entity” from its federal contractor subsidiary and has sufficient revenue not derived from its contractor subsidiary to make a contribution. *See, e.g.,* MUR 6403 (Aleut Corp. et al.); Advisory Op. 2005-01 (Mississippi Band of Choctaw Indians); Advisory Op. 1998-11 (Patriot Holdings LLC) (superseded on other grounds). If, however, the subsidiary is merely an agent, instrumentality, or alter

¹¹ The Commission’s “separate and distinct entity” standard has been informed by corporate “alter ego” and “piercing the veil” considerations. *See* Advisory Opinion 1998-11 (Patriot Holdings) at 5 n.3.

ego of the holding company, then the parent company is prohibited from making a contribution. Advisory Op. 1998-11 at 5.

MUR 6726 (Chevron Corporation), First General Counsel's Report at 8; *see also* MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 6.

With respect to the second context, the Commission applied the same basic principles to holding companies and their subsidiaries, and reached the same result:

In past opinions, the Commission permitted a holding company of a national bank, a holding company of a Federally chartered savings and loan, and a wholly owned subsidiary of a Federally chartered savings and loan association, to make contributions in connection with State and local elections and to make donations to committees associated with national political party conventions. See Advisory Opinions 1995-32, 1995-31, 1981-61, 1981-49, and 1980-7. The Commission reasoned in these opinions that a holding company is considered a distinct legal entity in its own right, apart from its subsidiaries, and that there is no language in section 441b indicating that the prohibition (as to contributions in any election, including State or local elections) extends to parent holding companies which are not themselves national banks, or Federally chartered corporations or banks. *See id.*

The Commission premised this position on the separate identity of a holding company from a subsidiary and the absence of facts which indicated the subsidiary was merely an agent, instrumentality, or alter ego of the holding company. See Advisory Opinions 1995-32, 1995-31 and 1980-7. The Commission has further required that the permitted political contributions of the holding company be funded only from revenue not derived from subsidiaries that are prohibited from the same activity by section 441b. See Advisory Opinions 1995-32, 1995-31, 1981-61 and 1981-49.

The Commission is of the opinion that this analysis should apply in PH's situation. The fact that PH and its subsidiaries are LLC's rather than corporations is not a significant distinction. As is the case with section 441b, the prohibitions of 2 U.S.C. §441c would not extend to an LLC holding company as long as it is, in fact, a separate and distinct legal entity from its Federal contractor subsidiaries.

Advisory Opinion 1998-11 (Patriot Holdings) at 4-5 (superseded by LLC regulations).

Finally, in the third context, the Commission has recognized that corporate entities created by Indian tribes are "separate and distinct" from the tribes themselves for purposes of the federal contractor prohibition. For instance, in 2005, the Commission determined that the Mississippi Band of Choctaw Indians was not prohibited from making federal contributions after it "established and chartered" a for-profit corporation (IKBI, Inc.) for the purpose of seeking and obtaining federal construction contracts. The Commission explained:

In two advisory opinions the Commission has considered whether the Federal contractor status of subordinate tribal enterprises limits the ability of Indian tribes to make contributions. See Advisory Opinions 1999-32 and 1993-12. The Commission concluded that if circumstances demonstrate that the tribal enterprise has a distinct and separate identity from the Indian tribe itself, then the Act does not prohibit a tribe from making contributions because of the Federal contractor status of the tribal enterprise. See Advisory Opinion 1999-32.

The facts in this request are substantially similar to the facts considered in Advisory Opinion 1999-32. As in Advisory Opinion 1999-32, circumstances indicate that IKBI is a separate and distinct entity from the Tribe. These include the separate incorporation of IKBI, the separate leasing and ownership of property, the fact that no member of the Tribal council may serve on the IKBI board, and that IKBI has a separate legal counsel, bank account, tax identification number and separate employees, personnel and benefit policies from the Tribe. Further, as in Advisory Opinion 1999-32, funds from the Tribal enterprise that is a Federal contractor are not intermingled with other Tribal funds. The Commission notes that revenues from IKBI may not be used to make contributions to Federal candidates or political committees.

Accordingly, when IKBI qualifies as a Federal contractor, its status as Federal contractor does not confer Federal contractor status on the Tribe and therefore will not affect the Tribe's political activities under 2 U.S.C. 441c [now 52 U.S.C § 30119].

Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 4.

2. Facts and Circumstances Determinations

“In determining whether a parent company is ‘separate and distinct’ from its subsidiary, the Commission has not articulated a specific test but has instead made determinations based on the facts and circumstances presented in each matter.” MUR 6726 (Chevon Corporation), First General Counsel's Report at 9. In past matters, facts and circumstances taken into consideration include:

- Are the parent and subsidiary companies separately incorporated?¹²
- Do the entities have separate tax identification numbers?¹³
- Are the companies under the direction and control of separate management?¹⁴
- Does the parent company pay the salaries or expenses of its subsidiary?¹⁵
- Does the subsidiary's government contract contain clauses or terms which would hold the parent company liable for breaches by the subsidiary?¹⁶

¹² MUR 6726 (Chevon Corporation), Factual and Legal Analysis at 6.

¹³ Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 2.

¹⁴ MUR 6726 (Chevon Corporation), Factual and Legal Analysis at 6.

¹⁵ Advisory Opinion 1998-11 (Patriot Holdings) at 5.

- Did the contributing parent entity have sufficient funds not derived from revenue of subsidiaries with federal contracts to make the contribution?¹⁷
- In the case of an Indian tribe, does the tribe's Utility Authority have its own bank account, employees, personnel policies, employee benefits, and legal counsel?¹⁸
- Does the entity lease or own its own property?¹⁹

The presence or absence of particular factors is not necessarily determinative. For instance, two entities may have common officers and directors and still be “separate and distinct legal entities.” *See* Advisory Opinion 1998-11 (Patriot Holdings) at 5 n.3 (“The fact that PH, ASM and PCS share common officers or directors, absent other factors, would be insufficient to establish that ASM and PCS were the alter egos of PH.”); MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 6 (“publicly available information indicates that Chevron and Chevron U.S.A. may share the same CEO”). An entity may also be deemed “separate and distinct” despite being financially dependent on another entity. For example, in Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians), the tribal corporation at issue, IKBI, was not financially independent from the tribe, and “[a]s a condition for issuing the bonds, the bonding agent will require the Tribe ... to sign an ‘agreement of indemnity.’ This obligates the Tribe ... to act as co-indemnitor (along with IKBI) for any losses and liabilities on the bonds.” Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 2.

In its Supplemental Complaint, the Complainant argues that GEO Corrections Holdings, Inc. and The GEO Group, Inc. “are nearly indistinguishable” because “[b]oth are incorporated at the same address, in the same state, and with significant overlap between officers and directors.” Supplemental Complaint at 5. This claim is both factually confused and legally incorrect.

Neither the Initial Complaint nor the Supplemental Complaint identifies a federal contract that is actually held by either GEO Corrections Holdings, Inc., or The GEO Group, Inc. The Initial Complaint incorrectly alleged that “GEO Corrections Holdings, Inc. is a federal contractor” that “operates the D. Ray James Detention Facility in Folkston, Georgia.” Initial Complaint at ¶¶ 19, 6. The Supplemental Complaint acknowledges this error, and then offers an alternative theory of liability. *See* Supplemental Complaint at 5 (“Finally, even if GEO Corrections Holdings Inc. were to offer evidence that it does not itself hold federal contracts, and is not rendering personal services pursuant to a federal contract, its contribution is nonetheless prohibited under the federal contractor ban.”). In past matters, the Commission analyzes a situation in which the parent company holds a federal contract while the contributing subsidiary company does not, and the inquiry focuses on whether the subsidiary is a separate and distinct legal entity. But if there is no evidence on the record that one or the other holds a federal contract, there is nothing for the Commission to analyze. The Complainant does not identify a federal contract allegedly held by The GEO Group, Inc., and the contract that the Complainant

¹⁶ Advisory Opinion 1998-11 (Patriot Holdings) at 5; Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 2.

¹⁷ MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 7; Advisory Opinion 1998-11 (Patriot Holdings) at 5.

¹⁸ Advisory Opinion 1999-32 (Tohono O’odham Nation) at 5; Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 2.

¹⁹ Advisory Opinion 2005-01 (Mississippi Band of Choctaw Indians) at 2.

attributes to GEO Corrections Holdings, Inc. was not actually held by GEO Corrections Holdings, Inc., and was not a federal contract. The Complainant submitted two complaints but failed to identify a single federal contract.

However, if we concede that The GEO Group, Inc. is a federal contractor – even though that fact is not established in either the Initial or Supplemental Complaint – it is still clear that GEO Corrections Holdings, Inc. is separate and legally distinct from The GEO Group, Inc. The Complainant claims that GEO Corrections Holdings, Inc. and The GEO Group, Inc. “are nearly indistinguishable” and that MUR 6726 (Chevron Corporation) is distinguishable. The Complainant misstates the relevant law. “Being incorporated at the same address, in the same state” is irrelevant. The *relevant* legal question is whether the two companies are “separately incorporated.” See MUR 6726 (Chevron Corporation), Factual and Legal Analysis at 6. The Commission has never suggested that the incorporator’s address or state of incorporation have any bearing on the issue at hand. In fact, the very matter that the Complainant cites, MUR 6726 (Chevron Corp.), specifically notes that “Chevron and Chevron U.S.A. are located at the same street address.” MUR 6726 (Chevron Corp.), Factual and Legal Analysis at 6. GEO Corrections Holdings, Inc. and The GEO Group, Inc. are separately incorporated.

In fact, each of the entities discussed above is separately organized, either as a corporation or limited liability company, and each has a different federal tax identification number. While the operations of The GEO Group family of companies is complex and overlapping in some regards, the companies within that structure are separate and legally distinct, as is required by complex REIT-related statutes and regulations found in the federal tax code. Separate entities within The GEO Group family of companies may have overlapping leadership, but as the Commission previously determined, “[t]he fact that [Entity 1, Entity 2, and Entity 3] share common officers or directors, absent other factors, would be insufficient to establish that [Entity 2] and [Entity 3] were the alter egos of [Entity 1].” Advisory Opinion 1998-11 (Patriot Holdings) at 5 n.3. The Commission reiterated this holding in MUR 6726 (Chevron Corp.). See MUR 6726 (Chevron Corp.), Factual and Legal Analysis at 6-7 (citing Advisory Opinion 1998-11 for the proposition that “overlapping officers and directors between a parent company and its subsidiaries was insufficient to establish that the subsidiaries were alter egos of the parent company”).

Finally, GEO Corrections Holdings, Inc. “had sufficient funds not derived from revenue of [related organizations] with federal contracts” to make the contributions identified in the Initial and Supplemental Complaint. MUR 6726 (Chevron Corp.), Factual and Legal Analysis at 7. GEO Corrections Holdings, Inc. has annual receipts in excess of \$250 million, and it had sufficient funds not derived from revenues of related organizations with federal contracts far in excess of the total amount of federal contributions at issue in this matter.

In sum, GEO Corrections Holdings, Inc., did not at the relevant times (and does not currently) hold any federal contract. GEO Corrections Holdings, Inc. is separate and legally distinct from other entities within The GEO Group family of companies that may derive revenue from federal contracts. GEO Corrections Holdings, Inc. had sufficient revenue derived from sources other than related entities with federal contracts to make the contributions at issue in this matter.

D. The Constitutionality of the Federal Contractor Prohibition Is Not At Issue In This Matter

The Complainant argues in support of the continued constitutional validity of the federal contractor prohibition with respect to contributions to *any* political committee, including an independent expenditure-only committee. We believe the Complainant's position is incorrect as a matter of law, but that the issue need not be addressed in this matter.

The question of whether the federal contractor prohibition may be applied constitutionally to independent expenditure-only committees has not been definitively and specifically resolved. *Wagner v. FEC* does not address contributions to independent expenditure-only committees, and specifically notes that the plaintiffs in that case did not challenge the prohibition with respect to contributions made to independent expenditure-only committees. *Wagner v. FEC*, 793 F.3d 1, 4 (D.C. Cir. 2015) (“Nor do [plaintiffs] challenge the law as the Commission might seek to apply it to donations to PACs that themselves make only independent expenditures, commonly known as ‘Super PACs.’”). The logic of *Citizens United v. FEC* and *SpeechNow.org. v. FEC* – that independent expenditures are not corrupting as a matter of law, and contributions to committees that make only independent expenditures cannot be corrupting as a matter of law – leads to the unavoidable conclusion that the federal contractor prohibition may *not* be applied constitutionally with respect to a contribution to an independent expenditure-only committee. We acknowledge the Commission's position taken in MUR 6403 (Alaskans Standing Together), but respectfully suggest this position will be rejected by the courts when the issue is squarely presented.

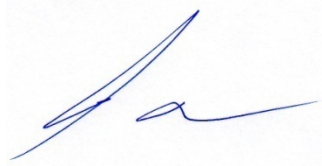
The issue, however, need not be reached in this matter. As explained above, the contribution at issue was not made by a federal contractor, so there is no statutory or regulatory violation.

III. CONCLUSION

There is no reason to believe that GEO Corrections Holdings, Inc. violated 52 U.S.C. § 30119. The Complainant's allegations rest on a series of factual errors and misstatements of the law. While GEO Corrections Holdings, Inc. made the reported contributions to Rebuilding America Now, Senate Leadership Fund, and Conservative Solutions PAC, GEO Corrections Holdings, Inc. is not, and was not at the time, a federal contractor. The contract that the Complainant attributes to GEO Corrections Holdings, Inc. was, in fact, held by GEO Reentry Services, LLC. That contract was not a federal contract, but rather, was a contract with the Louisiana Department of Public Safety. The GEO Group, Inc., GEO Corrections Holdings, Inc., GEO Reentry Services, LLC, GEO Corrections and Detention, LLC, and Cornell Companies, Inc. are all separate and distinct legal entities, so the contracting activities of any one of these entities does not confer federal contractor status on any other entity.

In sum, the Complainant has failed to demonstrate the basic elements of a violation of the federal contractor prohibition and there is no reason to believe a violation of the Act occurred. This Complaint should be dismissed expeditiously.

Sincerely,

A handwritten signature in blue ink, appearing to be "Jason Torchinsky", written over a light gray rectangular background.

Jason Torchinsky
Michael Bayes
Counsel to Respondents

Attachments

AFFIDAVIT OF AMBER MARTIN

PERSONALLY came and appeared before me, the undersigned Notary, the within named AMBER MARTIN, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Amber Martin, Executive Vice President, Contract Administration, for The GEO Group, Inc. I oversee government contracting matters for The GEO Group, Inc. family of companies.
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.
3. Neither GEO Corrections Holdings, Inc. nor GEO Reentry Services, LLC is a party to any federal contract involving the D. Ray James Detention Facility.
4. GEO Corrections Holdings, Inc. does not operate the D. Ray James Detention Facility, nor does it hold any contract, federal or otherwise, to provide services in connection with the D. Ray James Detention Facility.
5. GEO Corrections Holdings, Inc., a Florida corporation, is a wholly-owned subsidiary of The GEO Group, Inc., and is a holding company for several operating subsidiaries within The GEO Group family of companies. These subsidiaries are involved in operation, management, and construction of private correctional and detention facilities, community reentry facilities, inmate/detainee transportation, and electronic monitoring and tracking.
6. GEO Corrections Holdings, Inc. does not seek, negotiate, hold, or perform any federal government contracts, or any government contracts of any kind.

[Signature Page Follows]

DATED this the 19 day of January, 2017



Signature of Affiant, Amber Martin

SWORN to subscribed before me, this 19 day of January, 2017



NOTARY PUBLIC

My Commission Expires:

9/10/2018



SHANNON RENEE WELLER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF158967
Expires 9/10/2018

AFFIDAVIT OF JOHN TYRRELL

PERSONALLY came and appeared before me, the undersigned Notary, the within named JOHN TYRRELL, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am John Tyrrell, Director of Finance for The GEO Group, Inc. I am directly involved in the financial operations of The GEO Group, Inc. and various subsidiaries, including GEO Corrections Holdings, Inc.
2. GEO Corrections Holdings, Inc. has receipts in excess of \$250 million annually. These funds are received by other GEO subsidiaries from customers and transferred to GEO Corrections Holdings, Inc. for tax, administrative and management purposes.
3. The annual receipts of GEO Corrections Holdings, Inc., far exceed the amount of the contributions made to Rebuilding America Now (\$225,000), Senate Leadership Fund (\$200,000), and Conservative Solutions PAC (\$100,000), even after receipts from entities with federal contracts are set aside.
4. GEO Corrections and Detention, LLC, a wholly-owned subsidiary of GEO Corrections Holdings, Inc., has numerous state and local government contracts, but does not contract with the federal government. In 2016, GEO Corrections and Detention, LLC earned in excess of \$7.8 million from the State of Florida for its operation of Graceville Correctional Facility, providing GEO Corrections Holdings, Inc. with sufficient revenue from non-federal contractor subsidiaries to fund its political contributions.
5. Cornell Companies, Inc. and GEO Corrections Holdings, Inc. do not have direct financial arrangements with one another, and no revenue from Cornell Companies, Inc. (including revenue derived from its federal contracts) is delivered directly to GEO Corrections Holdings, Inc. Funds received by Cornell Companies, Inc. pass to The GEO Group, Inc.

[Signature Page Follows]

DATED this the 19 day of January, 2017


Signature of Affiant, John Tyrrell

SWORN to subscribed before me, this 19 day of January, 2017


NOTARY PUBLIC

My Commission Expires:

9/10/2018



SHANNON RENEE WELLER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF159987
Expires 9/10/2018

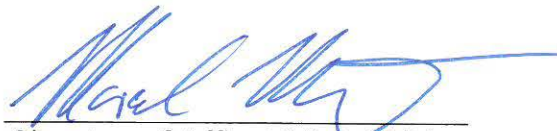
AFFIDAVIT OF MARCEL MAIER

PERSONALLY came and appeared before me, the undersigned Notary, the within named MARCEL MAIER, and makes this his Statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

1. I am Marcel Maier, Vice President, Tax, for The GEO Group, Inc. I oversee all tax matters for The GEO Group, Inc. and its various subsidiaries, including GEO Corrections Holdings, Inc.
2. Cornell Companies, Inc. was acquired by The GEO Group, Inc. via merger in 2010, with Cornell Companies, Inc. becoming a wholly-owned subsidiary of The GEO Group, Inc.
3. Prior to December 2012, GEO Reentry Services, Inc. was a wholly-owned corporate subsidiary of The GEO Group, Inc. In December 2012, GEO Reentry Services, Inc. was converted to its present LLC form and renamed, and 100% ownership interest in the entity was transferred from The GEO Group, Inc. to GEO Corrections Holdings, Inc. As a result of this transfer of interest, GEO Corrections Holdings, Inc. became the sole member of GEO Reentry Services, LLC.
4. GEO Reentry Services, LLC employs its own personnel, including operational staff at approximately 25 facilities, and owns office-related property (furniture, computer equipment, office supplies, etc.). GEO Reentry Services, LLC, does not own real property.
5. GEO Reentry Services, LLC, is licensed to do business in 18 states, including Louisiana.
6. Within The GEO Group family of companies, GEO Corrections Holdings, Inc. and Cornell Companies, Inc. are both "first level" subsidiaries that are wholly-owned by The GEO Group, Inc.
7. Pursuant to a management services agreement with The GEO Group, Inc., employees of GEO Corrections Holdings, Inc. perform administrative functions for The GEO Group family of companies.

[Signature Page Follows]

DATED this the 19 day of January, 2017



Signature of Affiant, Marcel Maier

SWORN to subscribed before me, this 19 day of January, 2017



NOTARY PUBLIC

My Commission Expires: 9/10/2018



SHANNON RENEE WELLER
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF158987
Expires 9/10/2018

ATTACHMENT C
FEC NOTIFICATION WITH FACTUAL AND LEGAL ANALYSIS
JANUARY 31, 2018



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jason Torchinsky, Esq.
Michael Bayes, Esq.
Steve Roberts, Esq.
Holtzman Vogel Josefiak Torchinsky, PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186
jtorchinsky@hvjt.law
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JAN 31 2018

RE: MUR 7180
GEO Corrections Holdings, Inc.

Dear Messrs. Torchinsky, Bayes, and Roberts:

On November 4, 2016, the Federal Election Commission (the "Commission") notified your client, GEO Corrections Holdings, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time. On December 27, 2016, you were notified of a supplement to the original complaint and a copy of that supplement was forwarded to you at that time.

Upon review of the allegations contained in the complaint, supplemental complaint, and information supplied by your client, the Commission, on January 23, 2018, found that there is reason to believe your client violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

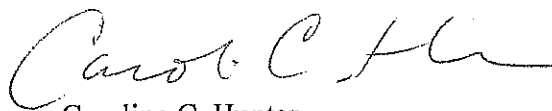
Jason Torchinsky, Esq.
Michael Bayes, Esq.
Steve Roberts, Esq.
MUR 7180 (GEO Corrections Holdings, Inc.)
Page 2

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Nicholas Mueller, the attorney assigned to this matter, at (202) 694-1650 or nmueller@fec.gov.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosure
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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

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

MUR 7180

5
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, Inc.
9 (“GC Holdings”) violated the Federal Election Campaign Act of 1971, as amended, (the “Act”)
10 when GC Holdings, purportedly a federal contractor, made contributions to Rebuilding America
11 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.

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

11 **II. FACTS**

12 **A. GEO Respondents**

13 The GEO family of companies operates correctional and detention facilities and provides
14 related services throughout the world.⁷ The GEO Group is the parent company, and it is
15 incorporated in Florida.⁸

16 GC Holdings, a wholly-owned subsidiary of the GEO Group, is also incorporated in
17 Florida.⁹ According to the GEO Respondents, GC Holdings "houses and performs a number of
18 administrative functions on behalf of The GEO Group family of companies" and generates no

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.snl.com/interactive/lookandfeel/4144107/2015AnnualReport.pdf> (cited in Compl. at n. 8).

⁸ GEO Resp. at 4; Compl. at 3.

⁹ GEO Resp. at 4.

1 income “through the sale of goods or services to persons beyond the GEO Group family of
2 companies.”¹⁰ GEO Respondents state that despite GC Holdings not having outside sources of
3 revenue, it “has receipts in excess of \$250 million annually” and that “[t]hese funds are received
4 by other companies within The GEO Group family of companies from their customers and
5 transferred to GEO Correcting Holdings, Inc., for tax, administrative and management
6 purposes.”¹¹

7 GEO Reentry bills itself as “the nation’s leader in safe, secure alternatives to detention
8 and reentry services for offenders released to community treatment and supervision,”¹² and it
9 contracts with federal, state, and local governments.¹³ Prior to December 2012, GEO Reentry
10 was a wholly-owned subsidiary of the GEO Group, but it was converted to its current form as a
11 single member LLC, and 100% of the LLC’s equity interest was transferred to GC Holdings.¹⁴
12 Thus, GC Holdings is the sole member of GEO Reentry.

13 Cornell Companies, Inc. (“Cornell Companies”) was acquired by the GEO Group in 2010
14 and became both a wholly-owned subsidiary of the GEO Group and a sister company to GC
15 Holdings.¹⁵ It is incorporated in Delaware.¹⁶ According to the GEO Respondents, Cornell

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² See <http://www.georeentry.com/about/>.

¹³ GEO Resp. at 6.

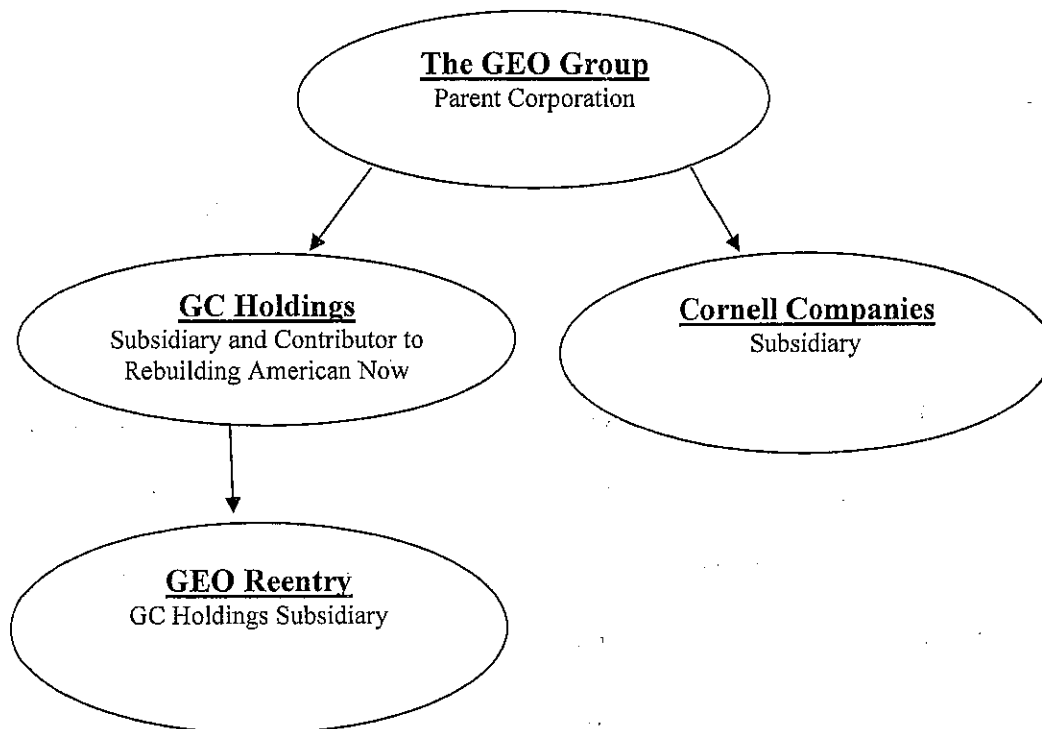
¹⁴ *Id.* at 6.

¹⁵ GEO Resp. at 6.

¹⁶ *Id.*

1 Companies has no direct financial arrangements with GC Holdings.¹⁷ While Complainants
 2 allege that GC Holdings operates a federal contract in connection with the D. Ray James
 3 Detention Facility in Folkston, Georgia (the “Georgia Detention Facility”), GEO Respondents
 4 assert that Cornell Companies holds the federal contract for services at this facility.¹⁸

5 The following chart illustrates the corporate structure of the relevant GEO entities.
 6



¹⁷ *Id.*

¹⁸ *Id.* at 3.

1 **B. Rebuilding American Now**

2 RAN is an independent-expenditure-only committee.¹⁹ According to its website, RAN
3 describes itself as “a Super PAC supporting Donald Trump in the 2016 general election.”²⁰
4 According to the GEO Respondents, on August 17, 2016, GC Holdings issued a \$100,000
5 contribution check to RAN,²¹ and RAN reported that it accepted \$100,000 from GC Holdings on
6 August 19, 2016.²² Further, on November 1, 2016, GC Holdings made another contribution
7 totaling \$125,000 to RAN.²³

8 **III. LEGAL ANALYSIS**

9 **A. The Act’s Prohibition of Contributions By Federal Contractors**

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.”²⁴ 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.”²⁵ In addition, the Act prohibits any person from knowingly
15

¹⁹ RAN, Statement of Organization,
<http://docquery.fec.gov/pdf/838/201606029017459838/201606029017459838.pdf>.

²⁰ See <https://rebuildingamericanow.com/about-our-organization/>.

²¹ 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.

²² RAN, October Quarterly Report,
<http://docquery.fec.gov/pdf/661/201610159032869661/201610159032869661.pdf>.

²³ Supp. Compl. at 1; RAN, Post-General Report,
<http://docquery.fec.gov/pdf/740/201612089039950740/201612089039950740.pdf>.

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

²⁵ *Id.*

1 soliciting a contribution from any person who is negotiating or performing a contract with the
2 United States government.²⁶ “When determining whether an entity has made a contribution in
3 violation of [52 U.S.C. § 30119], the Commission first looks to whether the entity met the
4 statutory and regulatory definition of government contractor at the time the contribution was
5 made.”²⁷

6 With respect to a parent company that has an ownership interest in a federal-contractor
7 subsidiary, the Commission has recognized that such parent company may make a contribution
8 without violating section 30119 if it is a “separate and distinct legal entity” from its federal-
9 contractor subsidiary and “has sufficient revenue derived from sources other than its contractor
10 subsidiary to make a contribution.”²⁸ If, however, the subsidiary is merely an agent,
11 instrumentality, or alter ego of the holding company, then the parent company is prohibited from
12 making a contribution.²⁹

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

15 1. GC Holdings May Be a Federal Contractor

16
17 In support of their allegations, complainants assert that GC Holdings is a federal
18 contractor based on documents GC Holdings filed with the NLRB in which it represented that it

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

²⁷ Factual and Legal Analysis at 5, MUR 6403 (Aleut Corp., *et al.*).

²⁸ 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).

²⁹ Advisory Op. 1998-11 (Patriot Holdings LLC) at 5.

1 holds federal contracts.³⁰ Complainants also rely on information on a government website,
2 USAspending.gov, that indicates GC Holdings has a federal contract in Louisiana.³¹

3 Complainants maintain that in a matter before the NLRB in 2013, GC Holdings is
4 identified as the employer and contractor for the Georgia Detention Facility, a federal prison.³²
5 Indeed, according to its brief in that matter, GC Holdings explicitly affirms that it was a federal
6 contractor:

7 [GC Holdings] is a large operator of prisons and other correctional facilities. *It*
8 *has contracts with several state and federal agencies, such as the Federal Bureau*
9 *of Prisons and Immigrations and Customs Enforcement, Department of Homeland*
10 *Security.* The D. Ray James Detention Facility [Georgia Detention Facility] is a
11 secure facility and is operated pursuant to a contract with the Federal Bureau of
12 Prisons. The D. Ray James Facility houses approximately 2,800 inmates.³³
13

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

16 The GEO Respondents do not dispute that GC Holdings made those factual
17 representations before the NLRB. Instead, they argue that Cornell Companies, not GC Holdings,
18 holds the contract for the Georgia Detention Facility and receives funds from the U.S.

³⁰ Compl. at 3-4.

³¹ *Id.* at 4.

³² *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>).

³³ 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.

1 Department of Justice.³⁴ In support, they rely upon the Affidavit of Amber Martin, Executive
2 Vice President for Contract Administration for the parent company, The GEO Group.³⁵ Martin's
3 Affidavit states, "GEO Corrections Holdings, Inc. does not seek, negotiate, hold or perform any
4 federal government contracts, or any government contracts of any kind."³⁶ Martin's averments,
5 however, post-date the contributions mentioned in the Complaint and Supplement, and they are
6 all phrased in the present tense, leaving open the possibility that GC Holdings was the contractor
7 at the time of the contributions. Further, the affidavit lacks supporting information, including
8 any contemporaneous evidence regarding the negotiation, formation, or execution of the contract
9 in question.³⁷

10 With respect to the matter filed with the NLRB, the GEO Respondents contend that the
11 Complaint's assertion that GC Holdings operates the Georgia Detention Facility is "factually
12 incorrect."³⁸ Respondents state that "[i]t is unclear why GEO Corrections Holdings, Inc. is
13 identified as the employer in the NLRB action referenced in the Complaint at Paragraph 6."³⁹
14 GEO Respondents do not, however, explain why GC Holdings filed a brief representing to the
15 NLRB that it was the employer and a federal contractor. Moreover, GC Holdings' identification

³⁴ GEO Resp. at 3.

³⁵ 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.").

³⁶ *Id.* ¶ 6.

³⁷ *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").

³⁸ GEO Resp. at 3.

³⁹ *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.⁴⁰

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,⁴¹ 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").⁴² In support, GEO Respondents provided a copy of this
15 contract confirming that the parties to the contract were GEO Reentry and LDPSC.⁴³ 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,⁴⁴ this contract does

⁴⁰ Supp. Compl. at 3, n. 9-10 (citing *GEO Corrections Holdings, Inc. v. SPFFA Local 126*, Case No. 12-CA-118124; *GEO Corrections Holdings, Inc.*, Case No. 12-CA-115020; *GEO Corrections Holdings, Inc. v. SPFFA Local 445*, Case No. 19-RC-099484).

⁴¹ GEO Resp. at 8.

⁴² *Id.* at 3.

⁴³ *Id.*, Attach. 4.

⁴⁴ See 11 C.F.R. § 115.1(d).

1 not demonstrate that GC Holdings is a federal contractor.⁴⁵ 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. Conclusion

6 The facts here indicate that GC Holdings may have been prohibited from making a
7 political contribution as a federal contractor. Therefore, the Commission finds reason to believe
8 that GC Holdings violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

⁴⁵ 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.

ATTACHMENT D
RESPONSE TO FACTUAL AND LEGAL ANALYSIS
MARCH 5, 2018

HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC
Attorneys at Law

45 North Hill Drive • Suite 100 • Warrenton, VA 20186

March 5, 2018

Nicholas Mueller, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of GEO Corrections Holdings, Inc. in MUR 7180

Dear Mr. Mueller,

In our Response of January 20, 2017, we submitted information and sworn affidavits demonstrating that the allegations made in the Complaint were factually incorrect and that GEO Corrections Holdings, Inc. (GCH), was not a federal contractor and had not violated the federal contractor contribution prohibition. Nevertheless, the Commission found that “the available information ... suggests that [GCH] *may have been* a federal contractor when it made its contributions to RAN and to other committees.” MUR 7180, Factual and Legal Analysis (FLA) at 2 (emphasis added). The Commission found reason to believe and “authorize[d] an investigation to determine whether [GCH] was a federal contractor at the time it made its contributions in 2015 and 2016.” *Id.*

Please find below additional information and explanation regarding the present matter. We reiterate that GCH was *not* a federal government contractor when it made the contributions at issue.

I. GEO Corrections Holdings, Inc. Does Not Contract with the Federal Government

As previously explained in the Response, “[t]he federal government’s contract for services in connection with the D. Ray James Detention Facility is not with GEO Corrections Holdings, Inc., but with Cornell Companies, Inc (Cornell). Cornell Companies, Inc. contracts with, and receives funds from, the U.S. Department of Justice. *See* Affidavit of Amber Martin at ¶ 2.” The FLA appears to ignore this specific sworn statement, and instead focuses on the more general Paragraph 6 of Ms. Martin’s affidavit, where she states: “GEO Corrections Holdings,

Inc. does not seek, negotiate, hold, or perform any federal government contracts, or any government contracts of any kind.”

With respect to Ms. Martin’s sworn statements, the FLA finds that they “are all phrased in the present tense, leaving open the possibility that [GCH] was the contractor at the time of the contributions.” *Id.* The phrasing of Ms. Martin’s averments simply reflects the fact that the federal contract to operate the D. Ray James Detention Facility was originally entered into by Cornell Companies, Inc. and that the contract continues with Cornell at present. GEO Corrections Holdings, Inc., is not now, and was not at the time of the contributions at issue, a federal government contractor.

In order to remove any doubt the Commission may have, we attach federal contract number DJB1PC012, for the operation of the D. Ray James Detention Facility. *See* Exhibit A. This contract conclusively demonstrates that the contracting party was *not* at any time, and is *not* at present, GCH. Rather, this contract was awarded to Cornell Companies, Inc. in January 2010, has been in effect since that time, and expires later this year. *Id.*; *see also* Response of January 20, 2017 at 3 (“The federal government’s contract for services in connection with the D. Ray James Detention Facility is not with GEO Corrections Holdings, Inc., but with Cornell Companies, Inc. Cornell Companies, Inc. contracts with, and receives funds from, the U.S. Department of Justice. *See* Affidavit of Amber Martin at ¶ 2.”); Response of January 20, 2017 at 4 (“Neither GEO Corrections Holdings, Inc., nor GEO Reentry Services, LLC, is a party to any federal contract involving the D. Ray James Detention Facility. *See* Affidavit of Amber Martin at ¶ 3.”); Response of January 20, 2017 at 4 (“GEO Corrections Holdings, Inc. does not operate the D. Ray James Detention Facility, and GEO Corrections Holdings, Inc. does not hold any contract, federal or otherwise, to provide services in connection with the D. Ray James Detention Facility. *See* Affidavit of Amber Martin at ¶ 4.”); Response of January 20, 2017 at 5 (“GEO Corrections Holdings, Inc. does not contract with any government entities, and does not provide services of any kind to any entities outside The GEO Group family of companies. Accordingly, GEO Corrections Holdings, Inc. has no government contracts of any kind. *See* Affidavit of Amber Martin at ¶ 6.”); Response of January 20, 2017 at 7 (“GEO Corrections Holdings, Inc. does not hold any government contracts (federal, state, or local), and was not a federal contractor at the time the contributions at issue were made.”); Response of January 20, 2017 at 14 (“GEO Corrections Holdings, Inc., did not at the relevant times (and does not currently) hold any federal contract.”).

The GEO Group, Inc., acquired Cornell Companies, Inc., on August 12, 2010 via a “reverse-triangular” merger. Cornell has been a wholly-owned subsidiary of The GEO Group since that time. *See* Response of January 20, 2017 at 3 (“Cornell Companies, Inc. was acquired by The GEO Group, Inc. via a “reverse-triangular merger” in 2010, and is now a wholly-owned subsidiary of The GEO Group, Inc.”) (footnote omitted). (GCH was not incorporated until December 26, 2012.)

On December 31, 2012, Cornell Companies, Inc., entered into an inter-company services agreement with CCG I, LLC, a former Cornell subsidiary also acquired by GEO in the 2010 merger, in order to subcontract performance of the D. Ray James contract. From December 31, 2012 through December 31, 2017, CCG I, LLC was the employer for all “GEO” personnel at D. Ray James. On December 31, 2017, CCG I, LLC merged into GEO Corrections and Detention, LLC, and GEO Corrections and Detention, LLC has been the personnel employer for the facility since that date.

Also attached are two modifications to the D. Ray James contract that identify the contracting party as Cornell Companies, Inc. The first, Modification 53, dated October 10, 2014, incorporates the collective bargaining agreement between The GEO Group, Inc. and the International Union, Security, Police and Fire Professionals of America (SPFPA). *See* Exhibit B. The second modification, Modification 88, dated January 25, 2018, incorporates the replacement collective bargaining agreement between the union and GEO Corrections and Detention, LLC. *See* Exhibit C. Both modifications further demonstrate that Cornell Companies, Inc., not GCH, was the federal contractor during the entire course of the D. Ray James contract.

The collective bargaining agreement, attached as Exhibit D, incorporated into the contract via Modification 53 is the end result – that is, the final outcome – of the 2013 NLRB complaint cited in the Complaint. The collective bargaining agreement is between The GEO Group, Inc. and the SPFPA. GCH was not a party to the collective bargaining agreement that resolved the referenced NLRB matter. In addition, this collective bargaining agreement was entered into by and between a private company and a non-governmental labor union on behalf of non-governmental employees. Thus, this collective bargaining agreement does not make GCH – or any other entity – a federal government contractor.

II. GEO Corrections Holdings, Inc. – Contracts Generally

GCH maintains a series of “inter-company” employee sharing and service agreements with a number of subsidiaries and affiliates of The GEO Group, Inc. Under these contracts, GCH provides corporate administrative and employee-related services to the various subsidiaries and affiliates. *See* Response of January 20, 2017 at 5. In preparing the Response of January 20, 2017, the Respondent performed a thorough review of all contracts to which GCH was a party during the period at issue. Nearly all of GCH’s contracts were (or are) with other subsidiaries and affiliates of The GEO Group, Inc. During the period 2015-2016, GCH had only two contracts with “external” parties (*i.e.*, entities other than subsidiaries and affiliates of The GEO Group, Inc.).

One of these “external” contracts was a collective bargaining agreement with the United Government Security Officers of America International Union (UGSOA) and its Local #840, effective from January 24, 2014 through January 23, 2017. The second “external” contract was a collective bargaining agreement with the UGSOA and its Local #880, effective from July 3,

2015 to July 2, 2018. None of these entities are units of the federal government, and the union employees covered by these CBAs are not federal government employees.

GCH entered into both collective bargaining agreements as the nominal employer of unionized personnel at U.S. Immigration and Customs Enforcement (ICE) facilities in Aurora, Colorado and Adelanto, California. By their incorporation into the contracts for the facilities, both agreements were assigned to GEO Corrections and Detention, LLC, which has operated the facilities involved in the agreements at all times relevant to this proceeding. The Aurora agreement was incorporated into The GEO Group, Inc.'s contract with ICE on September 11, 2014 (retroactively effective to January 24, 2014). The Adelanto agreement was incorporated into the intergovernmental services agreement between the City of Adelanto and ICE on September 1, 2015.

III. National Labor Relations Board Matter

The FLA also indicates that the Commission seeks additional information regarding representations made in a 2013 National Labor Relations Board (NLRB) matter. According to the FLA,

[b]ecause the GEO Respondents cannot sufficiently rebut why [GCH] 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 [GCH] was a federal contractor for as long as the Georgia Detention Facility has been under The GEO Group's ownership.

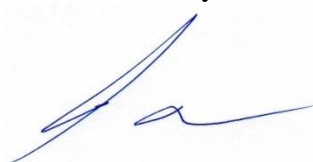
FLA at 7 n.33. The referenced NLRB filings are from 2013, pre-date the contributions at issue, and simply do not provide a reason to believe that GCH was a federal contractor two and three years later. Nevertheless, and as noted above, GCH was *not* a federal contractor at the time of the NLRB filings, despite what those filings may indicate.

The petition filed with the NLRB that initiated the 2013 matter was submitted by the SPFPA against GEO Corrections and Detention, LLC. *See* Exhibit E. The documents filed in the matter identified GEO Corrections and Detention, LLC as the "employer." The Respondent previously acknowledged that "[i]t is unclear why GEO Corrections Holdings, Inc., is identified as the employer in the NLRB action referenced in the Complaint." Response of January 20, 2017 at 3. Upon further review, it appears that the statements at issue were simply a matter of confusion. The NLRB action was filed on February 6, 2013. Approximately one month earlier, The GEO Group, Inc., underwent a conversion to a real estate investment trust (REIT). As part of this conversion, employees were "reallocated" among The GEO Group, Inc. and various operating subsidiaries, including GCH, GEO Corrections and Detention, LLC, and CCG I, LLC. We believe that the sweeping changes caused by the corporate restructuring contributed to some uncertainty in the NLRB matter, and the counsel involved in that matter may have been unaware of the inter-company agreement between Cornell Companies, Inc., and CCG I, LLC, referenced above, and simply identified the wrong "employer" in the action.

Nevertheless, as previously mentioned, the outcome of the NLRB matter was a collective bargaining agreement between The GEO Group, Inc.,¹ and the SPFPA, effective January 24, 2014. *See* Exhibit D. A contract modification dated September 11, 2014, was executed by Cornell Companies, Inc., the facility contractor, which incorporated the CBA into Cornell's contract, and assigned the collective bargaining agreement to Cornell (and by extension, CCG I, LLC, who actually employed the unionized officers). *See* Exhibit B. GCH has never been the employer at D. Ray James. And, as the D. Ray James contract and its modifications make clear, Cornell Companies, Inc. was, at all relevant times, the legal entity that holds the contract with the federal government.

Please feel free to contact us if you have any questions or require any additional information in this matter.

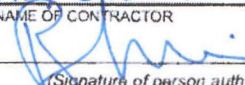

Sincerely,

A handwritten signature in blue ink, appearing to be 'Jason Torchinsky', written over a light blue rectangular background.

Jason Torchinsky
Michael Bayes

¹ The GEO Group, Inc. was neither the actual nor the named employer in this matter. The GEO Group, Inc. negotiated the CBA as the corporate parent company for the sake of efficiency. The CBA was then assigned to the appropriate subsidiary company by incorporating the CBA into the underlying government contract. The fact that the CBA was initially negotiated by The GEO Group, Inc. did not make The GEO Group, Inc. the employer or the government contractor.

Exhibit A
Federal Contract #DJB1PC012

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	OMB Clearance Control Number: 1103-0018
2. CONTRACT (Proc Inst Ident) NO DJB1PC012		3. EFFECTIVE DATE 01/12/2010		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	
5. ISSUED BY DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW - ROOM 5005 WASHINGTON, DC 20534		CODE CO	6. ADMINISTERED BY (If other than item 5)		CODE
7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) CORNELL COMPANIES, INC. 1700 WEST LOOP SOUTH, STE 1500 HOUSTON, TX 77027-3089				8. DELIVERY <input type="checkbox"/> FOB OR GIN <input checked="" type="checkbox"/> OTHER (See below)	
				9. DISCOUNT FOR PROMPT PAYMENT NET 30	
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN	
CODE: 760433642		FACILITY CODE: 797470549			
11. SHIP TO-MARK FOR		CODE	12. PAYMENT WILL BE MADE BY Federal Bureau of Prisons PRIVATIZATION MANAGEMENT BRANCH 400 FIRST STREET, NW SECOND FLOOR WASHINGTON, DC 20534		CODE CO
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()			14. ACCOUNTING AND APPROPRIATION DATA See Schedule		
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
	PROVIDE SERVICES FOR THE MANAGEMENT AND OPERATION OF A CORRECTIONAL FACILITY IN ACCORDANCE WITH RFP-PCC-0014. See Continuation Sheet(s)				
15G. TOTAL AMOUNT OF CONTRACT					\$206,510,787.25
16. TABLE OF CONTENTS					
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC. DESCRIPTION PAGE(S)
PART I - SCHEDULE				PART II - CONTRACT CLAUSES	
X	A	SOLICITATION/CONTRACT FORM	1	X	I CONTRACT CLAUSES 80
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	4	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH	
X	C	DESCRIPTION/SPECS/WORK STATEMENT	10	X	J LIST OF ATTACHMENTS 99
X	D	PACKAGING AND MARKING	64	PART IV - REPRESENTATIONS AND INSTRUCTIONS	
X	E	INSPECTION AND ACCEPTANCE	65	K	REPRESENTATIONS CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS
X	F	DELIVERIES OR PERFORMANCE	69		
X	G	CONTRACT ADMINISTRATION DATA	71	L	INSTRS., CONDS., AND NOTICES TO OFFERORS
X	H	SPECIAL CONTRACT REQUIREMENTS	75	M	EVALUATION FACTORS FOR AWARD
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE					
17. <input checked="" type="checkbox"/> CONTRACTORS NEGOTIATED AGREEMENT (Contractor is required to sign this document and return <u>2</u> copies to issuing office) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)			18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number <u>RFP-PCC-0014</u> , including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any condition sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.		
19A. NAME AND TITLE OF SIGNER (Type or print) BENJAMIN ERWIN SVP CORPORATE DEVELOPMENT			20A. NAME OF CONTRACTING OFFICER Doug Martz		
19B. NAME OF CONTRACTOR BY  (Signature of person authorized to sign)		19C. DATE SIGNED 1-12-10	20B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)		20C. DATE SIGNED 01/12/2010

Standard Form (SF) 26- Continuation Page

Contract Number: DJB1PC012 Solicitation Number: RFP-PCC-0014

Block 15G of SF-26 is the total estimated amount for the four year base period and is contingent upon FAR 52.232-18 Availability of Funds

In accordance with Item 17 - Contractor's Negotiated Agreement, the rights and obligations of the parties to this contract shall also be subject to and governed by the following:

I. Incorporated Changes:

D. Section J - List of Attachments

1. The following sections were removed:
 - a. J-10 Business Management Questionnaire
 - b. J-12 Question Submittal Form
 - c. J-13 Offeror's Intent to Propose
 - d. J-15 Procedural Guidance Complying With National Environmental Policy Act Requirements

II. Items Incorporated Into Contract DJB1PC012:

A. Amendments to solicitation RFP-PCC-0014

1. Amendment 1 to solicitation RFP-PCC-0014, dated 6/12/2008
2. Amendment 2 to solicitation RFP-PCC-0014, dated 6/30/2008
3. Amendment 3 to solicitation RFP-PCC-0014, dated 7/30/2008
4. Amendment 4 to solicitation RFP-PCC-0014, dated 8/8/2008
5. Amendment 5 to solicitation RFP-PCC-0014, dated 8/27/2008
6. Amendment 6 to solicitation RFP-PCC-0014, dated 3/18/2009
7. Amendment 7 to solicitation RFP-PCC-0014, dated 6/08/2009

8. Amendment 8 to solicitation RFP-PCC-0014, dated 8/27/2009
 9. Amendment 9 to solicitation RFP-PCC-0014, dated 9/29/2009
 10. Amendment 10 to solicitation RFP-PCC-0014, dated 10/22/2009
 11. Amendment 11 to solicitation RFP-PCC-0014, dated 11/23/2009
- B. Cornell's Price Proposal Revision dated 12/7/2009
- C. Cornell's Subcontracting Plan Revision dated 4/14/2009 and approved 12/5/2009
- III. Items Incorporated by Reference:
- A. Cornell's Offer and Other Documents
1. Initial Proposal dated 9/16/2008
- B. Cornell's Technical Proposals
1. Initial Proposal dated 9/16/2008
 2. Revisions dated 4/14/2009
 3. Revisions dated 12/7/2009
 4. Clarifications dated 12/10/2009
- C. Cornell's Final Proposal Revision Letter dated 12/7/2009
- IV. In the event a conflict exists between the contract terms (including the statement of work) and Cornell's proposal, the contract terms shall take precedence.
- V. The base period of the contract shall be 48 months from the date the Notice to Proceed is issued.
- VI. The total amount of the contract as set forth in Block 15G. of the SF 26 is estimated amount for the four-year base period.

//Last Item//

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 1
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2. AMENDMENT/MODIFICATION NO. 1	3. EFF. DATE 6/12/2008	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
------------------------------------	---------------------------	----------------------------------	--------------------------------

6. ISSUED BY FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW ROOM 5006 WASHINGTON DC 20534	7. ADMINISTERED BY (If other than Item 6) FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW ROOM 5006 WASHINGTON DC 20534
---	--

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) CCGI Corporation 1700 West Loop South, Suite 1500 Houston, TX 77027	9A. AMENDMENT OF SOLICITATION NO. X RFP-PCC-0014
	9B. DATED (SEE ITEM 11) 06/12/2008
	10A. MODIFICATION OF CONTRACT/ORDER NO. /
CODE	10B. DATED (SEE ITEM 13)

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103 (b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not is required to sign this document and return _____ copies to issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this amendment is to revise the cover letter of the solicitation. The second sentence of the second paragraph shall read as follows:

"Either solicitation may result in awards up to approximately 2,650 beds; however, the combined resulting awards from both solicitations will not exceed a maximum award of approximately 3,814 beds."

All other terms and conditions remain the same.

//Last item//

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin Senior Vice President, Corporate Development	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) AMANDA J. PENNEL
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 8/1/08
	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)
	16C. DATE SIGNED 6/12/2008

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE		PAGE OF PAGES 1 2	
2. AMENDMENT/MODIFICATION NO. 2		3. EFF. DATE 06/30/2008		4. REQUISITION/PURCHASE REQ. NO.	
5. PROJECT NO. (If applicable)		6. ISSUED BY CODE		7. ADMINISTERED BY (If other than Item 6) CODE	
FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET NW ROOM 5006 WASHINGTON DC 20534		FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET NW ROOM 5006 WASHINGTON DC 20534			
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)			9A. AMENDMENT OF SOLICITATION NO. X RFP-PCC-0014		
			9B. DATED (SEE ITEM 11) 06/12/2008		
			10A. MODIFICATION OF CONTRACT/ORDER NO. /		
CODE			10B. DATED (SEE ITEM 13)		
FACILITY CODE					
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input type="checkbox"/> is extended, <input checked="" type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:					
(a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103 (b).					
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not <input type="checkbox"/> is required to sign this document and return _____ copies to issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)					
THE PURPOSE OF THIS AMENDMENT IS TO CLARIFY LANGUAGE WITHIN THE COVER LETTER OF THE SOLICITATION. THE SECOND PARAGRAPH WAS REVISED AS FOLLOWS:					
- 2ND SENTENCE REMOVES THE FOLLOWING LANGUAGE, "EITHER SOLICITATION MAY RESULT IN AWARDS UP TO APPROXIMATELY 2,650 BEDS."					
- THE FOLLOWING SENTENCE WAS ADDED: "THE BOP ANTICIPATES DATE OF AWARD ON OR ABOUT MARCH 2009."					
THE ATTACHED REVISED COVER LETTER REPLACES THE ORIGINAL IN ITS ENTIRETY.					
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)		
			AMANDA J. PENNEL		
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA		16C. DATE SIGNED
_____ (Signature of person authorized to sign)			BY _____ (Signature of Contracting Officer)		6/30/2008

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT - Continuation			1. CONTRACT ID CODE	
2. AMENDMENT/MODIFICATION NO.	3. EFF. DATE	4. REQUISITION/PURCHASE REQ. NO.	PAGE OF	PAGES
2	06/30/2008		2	2

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

THE PRESOLICITATION NOTICE FOR RFP-PCC-0014 HAS ALSO BEEN AMENDED.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

//LAST ITEM//

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 1
2. AMENDMENT/MODIFICATION NO. 3	3. EFF. DATE 7/30/2008	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)
6. ISSUED BY FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW ROOM 5006 WASHINGTON DC 20534	CODE	7. ADMINISTERED BY (If other than Item 6) FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW ROOM 5006 WASHINGTON DC 20534	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) CCGI Corporation 1700 West Loop South, Suite 1500 Houston, TX 77027		9A. AMENDMENT OF SOLICITATION NO. X RFP-PCC-0014	9B. DATED (SEE ITEM 11) 06/12/2008
CODE	FACILITY CODE	10A. MODIFICATION OF CONTRACT/ORDER NO. /	10B. DATED (SEE ITEM 13)
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS			
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input checked="" type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning <u>1</u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.			
12. ACCOUNTING AND APPROPRIATION DATA (If required)			

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS,
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103 (b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (Specify type of modification and authority)
E. IMPORTANT: Contractor <input type="checkbox"/> is not <input type="checkbox"/> is required to sign this document and return _____ copies to issuing office.


14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

This amendment hereby extends the due date for receipt of proposals. Proposals must be received by the Contracting Officer by 2:00 PM Eastern Time, Tuesday, September 16, 2008.

All other terms and conditions remain the same.

//Last Item//

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin Senior Vice President, Corporate Development	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Amanda J. Pennel
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 8/1/08
16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 7/30/2008

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. 4	3. EFF. DATE 08/08/2008	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY CODE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET NW ROOM 5006 WASHINGTON DC 20534		7. ADMINISTERED BY (If other than Item 6) CODE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET NW ROOM 5006 WASHINGTON DC 20534		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)			9A. AMENDMENT OF SOLICITATION NO. RFP-PCC-0014	X
			9B. DATED (SEE ITEM 11) 06/12/2008	
			10A. MODIFICATION OF CONTRACT/ORDER NO. 1	
CODE			10B. DATED (SEE ITEM 13)	
FACILITY CODE				

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (Such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103 (b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (Specify type of modification and authority)
E. IMPORTANT: Contractor <input type="checkbox"/> is not <input type="checkbox"/> is required to sign this document and return _____ copies to issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

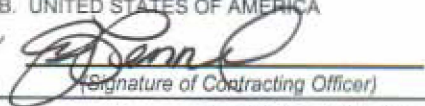
This amendment hereby incorporates the following attached Department of Labor Wage Determinations into the solicitation:

Wage Determination No.: Revision No.: Date of Last Revision:

Attachment I:

2005-2023	9	05/29/2008
2005-2043	8	05/29/2008
2005-2115	6	05/29/2008

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Amanda J. Pennel	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 08/08/2008

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT - Continuation			1. CONTRACT ID CODE	
2. AMENDMENT/MODIFICATION NO.	3. EFF. DATE	4. REQUISITION/PURCHASE REQ. NO.	PAGE OF	PAGES
4	08/08/2008		2	2

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Attachment II:

2005-2295	6	06/26/2008
2005-2297	5	06/12/2008
2005-2361	7	07/25/2008

Attachment III:

2005-2137	6	05/29/2008
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All other terms and conditions remain the same.

//Last item//

200521156

REGISTER OF WAGE DETERMINATIONS UNDER		U.S. DEPARTMENT OF LABOR
THE SERVICE CONTRACT ACT		EMPLOYMENT STANDARDS ADMINISTRATION
By direction of the Secretary of Labor		WAGE AND HOUR DIVISION
		WASHINGTON D.C. 20210
		Wage Determination No.: 2005-2115
Shirley F.Ebbesen		Revision No.: 6
Director		Date Of Last Revision: 05/29/2008

States: Florida, Georgia

Area: Florida Counties of Baker, Clay, Columbia, Duval, Hamilton, Lafayette, Madison, Nassau, Putnam, Saint Johns, Suwannee, Taylor

Georgia Counties of Brantley, Camden, Charlton, Glynn, Pierce

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	MINIMUM WAGE RATE
01000 - Administrative Support And Clerical Occupations	
01011 - Accounting Clerk I	12.06
01012 - Accounting Clerk II	12.83
01013 - Accounting Clerk III	16.03
01020 - Administrative Assistant	17.65
01040 - Court Reporter	14.34
01051 - Data Entry Operator I	11.02
01052 - Data Entry Operator II	13.15
01060 - Dispatcher, Motor Vehicle	16.74
01070 - Document Preparation Clerk	11.31

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01090 - Duplicating Machine Operator		11.31
01111 - General Clerk I		10.37
01112 - General Clerk II		11.80
01113 - General Clerk III		18.09
01120 - Housing Referral Assistant		15.84
01141 - Messenger Courier		10.89
01191 - Order Clerk I		11.14
01192 - Order Clerk II		12.65
01261 - Personnel Assistant (Employment) I		13.07
01262 - Personnel Assistant (Employment) II		14.62
01263 - Personnel Assistant (Employment) III		16.30
01270 - Production Control Clerk		18.78
01280 - Receptionist		10.56
01290 - Rental Clerk		10.75
01300 - Scheduler, Maintenance		12.70
01311 - Secretary I		12.70
01312 - Secretary II		14.21
01313 - Secretary III		15.84
01320 - Service Order Dispatcher		14.62
01410 - Supply Technician		17.65
01420 - Survey Worker		12.51
01531 - Travel Clerk I		11.42
01532 - Travel Clerk II		12.45
01533 - Travel Clerk III		13.42
01611 - Word Processor I		12.42
01612 - Word Processor II		15.29
01613 - Word Processor III		17.11
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		18.96
05010 - Automotive Electrician		16.74
05040 - Automotive Glass Installer		14.73
05070 - Automotive Worker		14.73

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05110 - Mobile Equipment Servicer	12.68
05130 - Motor Equipment Metal Mechanic	17.19
05160 - Motor Equipment Metal Worker	14.73
05190 - Motor Vehicle Mechanic	17.18
05220 - Motor Vehicle Mechanic Helper	12.01
05250 - Motor Vehicle Upholstery Worker	13.71
05280 - Motor Vehicle Wrecker	14.73
05310 - Painter, Automotive	15.73
05340 - Radiator Repair Specialist	14.73
05370 - Tire Repairer	11.70
05400 - Transmission Repair Specialist	17.19
07000 - Food Preparation And Service Occupations	
07010 - Baker	10.68
07041 - Cook I	9.54
07042 - Cook II	10.72
07070 - Dishwasher	7.78
07130 - Food Service Worker	9.21
07210 - Meat Cutter	12.74
07260 - Waiter/Waitress	8.20
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	15.02
09040 - Furniture Handler	9.62
09080 - Furniture Refinisher	15.02
09090 - Furniture Refinisher Helper	11.17
09110 - Furniture Repairer, Minor	13.09
09130 - Upholsterer	15.02
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	9.07
11060 - Elevator Operator	9.07
11090 - Gardener	12.04
11122 - Housekeeping Aide	9.33

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11150 - Janitor		9.92
11210 - Laborer, Grounds Maintenance		10.60
11240 - Maid or Houseman		8.15
11260 - Pruner		10.07
11270 - Tractor Operator		11.51
11330 - Trail Maintenance Worker		10.60
11360 - Window Cleaner		10.89
12000 - Health Occupations		
12010 - Ambulance Driver		15.60
12011 - Breath Alcohol Technician		17.67
12012 - Certified Occupational Therapist Assistant		24.19
12015 - Certified Physical Therapist Assistant		18.43
12020 - Dental Assistant		14.78
12025 - Dental Hygienist		27.39
12030 - EKG Technician		17.81
12035 - Electroneurodiagnostic Technologist		17.81
12040 - Emergency Medical Technician		14.96
12071 - Licensed Practical Nurse I		15.80
12072 - Licensed Practical Nurse II		17.67
12073 - Licensed Practical Nurse III		18.47
12100 - Medical Assistant		11.84
12130 - Medical Laboratory Technician		16.54
12160 - Medical Record Clerk		12.77
12190 - Medical Record Technician		14.72
12195 - Medical Transcriptionist		13.71
12210 - Nuclear Medicine Technologist		32.30
12221 - Nursing Assistant I		9.27
12222 - Nursing Assistant II		10.43
12223 - Nursing Assistant III		11.39
12224 - Nursing Assistant IV		12.77
12235 - Optical Dispenser		15.98
12236 - Optical Technician		12.12

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12250 - Pharmacy Technician	12.22
12280 - Phlebotomist	12.77
12305 - Radiologic Technologist	22.36
12311 - Registered Nurse I	20.99
12312 - Registered Nurse II	25.69
12313 - Registered Nurse II, Specialist	25.69
12314 - Registered Nurse III	31.09
12315 - Registered Nurse III, Anesthetist	31.09
12316 - Registered Nurse IV	37.23
12317 - Scheduler (Drug and Alcohol Testing)	20.51
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	16.11
13012 - Exhibits Specialist II	19.95
13013 - Exhibits Specialist III	24.41
13041 - Illustrator I	16.11
13042 - Illustrator II	19.95
13043 - Illustrator III	24.41
13047 - Librarian	22.10
13050 - Library Aide/Clerk	11.09
13054 - Library Information Technology Systems Administrator	20.85
13058 - Library Technician	12.87
13061 - Media Specialist I	14.40
13062 - Media Specialist II	16.11
13063 - Media Specialist III	17.96
13071 - Photographer I	12.92
13072 - Photographer II	16.00
13073 - Photographer III	18.79
13074 - Photographer IV	22.98
13075 - Photographer V	27.81
13110 - Video Teleconference Technician	15.10
14000 - Information Technology Occupations	

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14041 - Computer Operator I		13.41
14042 - Computer Operator II		14.44
14043 - Computer Operator III		16.96
14044 - Computer Operator IV		20.82
14045 - Computer Operator V		23.11
14071 - Computer Programmer I (1)		22.00
14072 - Computer Programmer II (1)		
14073 - Computer Programmer III (1)		
14074 - Computer Programmer IV (1)		
14101 - Computer Systems Analyst I (1)		
14102 - Computer Systems Analyst II (1)		
14103 - Computer Systems Analyst III (1)		
14150 - Peripheral Equipment Operator		15.41
14160 - Personal Computer Support Technician		20.82
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		25.63
15020 - Aircrew Training Devices Instructor (Rated)		31.00
15030 - Air Crew Training Devices Instructor (Pilot)		34.10
15050 - Computer Based Training Specialist / Instructor		24.27
15060 - Educational Technologist		21.78
15070 - Flight Instructor (Pilot)		34.10
15080 - Graphic Artist		20.70
15090 - Technical Instructor		18.93
15095 - Technical Instructor/Course Developer		23.16
15110 - Test Proctor		15.29
15120 - Tutor		15.29
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010 - Assembler		8.12
16030 - Counter Attendant		8.12
16040 - Dry Cleaner		10.36
16070 - Finisher, Flatwork, Machine		8.12
16090 - Presser, Hand		8.12

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16110 - Presser, Machine, Drycleaning	8.12
16130 - Presser, Machine, Shirts	8.12
16160 - Presser, Machine, Wearing Apparel, Laundry	8.12
16190 - Sewing Machine Operator	11.04
16220 - Tailor	11.72
16250 - Washer, Machine	8.84
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	16.70
19040 - Tool And Die Maker	21.00
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	13.90
21030 - Material Coordinator	18.78
21040 - Material Expediter	18.78
21050 - Material Handling Laborer	11.90
21071 - Order Filler	10.40
21080 - Production Line Worker (Food Processing)	13.90
21110 - Shipping Packer	13.53
21130 - Shipping/Receiving Clerk	13.53
21140 - Store Worker I	9.06
21150 - Stock Clerk	12.91
21210 - Tools And Parts Attendant	13.90
21410 - Warehouse Specialist	13.90
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural welder	22.54
23021 - Aircraft Mechanic I	21.46
23022 - Aircraft Mechanic II	22.54
23023 - Aircraft Mechanic III	23.66
23040 - Aircraft Mechanic Helper	13.64
23050 - Aircraft, Painter	18.68
23060 - Aircraft Servicer	15.99
23080 - Aircraft Worker	17.17

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23110 - Appliance Mechanic		15.85
23120 - Bicycle Repairer		12.87
23125 - Cable Splicer		22.36
23130 - Carpenter, Maintenance		15.90
23140 - Carpet Layer		15.91
23160 - Electrician, Maintenance		18.39
23181 - Electronics Technician Maintenance I		20.59
23182 - Electronics Technician Maintenance II		22.67
23183 - Electronics Technician Maintenance III		24.00
23260 - Fabric Worker		15.41
23290 - Fire Alarm System Mechanic		17.39
23310 - Fire Extinguisher Repairer		14.25
23311 - Fuel Distribution System Mechanic		21.25
23312 - Fuel Distribution System Operator		18.23
23370 - General Maintenance Worker		15.08
23380 - Ground Support Equipment Mechanic		21.46
23381 - Ground Support Equipment Servicer		15.99
23382 - Ground Support Equipment worker		17.17
23391 - Gunsmith I		16.81
23392 - Gunsmith II		18.67
23393 - Gunsmith III		20.74
23410 - Heating, Ventilation And Air-Conditioning Mechanic		17.70
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)		18.58
23430 - Heavy Equipment Mechanic		17.49
23440 - Heavy Equipment Operator		18.30
23460 - Instrument Mechanic		23.23
23465 - Laboratory/Shelter Mechanic		17.71
23470 - Laborer		11.90
23510 - Locksmith		15.02
23530 - Machinery Maintenance Mechanic		22.01
23550 - Machinist, Maintenance		18.36

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23580 - Maintenance Trades Helper		11.17
23591 - Metrology Technician I		23.23
23592 - Metrology Technician II		24.38
23593 - Metrology Technician III		25.60
23640 - Millwright		19.60
23710 - Office Appliance Repairer		19.74
23760 - Painter, Maintenance		15.02
23790 - Pipefitter, Maintenance		18.12
23810 - Plumber, Maintenance		17.03
23820 - Pneudraulic Systems Mechanic		18.87
23850 - Rigger		19.65
23870 - Scale Mechanic		16.55
23890 - Sheet-Metal Worker, Maintenance		19.44
23910 - Small Engine Mechanic		14.06
23931 - Telecommunications Mechanic I		22.88
23932 - Telecommunications Mechanic II		24.29
23950 - Telephone Lineman		20.88
23960 - welder, Combination, Maintenance		16.07
23965 - well Driller		16.82
23970 - woodcraft worker		18.87
23980 - Woodworker		12.11
24000 - Personal Needs Occupations		
24570 - Child Care Attendant		8.70
24580 - Child Care Center Clerk		12.73
24610 - Chore Aide		8.31
24620 - Family Readiness And Support Services Coordinator		13.37
24630 - Homemaker		18.59
25000 - Plant And System Operations Occupations		
25010 - Boiler Tender		21.43
25040 - Sewage Plant Operator		20.45
25070 - Stationary Engineer		21.43
25190 - Ventilation Equipment Tender		14.87

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25210 - Water Treatment Plant Operator	20.45
27000 - Protective Service Occupations	
27004 - Alarm Monitor	15.11
27007 - Baggage Inspector	9.62
27008 - Corrections Officer	13.12
27010 - Court Security Officer	13.12
27030 - Detection Dog Handler	13.68
27040 - Detention Officer	13.12
27070 - Firefighter	12.05
27101 - Guard I	9.62
27102 - Guard II	13.68
27131 - Police Officer I	18.34
27132 - Police Officer II	20.39
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	10.06
28042 - Carnival Equipment Repairer	10.21
28043 - Carnival Equipment Worker	8.18
28210 - Gate Attendant/Gate Tender	12.73
28310 - Lifeguard	11.01
28350 - Park Attendant (Aide)	14.24
28510 - Recreation Aide/Health Facility Attendant	10.13
28515 - Recreation Specialist	17.10
28630 - Sports Official	11.34
28690 - Swimming Pool Operator	14.87
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	17.26
29020 - Hatch Tender	17.26
29030 - Line Handler	17.26
29041 - Stevedore I	16.11
29042 - Stevedore II	18.46
30000 - Technical Occupations	

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30010	- Air Traffic Control Specialist, Center (HFO) (2)	33.96
30011	- Air Traffic Control Specialist, Station (HFO) (2)	23.42
30012	- Air Traffic Control Specialist, Terminal (HFO) (2)	25.79
30021	- Archeological Technician I	14.14
30022	- Archeological Technician II	15.82
30023	- Archeological Technician III	19.60
30030	- Cartographic Technician	19.60
30040	- Civil Engineering Technician	20.58
30061	- Drafter/CAD Operator I	14.76
30062	- Drafter/CAD Operator II	18.27
30063	- Drafter/CAD Operator III	20.00
30064	- Drafter/CAD Operator IV	21.71
30081	- Engineering Technician I	11.79
30082	- Engineering Technician II	15.06
30083	- Engineering Technician III	18.49
30084	- Engineering Technician IV	21.71
30085	- Engineering Technician V	26.51
30086	- Engineering Technician VI	32.13
30090	- Environmental Technician	17.83
30210	- Laboratory Technician	20.56
30240	- Mathematical Technician	21.52
30361	- Paralegal/Legal Assistant I	16.52
30362	- Paralegal/Legal Assistant II	20.72
30363	- Paralegal/Legal Assistant III	25.34
30364	- Paralegal/Legal Assistant IV	30.68
30390	- Photo-Optics Technician	21.52
30461	- Technical Writer I	19.12
30462	- Technical Writer II	23.38
30463	- Technical Writer III	27.29
30491	- Unexploded Ordnance (UXO) Technician I	21.58
30492	- Unexploded Ordnance (UXO) Technician II	26.11
30493	- Unexploded Ordnance (UXO) Technician III	31.30

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30494 - Unexploded (UXO) Safety Escort	21.58
30495 - Unexploded (UXO) Sweep Personnel	21.58
30620 - Weather Observer, Combined Upper Air Or Surface Programs (2)	19.59
30621 - Weather Observer, Senior (2)	21.78
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	13.82
31030 - Bus Driver	17.28
31043 - Driver Courier	14.66
31260 - Parking and Lot Attendant	7.86
31290 - Shuttle Bus Driver	15.41
31310 - Taxi Driver	10.31
31361 - Truckdriver, Light	15.41
31362 - Truckdriver, Medium	18.16
31363 - Truckdriver, Heavy	18.36
31364 - Truckdriver, Tractor-Trailer	18.36
99000 - Miscellaneous Occupations	
99030 - Cashier	8.29
99050 - Desk Clerk	9.58
99095 - Embalmer	23.86
99251 - Laboratory Animal Caretaker I	9.89
99252 - Laboratory Animal Caretaker II	10.39
99310 - Mortician	24.27
99410 - Pest Controller	14.06
99510 - Photofinishing Worker	12.21
99710 - Recycling Laborer	12.61
99711 - Recycling Specialist	17.03
99730 - Refuse Collector	11.19
99810 - Sales Clerk	12.00
99820 - School Crossing Guard	10.36
99830 - Survey Party Chief	18.02
99831 - Surveying Aide	10.21

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99832 - Surveying Technician		13.99
99840 - Vending Machine Attendant		11.62
99841 - Vending Machine Repairer		14.63
99842 - Vending Machine Repairer Helper		11.62

□

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.24 per hour or \$129.60 per week or \$561.60 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 8 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE PARENTHESES AFTER THEM RECEIVE THE FOLLOWING BENEFITS (as numbered):

1) Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates

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that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformance may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees

who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am.

If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime

(i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordinance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance

operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials

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which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

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The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall

be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

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Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

OFFEROR: _____

LOCATION: _____

PRICING SCHEDULE - BASE PERIOD

90% CONTRACT BEDS: Number of Contract Beds _____

100% CONTRACT BEDS: Number of Contract Beds _____

115% CONTRACT BEDS: Number of Contract Beds _____

FIUP will apply when the average number of inmates, in a monthly payment period, exceeds 90% of the contract beds **(See FIUP calculation explanation, page 6)**

BASE YEAR #1 (12 MONTHS) (includes Ramp Up Price)

Inmates up to (50%)	(50%+1) Inmates to(90%)	(90%+1) Inmates (115%)
Monthly Ramp Up Price (Estimated 3 months): \$ _____ Per month	Monthly Operating Price (MOP) (Estimated 9 months): \$ _____ Per month	Fixed Incremental Unit Price (FIUP) Per Inmate Day: \$ _____ Per day

Total Price/AOP (Ramp Up X 3 Months)+(MOP X 9 Months)+(FIUP to 115%): \$ _____

FIUP Can only apply to the nine month period and should be calculated as such.

BASE YEAR #2 (12 MONTHS)

Inmates up to(90%)	(90%+1)Inmates up to (115%)
Monthly Operating Price (MOP): \$ _____	Fixed Incremental Unit Price (FIUP) Per Inmate Day: \$ _____

Total Price/AOP (MOP x 12 Months)+(FIUP to 115%): \$ _____

BASE YEAR #3 (12 MONTHS)

Inmates up to(90%)	(90%+1)Inmates up to (115%)
Monthly Operating Price (MOP): \$ _____	Fixed Incremental Unit Price (FIUP) Per Inmate Per Day: \$ _____

Total Price/AOP (MOP x 12)+(FIUP to 115%): \$ _____

BASE YEAR #4 (12 MONTHS)

Inmates up to(90%)	(90%+1)Inmates up to (115%)
Monthly Operating Price (MOP): \$ _____	Fixed Incremental Unit Price (FIUP) Price Per Inmate Day: \$ _____

Total Price/AOP (MOP x 12)+(FIUP to 115%): \$ _____

RFP-PCC-0014**PART II - CONTRACT CLAUSES****SECTION I - CONTRACT CLAUSES****I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)
CLAUSES

NUMBER	DATE	TITLE
52.202-1	JUL 2004	DEFINITIONS
52.203-3	APR 1984	GRATUITIES
52.203-5	APR 1984	COVENANT AGAINST CONTINGENT FEES
52.203-6	SEP 2006	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	JUL 1995	ANTI-KICKBACK PROCEDURES
52.203-8	JAN 1997	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-10	JAN 1997	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	SEP 2007	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.203-13	DEC 2007	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT
52.204-4	AUG 2000	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER
52.204-7	APR 2008	CENTRAL CONTRACTOR REGISTRATION
52.204-9	SEP 2007	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL
52.204-10	SEP 2007	REPORTING SUBCONTRACT AWARDS
52.209-6	SEP 2006	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR

		PROPOSED FOR DEBARMENT
52.215-2	JUN 1999	AUDIT AND RECORDS-NEGOTIATION
52.215-8	OCT 1997	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT
52.215-11	OCT 1997	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS
52.215-13	OCT 1997	SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS
52.215-14	OCT 1997	INTEGRITY OF UNIT PRICES
52.215-15	OCT 2004	PENSION ADJUSTMENTS AND ASSET REVERSIONS
52.215-18	JUL 2005	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS
52.215-21	OCT 1997	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA-MODIFICATIONS
52.217-2	OCT 1997	CANCELLATION UNDER MULTIYEAR CONTRACTS
52.219-8	MAY 2004	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	APR 2008	SMALL BUSINESS SUBCONTRACTING PLAN Alternate II (OCT 2001)
52.219-16	JAN 1999	LIQUIDATED DAMAGES-SUBCONTRACTING PLAN
52.219-25	APR 2008	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM-DISADVANTAGED STATUS AND REPORTING
52.219-28	JUN 2007	POST-AWARD SMALL BUSINESS PROGRAM REPRESENTATION
52.222-1	FEB 1997	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
52.222-3	JUN 2003	CONVICT LABOR
52.222-4	JUL 2005	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION
52.222-21	FEB 1999	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	MAR 2007	EQUAL OPPORTUNITY
52.222-35	SEP 2006	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS W WITH DISABILITIES
52.222-37	SEP 2006	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE

		VETERANS
52.222-41	NOV 2007	SERVICE CONTRACT ACT OF 1965
52.222-43	NOV 2006	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT-PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)
52.222-50	AUG 2007	COMBATING TRAFFICKING IN PERSONS
52.223-6	MAY 2001	DRUG-FREE WORKPLACE
52.223-12	MAY 1995	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
52.223-14	AUG 2003	TOXIC CHEMICAL RELEASE REPORTING
52.224-1	APR 1984	PRIVACY ACT NOTIFICATION
52.224-2	APR 1984	PRIVACY ACT
52.225-13	JUN 2008	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1	DEC 2007	AUTHORIZATION AND CONSENT
52.227-2	DEC 2007	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.229-3	APR 2003	FEDERAL, STATE, AND LOCAL TAXES
52.232-1	APR 1984	PAYMENTS
52.232-8	FEB 2002	DISCOUNTS FOR PROMPT PAYMENT
52.232-9	APR 1984	LIMITATION ON WITHHOLDING OF PAYMENTS
52.232-11	APR 1984	EXTRAS
52.232-17	JUN 1996	INTEREST
52.232-18	APR 1984	AVAILABILITY OF FUNDS
52.232-23	JAN 1986	ASSIGNMENT OF CLAIMS
52.232-25	OCT 2003	PROMPT PAYMENT
52.232-33	OCT 2003	PAYMENT BY ELECTRONIC FUNDS TRANSFER-- CENTRAL CONTRACTOR REGISTRATION
52.233-1	JUL 2002	DISPUTES Alternate I (DEC 1991)
52.233-3	AUG 1996	PROTEST AFTER AWARD
52.233-4	OCT 2004	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM
52.237-3	JAN 1991	CONTINUITY OF SERVICES
52.242-1	APR 1984	NOTICE OF INTENT TO DISALLOW COSTS
52.242-13	JUL 1995	BANKRUPTCY
52.243-1	AUG 1987	CHANGES - FIXED-PRICE Alternate I (APR 1984)
52.244-6	MAR 2007	SUBCONTRACTS FOR COMMERCIAL ITEMS
52.246-4	AUG 1996	INSPECTION OF SERVICES - FIXED PRICE
52.248-1	FEB 2000	VALUE ENGINEERING
52.249-2	MAY 2004	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
52.249-8	APR 1984	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)
52.253-1	JAN 1991	COMPUTER GENERATED FORMS

[End of Clause]

I.2 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007)

(a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) Display of fraud hotline poster(s). Except as provided in paragraph (c)–

(1) During contract performance in the United States,

the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites–

(i) Any agency fraud hotline poster or Department

of Homeland Security (DHS) fraud hotline poster identified in paragraph (b) (3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company

website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Office of the Inspector General (OIG)

Fraud Detection Office

Attn: Poster Request

1300 N. 17th Street, Ste 3200

Arlington, VA 22209

Each request for posters must state the contract number and awarding component/bureau, provide a point of contact (with telephone number), mailing and/or Fed Ex address, and the quantity of posters requested.

Although Department of Homeland Security (DHS) posters are mentioned, **always** use the DOJ poster developed by our OIG.

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance

of this clause, including this paragraph (d), in all subcontracts that exceed \$5,000,000, except when the subcontract—

- (1) Is for the acquisition of a commercial item; or
- (2) Is performed entirely outside the United States.

[End of Clause]

I.3 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall --

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

[End of Clause]

I.4 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor prior to the expiration of the current period.

[End of Clause]

I.5 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor prior to the expiration of the current contract period; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

[End of Clause]

I.6 52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (JUL 2005)

(a) *Definition.* HUBZone small business concern, as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.*

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that

have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply if the offeror has waived the evaluation preference.

___ Offer elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants;

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

[End of clause]

I.7 52.222-39 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)

(a) Definition. As used in this clause--

"United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) Except as provided in paragraph (e) of this clause, during the term of this contract, the Contractor shall post a notice, in the form of a poster, informing employees of their rights concerning union membership and payment of union dues and fees, in conspicuous places in and about all its plants and offices, including all places where notices to employees are customarily posted. The notice shall include the following information (except that the information pertaining to National Labor Relations Board shall not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151-188)).

Notice to Employees

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues

and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll free number:

National Labor Relations Board
Division of Information
1099 14th Street, N.W.
Washington, DC 20570
1-866-667-6572
1-866-316-6572 (TTY)

To locate the nearest NLRB office, see NLRB's website at <http://www.nlr.gov>

(c) The Contractor shall comply with all provisions of Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR Part 470, and orders of the Secretary of Labor.

(d) In the event that the Contractor does not comply with any of the requirements set forth in paragraphs (b), (c), or (g), the Secretary may direct that this contract be cancelled, terminated, or suspended in whole or in part, and declare the Contractor ineligible for further Government contracts in accordance with procedures at 29 CFR part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 470, which implements Executive Order 13201, or as are otherwise provided by law.

(e) The requirement to post the employee notice in paragraph (b) does not apply to--

(1) Contractors and subcontractors that employ fewer than 15 persons;

(2) Contractor establishments or construction work sites where no union has been formally recognized by the Contractor or certified as the exclusive bargaining representative of the Contractor's employees;

(3) Contractor establishments or construction work sites located in a jurisdiction named in the definition of the United States in which the law of that jurisdiction forbids enforcement of union-security agreements;

(4) Contractor facilities where upon the written request of the Contractor, the Department of Labor Deputy Assistant Secretary for Labor-Management Programs has waived the posting requirements with respect to any of the Contractor's facilities if the Deputy Assistant Secretary finds that the Contractor has demonstrated that--

(i) The facility is in all respects separate and distinct from activities of the Contractor related to the performance of a contract; and

(ii) Such a waiver will not interfere with or impede the effectuation of the Executive order; or

(5) Work outside the United States that does not involve the recruitment or employment of workers within the United States.

(f) The Department of Labor publishes the official employee notice in two variations; one for contractors covered by the Railway Labor Act and a second for all other contractors. The Contractor shall--

(1) Obtain the required employee notice poster from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Download a copy of the poster from the Office of Labor-Management Standards website at <http://www.olms.dol.gov>; or

(3) Reproduce and use exact duplicate copies of the Department of Labor's official poster.

(g) The Contractor shall include the substance of this

clause in every subcontract or purchase order that exceeds the simplified acquisition threshold, entered into in connection with this contract, unless exempted by the Department of Labor Deputy Assistant Secretary for Labor-Management Programs on account of special circumstances in the national interest under authority of 29 CFR 470.3(c). For indefinite quantity subcontracts, the Contractor shall include the substance of this clause if the value of orders in any calendar year of the subcontract is expected to exceed the simplified acquisition threshold. Pursuant to 29 CFR Part 470, Subpart B--Compliance Evaluations, Complaint Investigations and Enforcement Procedures, the Secretary of Labor may direct the Contractor to take such action in the enforcement of these regulations, including the imposition of sanctions for noncompliance with respect to any such subcontract or purchase order. If the Contractor becomes involved in litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

[End of Clause]

**I.8 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES
(MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION.

EMPLOYEE CLASS	MONETARY WAGE-FRINGE BENEFITS	
Warehouse Specialist	WS-5	\$16.62
Chief Cook/Steward	WS-8	\$21.20
Instructor	GS-11	\$23.07
Secretary IV	GS-7	\$15.59
Secretary III	GS-6	\$14.03
Corrections Officer	GS-5	\$12.58
Personnel Assistant IV	GS-7	\$15.59
Personnel Assistant II	GS-5	\$12.58
Nursing Assistant	GS-7	\$15.59
Carpenter, Maintenance	WS-8	\$21.20
Automotive Worker	WS-8	\$21.20
Librarian	GS-11	\$23.07
Paralegal/Legal Assistant	GS-11	\$23.07

Stationary Engineer	WS-8	\$21.20
Licensed Practical Nurse	GS-7	\$15.59

[End of Clause]

**I.9 52.222-49 SERVICE CONTRACT ACT - PLACE OF PERFORMANCE
UNKNOWN (MAY 1989)**

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following:

Unavailable at this time.

=====
=====
=====

The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by or within 15 days of the release of the solicitation.

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

[End of Clause]

**I.10 52.237-7 INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE
(JAN 1997)**

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The

Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: \$1,000,000.00.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this

clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

[End of Clause]

I.11 DEPARTMENT OF JUSTICE (DOJ) RESIDENCY REQUIREMENT - BUREAU OF PRISONS CLAUSE (JUN 2004)

For three of the five years immediately prior to submission of an offer/bid/quote, or prior to performance under a contract or commitment, individuals or contractor employees providing services must have:

1. legally resided in the United States (U.S.);
2. worked for the U.S. overseas in a Federal or military capacity; or
3. been a dependent of a Federal or military employee serving overseas.

If the individual is not a U.S. citizen, they must be from a country allied with the U.S. The following website provides current information regarding allied countries:

<http://www.opm.gov/employ/html/citizen.htm>

By signing this contract or commitment document, or by commencing performance, the contractor agrees to this restriction.

[End of Clause]

I.12 NOTICE OF CONTRACTOR PERSONNEL SECURITY REQUIREMENTS (OCT 2005)

Compliance with Homeland Security Presidential Directive-12 (HSPD-12) and Federal Information Processing Standard Publication 201 (FIPS 201) (See Note i) entitled "Personal Identification Verification (PIV) for Federal Employees and Contractors," Phase I.

- (1) Long-Term Contractor Personnel:

In order to be compliant with HSPD-12/PIV I, the following investigative requirements must be met for each new long-term (See Note ii) contractor employee whose background investigation (BI) process begins on or after October 27, 2005:

- (a) Contractor Personnel must present two forms of identification in original form prior to badge issuance (acceptable documents are listed in Form I-9, OMB No. 1615-0047, "Employment Eligibility Verification," and at least one document must be a valid State or Federal government-issued picture ID);
- (b) Contractor Personnel must appear in person at least once before a DOJ official who is responsible for checking the identification documents. This identity proofing must be completed sometime during the clearance process but prior to badge issuance and must be documented by the DOJ official;
- (c) Contractor Personnel must undergo a BI commensurate with the designated risk level associated with the duties of each position. Outlined below are the minimum BI requirements for each risk level:
- High Risk - Background Investigation (5 year scope)
 - Moderate Risk - Limited Background Investigation (LBI) or Minimum Background Investigation (MBI)
 - Low Risk - National Agency Check with Inquiries (NACI) investigation
- (d) The pre-appointment BI waiver requirements for all position sensitivity levels are a:
- (1) Favorable review of the security questionnaire form;
 - (2) Favorable fingerprint results;
 - (3) Favorable credit report, if required; (See Note iii)
 - (4) Waiver request memorandum, including both the Office of Personnel Management schedule date and position sensitivity/risk level; and

- (5) Favorable review of the National Agency Check (NAC) (See Note iv) portion of the applicable BI that is determined by position sensitivity/risk level.

A badge may be issued following approval of the above waiver requirements.

If the NAC is not received within five days of OPM's scheduling date, the badge can be issued based on a favorable review of the Security Questionnaire and the Federal Bureau of Investigation Criminal History Check (i.e., fingerprint check results).

- (e) Badge re-validation will occur once the investigation is completed and favorably adjudicated. If the BI results so justify, badges issued under these procedures will be suspended or revoked.

(2) Short-Term Contractor Personnel:

It is the policy of the DOJ that short-term contractors having access to DOJ information systems and/or DOJ facilities or space for six months or fewer are subject to the identity proofing requirements listed in items 1a. and 1b. above. The pre-appointment waiver requirements for short-term contractors are:

- (a) Favorable review of the security questionnaire form;
- (b) Favorable fingerprint results;
- (c) Favorable credit report, if required; (See Note v) and
- (d) Waiver request memorandum indicating both the position sensitivity/risk level and the duration of the appointment. The commensurate BI does not need to be initiated.

A badge may be issued following approval of the above waiver requirements and the badge will expire six months from the date of issuance. This process can only be used once for a short-term contractor in a twelve month period. This will

ensure that any consecutive short-term appointments are subject to the full PIV-I identity proofing process.

For example, if a contractor employee requires daily access for a three or four-week period, this contractor would be cleared according to the above short-term requirements. However, if a second request is submitted for the same contractor employee within a twelve-month period for the purpose of extending the initial contract or for employment under a totally different contract for another three or four-week period, this contractor would now be considered "long-term" and must be cleared according to the long-term requirements as stated in this interim policy.

(3) Intermittent Contractors:

An exception to the above-mentioned short-term requirements would be intermittent contractors.

- (a) For purposes of this policy, "intermittent" is defined as those contractor employees needing access to DOJ information systems and/or DOJ facilities or space for a maximum of one day per week, regardless of the duration of the required intermittent access. For example, the water delivery contractor that delivers water one time each week and is working on a one-year contract.
- (b) Contractors requiring intermittent access should follow the Department's escort policy. Please reference the August 11, 2004, and January 29, 2001, Department Security Officer policy memoranda that conveys the requirements for contractor facility escorted access.
- (c) Due to extenuating circumstances, if a component requests unescorted access or DOJ IT system access for an intermittent contractor, the same pre-employment background investigation waiver requirements that apply to short-term contractors are required.
- (d) If an intermittent contractor is approved for unescorted access, the contractor will only be issued a daily badge. The daily badge will be issued upon entrance into a DOJ facility or space

and must be returned upon exiting the same facility or space.

- (e) If an intermittent contractor is approved for unescorted access, the approval will not exceed one year. If the intermittent contractor requires unescorted access beyond one year, the contractor will need to be re-approved each year.

(4) An individual transferring from another department or agency shall not be re-adjudicated provided the individual has a current (within the last five years), favorably adjudicated BI meeting HSPD-12 and DOJ's BI requirements.

(5) The DOJ's current escorted contractor policy remains unchanged by this acquisition notice

NOTES:

i FIPS 201 is available at:
www.csrc.nist.gov/publications/fips/fips201/FIPS-201-022505.pdf

ii Under HSPD-12, long-term contractors are contractors having access to DOJ information systems and/or DOJ facilities or space for six months or longer. The PIV-I identity proofing process, including initiation and adjudication of the required background investigation, is required for all new long-term contractors regardless of whether it is the current practice to issue a badge. The second phase of HSPD-12 implementation (PIV-II) requires badge issuance to all affected long-term contractors.

iii For contractors in position sensitivity/risk levels above level 1, a favorable review of a credit check is required as part of the pre-appointment waiver package.

iv In order to avoid a delay in the hiring process, components should request an Advance NAC Report when initiating investigations to OPM. Per OPM's instructions, to obtain an Advance NAC Report, a Code "3" must be placed in block "B" of the "Agency Use Only" section of the investigative form. This report is available for all case types.

v For contractors in position sensitivity/risk levels

above level 1, a favorable review of a credit check is required as part of the pre-appointment waiver package.

[End of Clause]

I.13 CONTINUING CONTRACT PERFORMANCE DURING A PANDEMIC INFLUENZA OR OTHER NATIONAL EMERGENCY (MAY 2008)

During a Pandemic or other emergency, we understand that our contractor workforce will experience the same high levels of absenteeism as our Federal employees. Although the Excusable Delays and Termination for Default clauses used in Government contracts list epidemics and quarantine restrictions among the reasons to excuse delays in contract performance, we expect our contractors to make reasonable effort to keep performance at an acceptable level during emergency periods.

The Office of Personnel Management (OPM) has provided guidance to Federal managers and employees on the kinds of actions to be taken to ensure the continuity of operations during emergency periods. This guidance is also applicable to our contract workforce. Contractors are expected to have reasonable policies in place for continuing work performance, particularly those performing mission critical services during a pandemic influenza or other emergency situation.

The types of actions a Federal contractor should reasonably take to help ensure performance are:

- Encourage employees to get inoculations or follow other preventive measures as advised by the public health service.
- Contractors should cross-train workers as backup for all positions performing critical services. This is particularly important for work such as guard services where telework is not an option.
- Implement telework to the greatest extent possible in the workgroup so systems are in place to support successful remote work in an emergency.
- Communicate expectations to all employees regarding their roles and responsibilities in relation to remote work in the event of a pandemic health crisis or other emergency.
- Establish communication processes to notify employees of

activation of this plan.

- Integrate pandemic health crisis response expectations into telework agreements.
- With the employee, assess requirements for working at home (supplies and equipment needed for an extended telework period). Security concerns should be considered in making equipment choices; agencies or contractors may wish to avoid use of employees' personal computers and provide them with PCs or laptops as appropriate.
- Determine how all employees who may telework will communicate with one another and with management to accomplish work.
- Practice telework regularly to ensure effectiveness.
- Make it clear that in emergency situations, employees must performance all duties assigned by management, even if they are outside usual or customary duties.
- Identify how time and attendance will be maintained.

It is the contractor's responsibility to advise the Government Contracting Officer if they anticipate not being able to perform and to work with the Bureau of Prisons (BOP) to fill gaps as necessary. This means direct communication with the Contracting Officer or in his/her absence, the Contracting Officer's Technical Representative, via telephone or e-mail messages acknowledging the contractor's notification. The incumbent contractor is responsible for assisting the BOP in estimating the adverse impacts of nonperformance and to work diligently with the BOP to develop a strategy for maintaining continuity of operations.

The BOP does reserve the right in such emergency situations to use Federal employees, employees of other agencies, contracting support from other existing contractors, or to enter into new contracts for critical support services. Any new contracting efforts would be acquired following the guidance in the Office of Federal Policy issuance "Emergency Acquisitions", dated May 2007 and Subpart 18.2, Emergency Acquisition Flexibilities, of the Federal Acquisition Regulations.

[End of Clause]

[End of Section]

RFP-PCC-0014**PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS****SECTION J - LIST OF ATTACHMENTS**

Attachment No.	Title	Page No.
J-1	Wage Determinations	2
J-2	Evaluation Techniques for Quality Assurance of Contractor Performance	3-4
J-3	Performance Requirements Summary Table (PRST)	5-9
J-4	Contractor Quality Control	10-11
J-5	Award Fee Determination Plan	12-14
J-6	Standards of Conduct	15-18
J-7	Scope and Coverage of a Limited Background Investigation (LBI)	19-21
J-8	Scope and Coverage of a Periodic Reinvestigation-Residence (PRIR)	22-23
J-9	Adjudication Standards for Resolving Limited Background Investigation (LBI) and Periodic Reinvestigation	24-30
J-10	Business Management Questionnaire	31-35
J-11	Subcontracting Plan	36-46
J-12	Question Submittal Form	47
J-13	Offeror's Intent to Propose	48
J-14	Required Government Space	49-50
J-15	Procedural Guidance Complying With National Environmental Policy Act Requirements	51-61
J-16	SENTRY Rules of Behavior	62
J-17	Federal Bureau of Investigation Criminal Justice Information Services Security Addendum	63-78
J-18	Qualifying Federal Offenses for Purposes of DNA Sample Collection	79-86
J-19	Information Systems Equipment	87-91
J-20	Procedures for Implementation of Walsh Act Civil Commitment of Sexually Dangerous Persons	92-101

RFP-PCC-0014**SECTION L - INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS****L.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) PROVISIONS

NUMBER	DATE	TITLE
52.207-1	MAY 2006	NOTICE OF STANDARD COMPETITION
52.215-1	JAN 2004	INSTRUCTIONS TO OFFERORS-- COMPETITIVE ACQUISITION Alternate II (OCT 1997)
52.219-24	OCT 2000	SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM--TARGETS
52.222-24	FEB 1999	PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION

[End of Provision]

L.2 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a fixed price with award-fee contract with a 4-year base period and three 2-year options resulting from this solicitation. The award fee will be awarded by the Government solely at its discretion.

[End of Provision]

L.3 52.233-2 SERVICE OF PROTEST (SEP 2006)

- (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

Procurement Executive
 Federal Bureau of Prisons
 320 First Street, N.W.
 Room 5006
 Washington, DC 20534

- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

[End of Provision]

L.4 PROTESTS FILED DIRECTLY WITH THE DEPARTMENT OF JUSTICE - JUSTICE ACQUISITION REGULATION 2852.233-70 (JAN 1998)

- (a) The following definitions apply in this provision:
- (1) "Agency Protest Official" means the official, other than the Contracting Officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.
 - (2) "Deciding Official" means the person chosen by the protestor to decide the agency protest; it may be either the Contracting Officer or the Agency Protest Official.
 - (3) "Interested Party" means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.
- (b) A protest filed directly with the Department of Justice must:
- (1) Indicate that it is a protest to the agency.
 - (2) Be filed with the Contracting Officer.

- (3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor is silent on this matter, the Contracting Officer will decide the protest.
- (4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the deciding official.
- (5) Include the information required by FAR 33.103(d) (2):
 - (i) Name, address, facsimile number and telephone number of the protestor.
 - (ii) Solicitation or contract number.
 - (iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protestor.
 - (iv) Copies of relevant documents.
 - (v) Request for a ruling by the agency.
 - (vi) Statement as to the form of relief requested.
 - (vii) All information establishing that the protestor is an interested party for the purpose of filing a protest.
 - (viii) All information establishing the timeliness of the protest.
- (c) An interested party filing a protest with the Department of Justice has the choice of requesting either that the Contracting Officer or the Agency Protest Official decide the protest.
- (d) The decision by the Agency Protest Official is an alternative to a decision by the Contracting Officer. The Agency Protest Official will not consider appeals from the Contracting Officer's decision on an agency protest.
- (e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on

availability of the necessary parties.

- (f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.
- (g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official may request additional information from either the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.
- (h) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not reimburse the protestor for any legal fees related to the agency protest.
- (i) The Department of Justice will stay award or suspend contract performance in accordance with FAR 33.103(f). The stay or suspension, unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.
- (j) The deciding official will make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written.
- (k) The Department of Justice may dismiss or stay proceeding on an agency protest if a protest on the same or similar basis is filed with a protest forum outside the Department of Justice.

[End of Clause]

L.5 FAITH-BASED AND COMMUNITY-BASED ORGANIZATIONS (AUG 2005)

Faith-based and Community-based organizations can submit offers/bids/quotations equally with other organizations for contracts for which they are eligible.

[End of Provision]

L.6 CONTRACTOR CERTIFICATION OF COMPLIANCE WITH FEDERAL TAX REQUIREMENTS (MAR 2008)

By submitting a response to a solicitation or accepting a contract award, the contractor certifies that, to the best of its knowledge and belief, the contractor has filed all Federal tax returns required during the three years preceding certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

[End of Provision]

L.7 PROPOSAL PREPARATION INSTRUCTIONS - GENERAL

Proposals are expected to conform to and be prepared in accordance with FAR 52.215-1, Instructions to Offerors-- Competitive Acquisition (contained in this solicitation). To aid in evaluation, proposals shall be clearly and concisely written as well as neat, indexed (cross-indexed as appropriate) and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the offeror, date and Request for Proposal (RFP) number to the extent practicable. Unless explicitly stated otherwise, **the proposal text shall be typed, using Courier New, Size 12, 1.5 spaced and printed (unreduced in size) on 8 ½ x 11 inch paper.**

The overall arrangement of the proposal shall be as follows:

- The overall proposal shall consist of four physically separate volumes, individually entitled as stated below. The required quantity of each volume is shown in the matrix below. Each copy of each volume shall be numbered sequentially.
- The first copy of each Volume #1 shall contain the signed original of all documents requiring signature by the offeror.
- Offerors may submit more than one proposal in response

to the RFP. Offerors shall submit a separate Volume #1 for each proposal submitted in the number of copies listed below. Offerors may avoid submitting redundant information in Volume #2 by following instructions at L.9 C. Offerors need only make one submission of Volume #3 information, regardless of the number of proposals offered.

<u>Proposal Volume</u>	<u>Total Copies Required</u>
Volume #1	2 (1 copy with original signatures)
Volume #2	10 (paper copies accompanied by multi-media - see L.9)
Volume #3	1 (multi-media - see L.10)
Volume #4	3 (paper copies accompanied by multi-media - see L.11)

L.8 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME #1: OFFER AND OTHER DOCUMENTS

Volume #1 consists of the actual offer to enter into a contract to perform the desired work. It also includes required representations, certifications, other statements of the offeror and any other administrative information.

- A. Format and Content - The volume shall include the following documents in the order listed:
1. Fully executed Standard Form 33 (SF 33), Solicitation, Offer and Award;
 2. Pricing schedules (extracted from Section B);
 3. Fully executed Offeror Representations, Certifications and Other Statements (extracted from Sections G, J, K and L as applicable);
 4. Decisional rule criterion (in accordance with Section L.8 C);
 5. Bureau of Prisons' (BOP) Contract Business Management Questionnaire (from Section J); and
 6. Small Business Subcontracting Plan (from Section J).

B. Proposal Form -

1. Use of the Form. SF 33, Solicitation, Offer and Award, which is Section A of the RFP, shall be fully executed by the offeror and shall be the first page of each copy of Volume #1.
2. Acceptance Period. The acceptance period shall be no less than the period of time entered by the Government on the SF 33 in Block 12.
3. Signature Authority. The individual signing the SF 33 shall provide proof they have the authority to commit the offeror to all requirements of the proposal, fully recognizing the Government has the right, by terms of the RFP, to make award without further discussions if it so elects. This individual shall also be required to attend any and all negotiations and pre-performance conferences, etc.

C. Decisional Rule Criterion - The preparation of this information is critical. If the proposal does not meet the requirements of the decisional rule criterion as defined in Section M, it shall not be evaluated. The decisional rule criterion must be sufficient unto itself for a determination of whether or not the proposal meets the relevant criteria. The BOP does not intend and has no obligation to refer to other volumes if the decisional rule criterion is not met.

To be considered, the offeror submitting the proposal must clearly demonstrate the following criteria at the time of proposal submission:

1. The proposed institution meets the definition of an existing institution as defined in Section C - Statement of Work **(Page Limitation - 5 pages)**
2. The offeror has corporate experience operating secure corrections/detention facilities for a continuous three-year period as of the date the RFP was issued. **(Page Limitation - 5 pages)**

D. Notification of State Authorities - The offeror shall submit proof the chief law enforcement officer (state Attorney General, State's Attorney, etc.) of the state in which the proposed facility is located has been

notified of the contractor's intent to manage and operate a correctional institution as identified in the solicitation.

The proof shall be a signed copy of the notification sent via registered or certified mail to the applicable state's chief law enforcement officer. The notification shall provide an accurate description of the program services the contractor will provide under any prospective contract to include, but not be limited to: size of the proposed facility/population, specific address of the proposed facility and type of offender the solicitation indicates could be placed at the proposed facility.

The proof of notification and a copy of the contents of the notification material submitted to state officials shall be part of the offeror's response to this solicitation.

The offeror shall submit a copy of any document it receives in response to the notification. The offeror's duty to submit such documentation shall continue until award.

L.9 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME #2: TECHNICAL PROPOSAL

Volume #2 consists of the offeror's technical approach to performing the requirement, offeror's technical capabilities and technical effort the offeror would apply to satisfy the requirements of the Statement of Work (SOW) (Section C). Since each offeror's technical proposal will be evaluated in accordance with Section M, it should be practical and prepared simply and economically, providing a straightforward, concise delineation of what it is the offeror will do to satisfy the requirements of the RFP.

Proposal page limitations will be strictly enforced.
Proposal content exceeding the specified page limitation will not be evaluated.

The proposal should not merely offer to perform work in accordance with the SOW but shall describe the actual work proposed as specifically as practical. The SOW reflects the requirements and objectives of the program under consideration; therefore, repeating or paraphrasing the SOW without sufficient elaboration is not acceptable.

Technical proposals shall be submitted in both paper copies and electronic format. Electronic copies may be submitted on compact disk (CD-ROM) in one of the following formats: WordPerfect (read only); Adobe Acrobat (PDF format); Visioneer Paperport (MAX file).

- A. Format and Content - Volume #2 shall include the following components:
1. Table of contents;
 2. List of attachments, tables and figures; and
 3. Technical discussion.
- B. Technical Discussion - This section shall describe the offeror's approach to performing the requirement. It must clearly address each issue identified below in as much detail as practical.
- C. Multiple Locations - Offerors may identify multiple locations in a single proposal. To avoid submitting redundant information, the proposal shall include a single Volume #2-A. Offerors shall submit a Volume #2-B for each performance location identified in the proposal. Any contract award will be for work performed at a single site - population cannot be split among locations.

VOLUME #2-A: TECHNICAL PROPOSAL

- A. Administration and Management -
1. Quality Control Program. The offeror shall describe its approach to evaluating and monitoring the operation of the facility during contract performance and how the offeror's Quality Control Program will be coordinated with the Quality Assurance Plan administered by the BOP. **(Page Limitation - 5 pages)**
 2. Organizational Structure. Each offeror shall provide a diagram of the proposed organizational structure. The diagram shall detail the corporate and facility lines of authority for this effort (including all proposed subcontracting and leasehold relationships) and the relationship of the organizational structure to both the BOP and the

offeror's corporate office. **(Page Limitation - 3 pages)**

3. Personnel and Staff Development. The offeror shall submit a plan for the employment and retention of qualified staff and identify the offeror's goals for equal employment opportunity. The offeror shall discuss the approach to staff development and its ability to manage inmates of various cultures found in a criminal alien population. **(Page Limitation - 5 pages)**

B. Institution Operations -

1. The offeror shall describe its approach for maintaining accountability of all offenders assigned to the institution. **(Page Limitation - 3 pages)**
2. The offeror shall describe its approach to responding to institution emergencies, including assistance from local and/or state authorities. **(Page Limitation - 10 pages)**

C. Institution Services -

1. The offeror shall discuss its approach to providing food services to the inmate population. **(Page Limitation - 3 pages)**
2. The offeror shall discuss its approach to the institution medical program. **(Page Limitation - 6 pages)**

D. Inmate Programs -

1. The offeror shall submit a detailed plan of all work, education and recreation programs. Each identified program shall include a brief description of the characteristics. **(Page Limitation - 5 pages)**
2. The offeror shall discuss its approach to maintaining inmate family ties (i.e., visiting, mail and telephone procedures). **(Page Limitation - 3 pages)**

VOLUME #2-B: TECHNICAL PROPOSALA. Contract Activation - The offeror shall submit:

1. A detailed schedule of the activation process identifying anticipated dates from contract award to issuance of the Notice to Proceed (NTP);
2. A staff activation schedule to include hiring, clearances and training; and
3. A complete list of all contractor policies to be developed and implemented. The list shall include the date each policy will be submitted for BOP review.

(Schedules shall reflect project calendar days, track task start/finish/duration, identify individual tasks and their relationship to other tasks.) **(Page Limitation - 15 pages)**

B. Staffing -

1. Human Resources. The offeror shall submit a staffing plan of all personnel necessary for the performance of the contract. The plan shall be organized by department and clearly and concisely illustrate: each position title; number of working days per week; number of staff per shift; relief factor; total number of full time equivalents for each position title, department and total complement; applicable hourly rate; and annual pay schedule. **(Page Limitation - 6 pages)**

C. Physical Plant -

1. The offeror shall specify the location of the proposed facility by providing the address and identifying the site on a general location map and a local area map.
2. The offeror shall identify the rated and total capacity of the proposed facility.
3. The offeror shall submit a brief DVD/video tour (15-30 minutes) of the proposed site and buildings.

4. The offeror shall submit half size prints of facility site plan (scale of original document: minimum 1" = 100 feet) showing the location of buildings, roads, fences, parking lots and walkways.
5. The offeror shall submit half-size prints (scale of original document: 1/8" = 1 foot) of architectural floor plans for each building showing:
 - a) Name/function of all rooms;
 - b) Total gross square footage of each program area and entire facility;
 - c) Entry into the secure perimeter by means of a secure entry point;
 - d) Physical plant security details, including, but not limited to: secure walls, security doors, secure ceilings, control center, sally ports and the secure perimeter; and
 - e) Location of required Government-occupied space as detailed in Section J.
6. The offeror shall explain the proposed facility's compliance status with the following:
 - a) Handicapped accessibility requirements;
 - b) Building code requirements;
 - c) Fire safety and life safety requirements;

and provide appropriate substantiation for each (e.g., certificates, licenses, etc.). If the facility is presently noncompliant, the offeror shall explain what action it will take to become compliant prior to the date scheduled for issuance of the NTP.

L.10 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME #3: PAST PERFORMANCE AND EXPERIENCE INFORMATION

The past performance and experience proposal shall serve to gather information regarding the quality of an offeror's past performance and the extent of an offeror's experience performing secure corrections/detention type services.

Offerors shall submit past performance and experience information in electronic format. The information may be submitted on compact disk (CDROM) in one of following

formats: WordPerfect (read only); Adobe Acrobat (PDF format); Visioneer Paperport (MAX file).

Offerors are encouraged to submit past performance and experience information prior to the due date for proposals to assist the Government in reducing the evaluation period.

A. Format and Content - At a minimum, the submission shall contain the information specified below in accordance with the following general format:

1. Table of contents;
2. List of tables and exhibits;
3. Past performance information; and
4. Corporate experience.

B. Past Performance - Offerors shall submit a list of all contracts and subcontracts related to secure corrections/detention services completed during the past three years and all contracts currently in progress. Contracts listed shall include those entered into with the federal government, agencies of state and local governments' customers.

Include the following information for each contract and subcontract:

1. Name of contracting activity;
2. Contract number;
3. Contract type (i.e., cost reimbursement, fixed-price);
4. Date of contract award and expiration;
5. Total contract value and per diem rate(s);
6. Definition of contract work;
7. Contracting officer and telephone number;
8. Program manager and telephone number;
9. Administrative contracting officer (if different

from #7 above) and telephone number; and

10. List of prime contractor or major subcontractors with contact names, addresses and telephone numbers.

C. Corporate Experience - The offeror shall provide the following information for each contract listed above:

1. If the contract was competitive or sole source and if the present contract was awarded as a follow-on contract;
2. Identify any change orders/modifications to the contract subsequent to award, basis of the change(s) and dollar value;
3. Identify if the operation has been accredited by the American Correctional Association, The Joint Commission and/or other professional organizations and the date of each accreditation;
4. In a brief narrative describe the extent to which the contract was/is similar to the requirements identified by this RFP (i.e., population quantity, population security level, size and complexity of staff complement, quality control approach) (a technical description sufficient to permit assessment must be provided to support the similarity);
5. Provide data representing the number of occurrences for the following listed incidents (include negative responses):
 - a) Escape;
 - b) Food/Work strike; and
 - c) Disturbances involving ten offenders or more; and
6. Provide information on problems encountered on the identified contracts and the corrective actions taken.

**L.11 PROPOSAL PREPARATION INSTRUCTIONS - VOLUME #4:
ENVIRONMENTAL DOCUMENTATION**

Volume #4 consists of the offeror's environmental

documentation which identifies the potential environmental impacts, proposed mitigation and any other relevant information pertaining to the impacts of the offeror's proposal. The documentation shall be completed in accordance with Section J. Each offeror's environmental documentation will be evaluated in accordance with Section M.

Documentation shall be submitted in both paper copies and electronic format. Electronic copies may be submitted on compact disk (CD-ROM) in one of the following formats: WordPerfect (read only); Adobe Acrobat (PDF format); Visioneer Paperport (MAX file).

Disclosure of information: Information submitted by any potential offeror in Volume #4 shall not be considered "Proprietary Information." The Government reserves the right to publicly disclose any information submitted.

L.12 FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) and its amendments have resulted in an increasing number of requests to federal agencies for copies of technical and business proposals from other than Government sources.

The offeror should identify information in its proposals the offeror believes should be withheld from these sources on the basis the proposals consist of "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (exemption (b)(4) of the FOIA). This identification will assist in the decision by a responsible federal official to disclose or withhold the requested information.

If an offeror considers elements of its proposal to be exempt under FOIA, ensure the following notice is annotated on the title page of the proposal: "Elements of this document, as identified on individual pages, are considered by the submitter to be privileged or confidential trade secrets or commercial or financial information not subject to mandatory disclosure under the Freedom of Information Act. Material considered privileged or confidential on this basis is contained on pages _____."

The offeror must annotate each individual item it considers privileged or confidential under the FOIA exemption with the following notice: "The data or information is considered

confidential or privileged and not subject to mandatory disclosure under the FOIA."

All information in an offeror's proposal not designated exempt may be subject to automatic public disclosure if it is requested under the FOIA. It must be emphasized that under the FOIA no information is automatically exempt from public disclosure. However, no disclosures will be made without careful evaluation, giving due regard to the need for safeguarding material considered privileged or confidential by the offeror. It is the policy of the Department of Justice to withhold, whenever possible, material that is genuinely privileged or confidential.

L.13 DISPOSITION OF PROPOSALS

Following selection of the successful contractor and contract award, unsuccessful proposals will be disposed of by retaining one copy at the contracting office having issued the solicitation and destroying the remaining copies by shredding.

[End of Section]

RFP-PCC-0014**SECTION M - EVALUATION FACTORS FOR AWARD****M.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)
PROVISIONS

NUMBER	DATE	TITLE
52.217-5	JUL 1990	EVALUATION OF OPTIONS

[End of Provision]

M.2 DECISIONAL RULE CRITERION

Unless otherwise stated, proposals must clearly demonstrate at the time of submission that offerors meet the following decisional rule criterion. Proposals will be reviewed on a go/no-go basis for the decisional rule criterion. Offerors whose proposals do not meet the decisional rule criterion shall be advised of their elimination from the procurement. Only those proposals which meet the decisional rule criterion shall be evaluated for award.

1. Qualification As An Existing Institution

Offerors must clearly demonstrate at the time of proposal submission that the proposed facility meets the definition of an existing institution as defined in Section C - Statement of Work, of the solicitation. The Government reserves the right to eliminate

proposals based on the adequacy of the documentation provided by the offeror to support the claim of qualifying as an existing institution.

2. Corporate Experience

Offerors must clearly demonstrate at the time of proposal submission they have corporate experience operating secure corrections/detention facilities for a continuous three-year period as of the date the solicitation was issued.

M.3 EVALUATION OF PROPOSALS

Award will be made to the responsible offeror whose proposal, conforming to this solicitation, is the most advantageous to the Government. The Government reserves the right to make multiple awards resulting from this solicitation.

M.4 OVERALL RELATIVE IMPORTANCE OF OTHER (NON-PRICE) EVALUATION CRITERIA AND PRICE

NON-PRICE EVALUATION CRITERIA

The non-price evaluation criteria are listed below in descending order of importance with Environment, Notification and Small Disadvantage Business Utilization all being equal in order of importance:

1. Past Performance
2. Technical Proposal
3. Environment
4. Notification
5. Small Disadvantaged Business Utilization

The combined non-price evaluation criteria are significantly more important than price. Price becomes a major factor in award selection when other criteria are substantially equal.

The Government reserves the right to award a contract to an offeror other than the offeror proposing the lowest price when the Government's evaluation determines a proposal is significantly superior from a non-price standpoint and warrants payment by the Government of a premium.

1. PAST PERFORMANCE

Each offeror will be evaluated on its performance under existing and prior contracts for similar services.

Performance information will be used for evaluating proposals and responsibility determinations. The evaluation will focus on information which demonstrates quality of performance relative to the size and complexity of the procurement under consideration. References other than those identified by the offeror may be contacted.

Information utilized may be obtained from the references listed in the proposal, other customers known to the Government or of whom it becomes aware, consumer protection organizations and any others who may have useful and relevant information. Information may also be considered regarding significant subcontractors, corporate personnel and essential personnel.

Past performance will be examined to ensure corrective measures have been implemented where problems in performance have occurred. Prompt corrective action in isolated instances may not outweigh overall negative trends.

Past performance will be evaluated to determine the quality control, business relations and customer satisfaction in the areas of security, personnel, health services, facility maintenance, inmate programs and institution services the offeror has delivered during its performance of prior and existing contracts for similar services. All factors are of equal importance.

Assessment of the offeror's experience will be one means of evaluating the viability of the offeror's proposal and its relative capability to meet the solicitation's performance requirements.

2. TECHNICAL PROPOSAL

Technical proposals will be evaluated to determine the soundness and anticipated effectiveness of the offeror's approach to perform the requirements identified in the Statement of Work and in Section L. Available points will be distributed equally among the following technical elements identified within the proposal instructions:

- Administration and Management
- Institution Operations

- Institution Services
- Inmate Programs
- Activation and Staffing
- Physical Plant

3. ENVIRONMENT

Information will be requested of offerors regarding past environmental activities and the environmental condition of proposed sites and institutions. Environmental documentation and other information will be required in order to comply with the National Environmental Policy Act of 1969 prior to contract award.

The Government will independently evaluate and verify the accuracy of the environmental documentation submitted in accordance with Sections J and L. Greater consideration will be given to the proposal which represents the "environmentally preferable" alternative. Environmentally preferable alternative means the proposal that has lesser or reduced environmental impacts or adverse environmental effects when compared with competing proposals.

The Government reserves the right to eliminate proposals based on the adequacy of the documentation provided by the offeror or the potential impact to the quality of the human environment.

The Government reserves the right to disclose or make public any environmental documentation or other information provided under this section. Such disclosures would typically occur in Environmental Impact Statements, Environmental Assessments, public hearings, comment periods and other public forums.

4. NOTIFICATION

Greater consideration will be given to proposals including positive or neutral responses from the chief law enforcement officer of the state in which the proposed facility is located. Failure to receive a response or receipt of a negative response will result in a lower score.

5. SMALL DISADVANTAGED BUSINESS (SDB) UTILIZATION

The offeror proposing the highest SDB participation, expressed as dollars and percentages of total contract value, shall receive the most points for this category. A proportionate amount of points will be awarded to each offeror below the highest ranked offeror in this

category.

PRICE

Prices proposed for each year of the base period and option periods will be evaluated in total. Award is based on best value. Although non-price factors are more important than price, as non-price factors become more equal, price becomes more important and may be the deciding factor for award.

[End of Section]

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. CONTRACT ID CODE	PAGE	OF PAGES
2. AMENDMENT/MODIFICATION NO. 6	3. EFFECTIVE DATE 3/18/2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)			
6. ISSUED BY DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW ROOM 5006 WASHINGTON, DC 20534		7. ADMINISTERED BY (If other than Item 6) FEDERAL BUREAU OF PRISONS AMANDA J. PENNEL, PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW ROOM 5006 WASHINGTON, DC 20534		CODE		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) Cornell Companies, Inc. 1700 West Loop South, Suite 1500 Houston, Texas 77027				(X)	9.A. AMENDMENT OF SOLICITATION NO. RFP-PCC-0014	
CODE					9.B. DATED (SEE ITEM 11) 6/12/2008	
FACILITY CODE					10.A. MODIFICATION OF CONTRACT/ORDER NO.	
					10.B. DATED (SEE ITEM 13)	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers extended is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such changes may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM APPLIES TO MODIFICATION OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.


14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible).

This amendment hereby incorporates the following changes to the solicitation:

(1) Section C - Statement of Work has been revised and should be replaced in its entirety with the attached document. The revisions consist of the following changes:

- Section B. General Administration: The following paragraph was added, "The contractor shall promptly make public announcements stating the facts of unusual newsworthy incidents to local media. Examples of such events include, but are not limited to, deaths by other than natural causes, escapes from custody, and institution emergencies."

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin, Senior Vice President, Corporate Development		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type of Print) AMANDA J. PENNEL	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED March 19, 2009	16B. UNITED STATES OF AMERICA  (Signature of Contracting Officer)	16C. DATE SIGNED 3/18/2009

AMENDMENT OF SOLICITATION/ MODIFICATION OF CONTRACT - CONTINUATION			1. CONTRACT ID CODE	
2. AMENDMENT/MODIFICATION NO.	3. EFF. DATE	4. REQUISITION/ PURCHASE REQ. NO.	PAGE OF	PAGE
6	3/18/2009		2	2

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible).

Section J -Discipline: The words “and SHU” were removed. The paragraph within this section now reads as follows: “The contractor shall comply with the policy and procedures for inmate discipline as contained in 28 CFR 541 and P.S. 5270.07, Inmate Discipline and Special Housing Units, dated 3/20/06. All data regarding the discipline incident report process for inmates shall be entered into SENTRY.”

Section O - Work and Correctional Industries: The following paragraph was removed, “As applicable, inmates shall be paid identical rates of pay as those established by the BOP. Current established rates are in P.S. 5251.05, Inmate Work and Performance Pay, dated 12/31/98, and 28 CFR 545.20.”

The following paragraph was added, “As applicable, inmates shall be paid identical rates of pay as those established by the BOP. Current established rates are in P.S. 5251.06, Inmate Work and Performance Pay, dated 10/1/08, and 28 CFR 545.20. The contractor shall develop procedures whereby inmates receiving performance pay who are found through the disciplinary process to have committed a level 100 or 200 series drug- or alcohol-related prohibited act will have performance pay reduced to maintenance pay level.”

- (2) Attachment J-2 - Evaluation Techniques for Quality Assurance of Contractor Performance has been revised and should be replaced in its entirety with the attached document. The revisions consist of the following changes:

The section entitled “Program Review Findings” was revised and the section entitled “Contractor Progress Report” was added.

//LAST ITEM//

Attachment J-2

EVALUATION TECHNIQUES FOR QUALITY ASSURANCE OF CONTRACTOR PERFORMANCE

General: In accordance with the Inspection of Services--Fixed-Price clause, the Federal Bureau of Prisons (BOP) may choose to apply a program review inspection process to either assess the contractor's performance or determine the amount of payment or both. The following is a description of the program review process.

Program Review is a system for inspecting performance, testing the adequacy of the internal quality controls and assessing risks for all program and administrative areas of contract performance.

The review guidelines will be based on the contractor's Quality Control Program (QCP), Statement of Work (SOW), professional guidelines referenced by the SOW, applicable BOP policy and any other appropriate measure within the contract's scope of work.

Contract requirements will be divided into various disciplines, each of which has a number of vital functions. Successful performance in a vital function is essential to successful performance of the related discipline. Each discipline comprises a specific percentage of the overall contract requirement. Deductions will be based on these percentages applied to the overall monthly invoice.

The BOP may, consistent with the scope of contract performance requirements, unilaterally change the vital functions identified in the Performance Requirements Summary Table (PRST). A minimum of 30 calendar days before the beginning of each evaluation period, the Contracting Officer (CO) will notify the contractor of any changes. If the contractor is not provided with the notification, the existing vital functions will continue in effect for the next evaluation period unless the contractor agrees to accept the proposed changes.

The BOP reserves the right to develop and implement new inspection techniques and instructions at any time during contract performance without notice to the contractor.

Management Assessment: Subsequent to award, the CO will convene a meeting in which the BOP and the contractor will cooperatively assess the contractor's QCP and the BOP's Quality Assurance Plan (QAP). The assessment process is intended to facilitate the

identification of strategic issues important to the QAP and QCP and a mutual understanding of both by BOP and contractor staff.

Program Review Steps: Review steps will utilize the findings of the contractor's QCP reports submitted to the BOP and direct observations, interviews and analytical determinations.

Generally, program reviews will be of two types:

1. Systematic - These reviews will be scheduled inspections focusing on a specific discipline. Inspections may be performed by onsite BOP monitors or by other parties designated by the CO as representatives of the BOP.
2. Ad-Hoc - These reviews will be conducted as a result of special interests arising from routine monitoring of the contractor's QCP, an unusual occurrence pertaining to the contract or other BOP concerns. These reviews could utilize established program review steps or an entirely different inspection approach.

Program Review Findings: At the conclusion of each review, a report (Contract Facility Monitoring Report) will be written documenting any findings identified during the monitoring.

Contractor Progress Report: The contractor shall receive a Contractor Progress Report within 60 days of the end of the six-month evaluation period.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT # CODE PAGE OF PAGES
 1 2

2. AMENDMENT/MODIFICATION NO. 7
 3. EFFECTIVE DATE 6/8/2009
 4. REQUISITION/PURCHASE REQ. NO.
 5. PROJECT ID. (If applicable)

6. ISSUED BY CODE DEPARTMENT OF JUSTICE
 FEDERAL BUREAU OF PRISONS
 PRIVATIZED CORRECTIONS CONTRACTING
 320 FIRST STREET, NW ROOM 5006
 WASHINGTON, DC 20534
 7. ADMINISTERED BY (If other than Item 6) CODE
 FEDERAL BUREAU OF PRISONS
 AMANDA J. PENNEL, PRIVATIZED CORRECTIONS CONTRACTING
 320 FIRST STREET, NW ROOM 5006
 WASHINGTON, DC 20534

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)
 Cornell Companies, Inc.
 1700 West Loop South, Suite 1500
 Houston, Texas 77027
 (X) 9.A AMENDMENT OF SOLICITATION NO. RFP-PCC-0014
 9.B DATED (SEE ITEM 11) 6/12/2008
 10.A MODIFICATION OF CONTRACT/ORDER NO.
 10.B DATED (SEE ITEM 13)
 CODE FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended is not extended.
 Others must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such changes may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible).

PLEASE SEE ATTACHED CONTINUATION PAGES.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin
 Senior Vice President, Business Development
 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or Print) AMANDA J. PENNEL
 15B. CONTRACTOR/OFFEROR
 15C. DATE SIGNED 6-9-09
 16B. UNITED STATES OF AMERICA
 16C. DATE SIGNED
 (Signature of person authorized to sign) (Signature of Contracting Officer)

AMENDMENT OF SOLICITATION/ MODIFICATION OF CONTRACT - CONTINUATION			1. CONTRACT ID CODE	
2. AMENDMENT/MODIFICATION NO.	3. EFF. DATE	4. REQUISITION/ PURCHASE REQ. NO.	PAGE OF	PAGE
7	6/8/2009		2	2

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible).

This amendment hereby incorporates the following changes into the solicitation:

- (1) Section C, Statement of Work, has been revised and should be replaced in its entirety with the attached document. The revisions consist of the following changes and are indicated by yellow highlight in the revised document:
- Section G. Information Systems and Research - Information Systems - Paragraph 5: The following language was added, "The network switching infrastructure must be Cisco hardware and software. BOP National Network Communications staff must be provided enable password access to all the Cisco infrastructure equipment."
 - Section I. Security and Control - Inmate Transportation: The following language was removed:
 "The contractor shall utilize restraint equipment identical to the BOP's (Peerless standard 10 oz. hand restraints and 15 oz. leg restraints; American Padlock with a PTK 3-1 key-way code 23638) when one-for-one equipment exchange is required (e.g., airlifts)"
 and was replaced with the following:
 "The contractor shall utilize restraint equipment identical to the BOP's [**Handcuffs:** stainless, nickel-plated steel, 10oz/12oz; **Leg Irons:** standard, nickel-plated steel, with approximately a 14 x ½ inch chain; **Martin Chain (Waist Chain):** chains shall be of case hardened variety with a minimum breaking strength of approximately 800 pounds; **American Padlock** with a PTKB-1 key-way code to be provided by on-site staff] when one-for-one equipment exchange is required (e.g., airlifts)."
- (2) Section H, Special Contract Requirements, has been revised and should be replaced in its entirety with the attached document. The following clauses have been removed from the solicitation: "Security of Systems and Data, Including Personally Identifiable Information" (Mar 2008) and "Information Resellers or Data Brokers" (Mar 2008).
- (3) Attachment J-19 has been revised and should be replaced in its entirety with the attached document.

All other terms and conditions remain the same.

//LAST ITEM//

RFP-PCC-0014

SECTION C - STATEMENT OF WORK

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1 **INTRODUCTION**

2 This Statement of Work (SOW) sets forth the contract performance
3 requirements for the management and operation of a contract
4 correctional institution(s) to accommodate up to 3,814 beds for a
5 low security adult male population consisting primarily of
6 criminal aliens. The criminal alien population will ordinarily
7 be low security non-U.S. citizen, primarily Mexican, adult males
8 with 90 months or less remaining to serve on their sentences.

9 The proposed facility(ies) shall be an existing institution to
10 accommodate approximately 900-2,650 beds on a daily basis. An
11 existing institution is defined as a secure facility which was
12 complete and ready for occupancy prior to the date the Pre-
13 solicitation Notice was released (May 28, 2008). A facility in
14 which construction or expansion began prior to May 28, 2008, and
15 in which such construction or expansion will be completed by
16 October 1, 2010, is considered to be an existing facility. Any
17 facility in which construction or expansion begins after
18 May 28, 2008, is not considered to be an existing facility and
19 will not be considered.

20 The facility must be able to meet all of the requirements of the
21 solicitation. The proposed facility(ies) must be located
22 anywhere in the continental United States. Offerors are
23 prohibited from housing any other inmate population within the
24 same fence perimeter; however, multiple populations at a prison
25 complex with separate fence lines would be acceptable. Shared
26 services within each fence line is not acceptable.

27 The institution shall include a Special Housing Unit (SHU) with a
28 capacity of at least 10% of the accepted number of contract beds.
29 The contractor will be required to house a daily population up to
30 15% over the accepted number of contract beds.

31 The contractor shall ensure the facility operates in a manner
32 consistent with the mission of the Bureau of Prisons (BOP). The
33 BOP's mission is the protection of society by confining offenders
34 in the controlled environments of prisons and community-based
35 facilities which are safe, humane, cost efficient, appropriately
36 secure and provide work and other self-improvement opportunities
37 to assist inmates in becoming law abiding citizens.

38 The contractor shall be ready to begin accepting inmates and
39 assume full responsibility for the operation, maintenance and
40 security of the institution no later than October 1, 2010.

41 Prior to issuance of the NTP, the BOP will perform numerous

1 assessments to ensure the contractor is prepared to accept
2 responsibility for performing all requirements of the contract.

3 The contractor shall notify the CO in writing when it is ready to
4 accept inmates and assume full responsibility for the operation,
5 maintenance and security of the institution 30 days prior to the
6 contractor's expected NTP date.

7 Unless otherwise specified, all plans, policies and procedures,
8 including those identified in the most current edition of
9 American Correctional Association Standards for Adult
10 Correctional Institutions (ACA/ACI Standards), shall be developed
11 by the contractor and submitted in writing to the Contracting
12 Officer's Representative (COR) for review and concurrence prior
13 to issuance of the NTP. Once concurrence has been granted, these
14 plans, policies and procedures shall not be modified without the
15 prior written concurrence of the COR.

16 The NTP will be issued subsequent to receiving the contractor's
17 notification it is prepared to receive inmates and the BOP's sole
18 determination the contractor is capable of accepting inmates.
19 The contractor shall be prepared to accept inmates immediately
20 upon issuance of the NTP.

21 It is anticipated the BOP will predominantly designate non-U.S.
22 citizens with deportation orders to the institution. However,
23 the BOP may designate any inmate within its custody utilizing the
24 same designation criteria as used at other BOP low security
25 facilities. P.S. 5100.08, Inmate Security Designation and
26 Custody Classification, dated 9/12/06, outlines the procedures
27 for designating inmates.

28 Inmate movement to the institution is anticipated to occur at an
29 estimated rate of 180 inmates per week. The estimated weekly
30 movement to the institution would result in a population of
31 approximately 900-2,650 inmates in 5-15 weeks. The institution
32 activation schedule of 180 inmates per week is an estimate only.
33 Actual movement will depend upon many factors, including, but not
34 limited to, the contractor's ability to provide services in
35 accordance with the contract, sentencing by the federal courts
36 and the BOP designation process.

37 The contractor does not have a right of refusal and shall accept
38 all designations from the BOP.

39 The contractor is prohibited from constructing any additional bed
40 space or facilities at the contract location after award without
41 the prior written approval of the CO.

1 The contractor shall furnish all personnel, management,
2 equipment, supplies and services necessary for performance of all
3 aspects of the contract. Unless explicitly stated otherwise, the
4 contractor is responsible for all costs associated with and
5 incurred as part of providing the services outlined in this
6 contract.

1 **EXPLANATION OF STATEMENT OF WORK TERMS**

2 ACA/ACI - American Correctional Association - Adult Correctional
3 Institution. The private, nonprofit organization that
4 administers the only national accreditation program for all
5 components of adult and juvenile corrections. Its purpose is to
6 promote improvement in the management of correctional agencies
7 through the administration of a voluntary accreditation program
8 and the ongoing development and revision of relevant, useful
9 standards.

10 BOP - Federal Bureau of Prisons.

11 CO - Contracting Officer. A Government employee, who by virtue
12 of a Contracting Officer's Warrant, is the only Government
13 employee authorized to obligate, negotiate, award, administer,
14 cancel or terminate contracts on behalf of the United States
15 Government. Contracting Officers are responsible for: ensuring
16 performance of all necessary actions for effective contracting,
17 ensuring compliance with the terms of the contract and
18 safeguarding the interest of the Government in its contractual
19 relationships.

20 Contract Award Date - The date the CO signs the contract.

21 Contract Day - A "day" is considered a calendar day.

22 Contractor - The entity to whom the Government has awarded the
23 contract.

24
25 COR - Contracting Officer's Representative. The Government
26 employee, designated in writing by the CO, authorized to perform
27 certain limited functions on behalf of the CO. The extent of COR
28 responsibilities are outlined in Section G of the contract and
29 the COR Designation Letter which will be provided to the
30 contractor. Typically, the COR is the Privatization Field
31 Administrator.

32
33 COTR - Contracting Officer's Technical Representative.
34 Government staff, designated in writing by the CO, who assist the
35 CO and COR in the performance of duties. The extent of COTR
36 responsibilities are outlined in Section G of the contract. COTR
37 responsibilities are delineated in writing by the CO and will be
38 provided to the contractor. Typically, the COTR is the Senior
39 Secure Institution Manager.

1 Credentials - Documents permitting primary source verification
2 regarding qualifications, including education, training,
3 licenser, experience and board certification of an employee.

4 DHO - Discipline Hearing Officer. The Government trained and
5 certified contractor employee responsible for conducting
6 disciplinary hearings.

7 DOJ - Department of Justice.

8 Emergency - Any significant disruption of normal institution
9 procedure, policy or activity caused by inmate disturbances, work
10 or food strikes, food borne illnesses, escapes, fires, natural
11 disasters, employee strikes or work stoppages or other serious
12 incidents.

13 EOIR - Executive Office for Immigration Review. A component of
14 the Department of Justice with responsibility for interpreting
15 and administering federal immigration law by conducting
16 immigration court proceedings, appellate reviews and
17 administrative hearings. The organization adjudicates
18 immigration cases involving detained aliens, criminal aliens and
19 aliens seeking asylum as a form of relief from removal.

20 FBI - Federal Bureau of Investigation.

21 FOIA Exempt - Information which is exempt from release under the
22 Freedom of Information Act, 5 United States Code (USC) 552.

23 Former Inmate - A person who has been found guilty of committing
24 a felony or misdemeanor for whom less than one year has elapsed
25 since release from custody or any type of supervision.

26 HSU - Health Services Unit. The organizational unit providing
27 routine and emergency health care. The HSU is the designated
28 part of a facility delivering health care to inmates.

29 ICE - United States Immigration and Customs Enforcement.

30 Inmate - An individual confined under the auspices and authority
31 of the BOP or under supervision of a federal court.

32 Inmate Records - Information concerning an inmate's personal,
33 criminal and medical history, behavior and activities while in
34 custody. This may include detainers, personal property receipts,
35 visitor lists, photographs, fingerprints, disciplinary
36 infractions and actions taken, grievance reports, work

1 assignments, program participation, miscellaneous correspondence
2 and forms prescribed by Government policy, etc.

3 Lethal Force - The force a person uses with the purpose of
4 causing or which they know or should know would create a
5 substantial risk of causing death or serious bodily harm.

6 MOAR - Minimum Operational Availability Rate. The monthly rate
7 for computer services/resource components which is a percentage
8 calculated by dividing the accumulated monthly down time hours by
9 the total number of hours of operation for a given month.

10 Negative Pressure Room - A room where the direction of air flow
11 is controlled by creating a lower (negative) pressure in the area
12 into which flow of air is desired.

13 NTP - Notice To Proceed. The official written notice signed and
14 issued by the CO which authorizes the contractor to proceed with
15 the contract and begin providing services under the contract.
16 The contractor shall be prepared to accept inmates immediately
17 upon issuance of the NTP.

18 OIG - Office of the Inspector General, Department of Justice.

19 P.S. - Program Statement. A BOP written directive that
20 establishes policy in a given area.

21 Records Office - The office responsible for maintaining records,
22 coordination of movement and other related functions.

23 Safety Equipment - Including, but not limited to, fire fighting
24 equipment (e.g., chemical extinguishers, hoses, nozzles, water
25 supplies, alarm systems, portable breathing devices, gas masks,
26 fans, first aid kits, stretchers).

27 Sensitive But Unclassified - Information which is unclassified
28 information of a sensitive, proprietary or personally private
29 nature which must be protected against release to unauthorized
30 individuals.

31 SENTRY - The BOP's online real-time database system used
32 primarily for maintaining information about federal inmates. It
33 contains information about sentencing, work assignments,
34 admission/release status and other special assignments for
35 monitoring inmate status. The SENTRY system also includes
36 property management and other modules which address most aspects
37 of incarceration.

1 Subcontract - Any agreement entered into by the contractor who
2 was awarded the contract ("prime contractor") with another entity
3 to provide services and supplies to accomplish performance of the
4 contract.

5 Subcontractor, Full Time - An individual performing work in the
6 contract facility which requires performance in excess of 29 or
7 more total days or 232 hours which can be accrued incrementally
8 (i.e., 2 hours per week, 3 days per week) or in a one month
9 period.

10 Subcontractor, Part Time - An individual performing work in the
11 contract facility which requires performance of 29 total days or
12 232 hours or less which can be accrued incrementally (i.e., 2
13 hours per week, 3 days per week) in a 29 day period. Part-time
14 subcontractors shall be escorted at all times while in the
15 institution or when outside the institution if the possibility
16 exists of coming into contact with inmates.

17 USMS - United States Marshals Service.

18 Warden - The contractor's official, regardless of title (e.g.,
19 Chief Executive Officer), who has ultimate onsite responsibility
20 for the overall management and operation of a facility.

21 Additional definitions are contained in the ACA/ACI Standards and
22 Standards Supplement.

1 **PERFORMANCE OBJECTIVES**

2 **A. Contract Performance**

3 All services and programs shall comply with the SOW; United
4 States Constitution; all applicable federal, state and local laws
5 and regulations; applicable Presidential Executive Orders (E.O.);
6 all applicable case law; and court orders. Should a conflict
7 exist between any of the aforementioned standards, the most
8 stringent shall apply. When a conflict exists and a conclusion
9 cannot be made as to which standard is more stringent, the CO
10 shall determine the appropriate standard. The contractor shall
11 comply with and implement any applicable changes to BOP policy,
12 Department of Justice (DOJ) regulation, Congressional mandate,
13 federal law, DC law or E.O. Should the Government invoke such
14 changes, the contractor retains rights and remedies (i.e.,
15 equitable adjustment) under the terms and conditions of the
16 contract.

17 BOP reserves the right to have various staff on site to monitor
18 contract performance. The Government reserves its right to
19 conduct announced and unannounced inspections of any part of the
20 institution at any time and by any method to assess contract
21 compliance.

22 **B. General Administration**

23 The contractor is required to perform in accordance with the most
24 current edition of the ACA/ACI Standards. The contractor shall
25 obtain ACA accreditation within 24 months of the NTP and shall
26 maintain continual compliance with all ACA/ACI Standards during
27 the performance of the contract unless otherwise specified by the
28 CO. Once full accreditation has been obtained, the contractor
29 shall maintain this accreditation throughout the life of the
30 contract, inclusive of any option periods exercised. Failure to
31 perform in accordance with contract requirements and to obtain
32 ACA accreditation within 24 months of the NTP may result in a
33 reduction of the monthly operating price in accordance with the
34 contract terms.

35 Accomplishment of some ACA/ACI Standards is augmented by BOP
36 policy and/or procedure. In these instances, the SOW identifies
37 and provides direction for the enhanced requirements.

1 The contractor is responsible for development and administration
2 of a comprehensive Quality Control Program (QCP) which ensures
3 all requirements of this contract are achieved. The specific
4 requirements for the QCP are detailed in Section J.

5 Several sections of this SOW require the contractor to maintain a
6 system of records identical to the BOP. The contractor shall not
7 establish a separate system of records without prior written
8 approval of the CO. All records related to contract performance
9 shall be retained in a retrievable format for the duration of the
10 contract. Except as otherwise expressly provided in this SOW,
11 the contractor shall, upon completion or termination of the
12 resulting contract or upon request, transmit to the Government
13 any records related to performance of the contract.

14 The contractor shall comply with all statutes, regulations and
15 guidelines from the National Archives and Records Administration.
16 Records and information management functions are required and
17 mandated by the following regulations: 44 USC 21, 29, 31 and 33;
18 36 Code of Federal Regulations (CFR) Chapter 12, Sub-chapters A
19 and B; Office of Management and Budget (OMB) Circular A-130; and
20 DOJ Order 2710.8C, Removal and Maintenance of, and Access to,
21 Documents. Criminal penalties for unlawfully destroying,
22 damaging or removing federal records is addressed in 18 USC 2071,
23 793, 794 and 798.

24 The contractor shall protect, defend, indemnify, save and hold
25 harmless the Government, BOP and its employees or agents from and
26 against any and all claims, demands, expenses, causes of action,
27 judgments and liability arising out of, or in connection with,
28 any negligent acts or omissions of the contractor, its agents,
29 subcontractors, employees, assignees or any one for whom the
30 contractor may be responsible. The contractor shall also be
31 liable for any and all costs, expenses and attorneys fees
32 incurred as a result of any such claim, demand, cause of action,
33 judgment or liability, including those costs, expenses and
34 attorneys fees incurred by the Government, BOP and its employees
35 or agents. The contractor's liability shall not be limited by
36 any provision or limits of insurance set forth in the resulting
37 contract.

38 In awarding the contract, the Government does not assume any
39 liability to third parties, nor will the Government reimburse the
40 contractor for its liabilities to third parties, with respect to
41 loss due to death, bodily injury or damage to property resulting

1 in any way from the performance of the contract or any
2 subcontract under this contract.

3 The contractor shall be responsible for all litigation, including
4 the cost of litigation, brought against it, its employees or
5 agents for alleged acts or omissions. The CO/COR shall be
6 notified in writing of all litigation pertaining to this contract
7 and provided copies of any pleadings filed or said litigation
8 within five working days of the filing. The contractor shall
9 cooperate with Government legal staff and/or the United States
10 Attorney regarding any requests pertaining to federal or
11 contractor litigation.

12 Policies and procedures shall be developed to ensure a positive
13 relationship is maintained with all levels of the federal
14 judiciary. The contractor's procedures shall ensure a tracking
15 system is established which mandates all judicial inquiries and
16 program recommendations are responded to in a timely and accurate
17 manner. All judicial inquiries and contractor responses
18 specifically related to an inmate shall be made part of the
19 inmate's central file.

20 The contractor shall notify the COR immediately when a request is
21 made by a member of the United States Congress for information or
22 to visit the institution. All responses to Congress shall be
23 cleared, in advance, by the COR.

24 The COR shall be notified when a request is made for inmate or
25 employee interviews or visits to the institution by any
26 representative of the media as defined by P.S. 1480.05, News
27 Media Contacts, dated 9/21/00. The contractor shall permit
28 inmate interviews by legitimate media consistent with P.S.
29 1480.05.

30 The contractor shall coordinate, in advance, all public
31 information related issues with the CO prior to NTP and the COR
32 after NTP. All press statements and releases shall be cleared,
33 in advance, with the CO prior to NTP and the COR after NTP.

34 The contractor shall promptly make public announcements stating
35 the facts of unusual newsworthy incidents to local media.
36 Examples of such events include, but are not limited to, deaths
37 by other than natural causes, escapes from custody and
38 institution emergencies.

1 The contractor shall ensure employees agree to use appropriate
2 disclaimers clearly stating the employees' opinions do not
3 necessarily reflect the position of the BOP or DOJ in any public
4 presentations they make or articles they write which relate to
5 any aspect of contract performance or the facility operations.

6 **C. Fiscal Management**

7 Commissary Operation

8 A commissary shall be operated by the contractor as a privilege
9 for inmates. The commissary shall have items available for
10 purchase which are not required to be furnished by the contractor
11 in accordance with the objectives of the contract. Inmates shall
12 have the opportunity to purchase from the commissary at least
13 once a week. A copy of the commissary inventory shall be
14 provided to the BOP upon request.

15 The contractor shall ensure inmates spend no more on purchases
16 than the BOP's current national spending limitation for
17 commissary sales. The contractor shall not sell or stock items
18 which are prohibited by the BOP as defined in P.S. 4500.05, Trust
19 Fund/Deposit Fund Manual, dated 1/22/07, Chapter 3.4.

20 The selling price of each item ordered and sold in the commissary
21 shall be calculated based on the cost of each sellable unit. The
22 markup of merchandise shall be no more than the following: 0%
23 for postage stamps, religious items, education course/resource
24 requirements; 5% for Special Purchase Orders (SPO) purchased at
25 retail cost; 30% on standard/SPOs purchased at non-retail cost;
26 preprinted sales prices printed on packaging will be sold at the
27 preprinted price. Once an item is marked up, any applicable
28 sales tax will need to be added and the total price rounded to
29 the next highest nickel.

30 The contractor shall establish procedures to maintain
31 accountability of all trust fund monies and property to prevent
32 waste, fraud and abuse.

33 The contractor shall review commissary inventories for excessive
34 inventory differences and to ensure the commissary remains within
35 acceptable tolerance levels. The tolerance level for inventory
36 differences is calculated by multiplying .0025 times the last six
37 months sales at cost.

1 The contractor shall establish procedures in accordance with P.S.
2 4500.05, Trust Fund/Deposit Fund Manual, dated 1/22/07, Chapter
3 3, when disposing of commissary merchandise when it is damaged,
4 unfit for resale or destroyed. The total of unsaleable
5 merchandise at cost cannot exceed .0015 times the actual regular
6 commissary semi-annual sales at cost in any one inventory period.

7 Inmate Benefit Fund

8 Any revenues earned in excess of those needed for commissary
9 operations shall be used to provide benefit to all inmates via an
10 inmate benefit fund. The contractor may use P.S. 4500.05,
11 Chapter 2, as a guide for appropriate expenditures from this
12 fund. However, prohibited items, as defined by the BOP, shall
13 not be purchased with commissary revenues. Individual
14 expenditures from the inmate benefit fund that exceed \$10,000
15 shall be approved by the contractor's corporate office. Records
16 of inmate benefit fund expenditures shall be maintained on site
17 at the contract facility and available for review by the BOP. At
18 the conclusion of the contract, the inmate benefit fund shall
19 revert back to the Government. Any interest earned on this fund
20 shall be credited to the inmate benefit fund.

21 Inmate Funds

22 If inmate funds are placed in an interest bearing account, the
23 interest earned must be credited to the inmate.

24 Procedures shall be established for transferring inmate personal
25 funds upon release from the institution, transfer to another
26 institution or when an inmate requests a funds transfer to an
27 outside source. The contractor shall ensure all inmates who are
28 scheduled for removal to foreign destinations are given all funds
29 immediately prior to release from the institution. Transfer of
30 inmate funds shall occur within five working days upon release
31 from the institution, transfer to another institution or when an
32 inmate requests a funds transfer to an outside source.

33 Inmates who transfer to a BOP institution shall have their funds
34 sent to the BOP National Lockbox address below in accordance with
35 the procedures defined in P.S. 4500.05, Chapter 9.6:

1 Federal Bureau of Prisons
2 *Insert Inmate Eight Digit Register Number*
3 *Insert Inmate's Committed Name*
4 PO Box 474701
5 Des Moines, IA 50947-0001

6 Unclaimed Inmate Funds

7 The contractor shall exhaust all avenues to locate inmates and
8 forward their inmate account balances. If after three months the
9 inmate cannot be located, the contractor shall forward the inmate
10 account balance to the BOP as instructed below:

- 11 1) Check made payable to the individual inmate must
12 contain the inmate's committed name and register
13 number. The sender's name must be included on the
14 check and/or mailing envelope.
- 15 2) Check made payable to the BOP for the purposes of
16 consolidating several inmate account balances must be
17 accompanied by a Field Submission Form provided by the
18 BOP.
- 19 3) Field Submission Forms shall list the inmate's
20 committed name, register number and amount to be
21 credited to the inmate. One Field Submission Form
22 shall be completed for each check.
- 23 4) Signed memorandum must accompany each Field Submission
24 Form certifying all avenues to locate the inmate(s)
25 listed on the form have been exhausted.
- 26 5) Unclaimed funds shall be sent to the following address:

27
28 Federal Bureau of Prisons
29 *Insert Inmate Eight Digit Register Number*
30 *Insert Inmate's Committed Name*
31 Trust Fund Branch/Deposit Fund
32 320 First Street, NW
33 Room 5005
34 Washington, DC 20534

35 **D. Personnel**

36 For purposes of the Personnel portion of the contract, the terms
37 "employee," "subject" and "applicant" refer to any person
38 applying to work for the contractor as an employee or

1 subcontractor, or who may already be employed by the contractor,
2 who has not previously completed the personnel security
3 requirements detailed in this section of the contract and who has
4 not received a favorable suitability adjudication from the BOP.

5 The contractor shall develop written procedures for the security
6 and supervision of employees and subcontractors who work on this
7 contract in accordance with the Notice of Contractor Personnel
8 Security Requirements Clause and with the requirements of
9 Homeland Security Presidential Directive-12 (HSPD-12) located in
10 Section I of the contract. The procedures shall include record
11 keeping, identification badges and escort protocols. The
12 contractor shall include these procedures in the contractor's
13 Personnel Policy Manual.

14 Staffing Plan

15 The contractor may restructure the staffing plan in any manner
16 that does not reduce the minimum performance requirements of the
17 contract and does not eliminate essential personnel or personnel
18 as required by the most current version of ACA/ACI Standards.

19
20 The contractor shall provide the CO with a staffing plan and
21 subsequent changes to the staffing plan.

22

23 Employment Procedures

24 The Warden or designee shall be the contractor's contact person
25 for all matters regarding the processing of contractor personnel.

26 Prior to employees entry on duty (EOD) at the facility, the
27 contractor shall ensure the following steps are completed for
28 each applicant, full or part time, as listed below:

- 29 1) Conduct a credit check for employment purposes as
30 described in the Fair Credit Reporting Act;
- 31 2) Conduct a pre-employment interview;
- 32 3) Complete an Employment Eligibility Verification (Form
33 I-9);
- 34 4) Voucher the applicant's employment record for the past
35 five years;
- 36 5) Perform a Law Enforcement Agency Check for the past
37 five years;
- 38 6) Certify the applicant is a U.S. citizen (see below -

- 1 Other Requirements);
- 2 7) Certify the applicant has met the residency
- 3 requirements (see below - Other Requirements);
- 4 8) Applicant shall complete Questionnaire for Public Trust
- 5 Positions (SF-85P) or approved equivalent;
- 6 9) Complete and submit FBI fingerprint form (FD-258);
- 7 10) Coordinate the process for BOP staff to conduct
- 8 criminal history checks from the National Crime
- 9 Information Center (NCIC) and National Law Enforcement
- 10 Telecommunication System (NLETS).

11 The contractor shall also ensure the following HSPD-12

12 requirements are completed for each applicant who requires access

13 to federal information systems, i.e., SENTRY:

- 14 • Employment Eligibility Verification (Form I-9) must be
- 15 verified by a BOP official;
- 16 • Coordinate the process with the BOP for a National
- 17 Agency Check with Inquiries (NACI);
- 18 • Questionnaire for Public Trust Positions (SF-85P) and
- 19 FBI fingerprint form (FD-258) shall be submitted to the
- 20 Office of Personnel Management (OPM).
- 21

22 The determination for employment suitability must be made using

23 the BOP's current Guidelines of Acceptability (Guidelines).

24 Based on steps #1-8 and the Guidelines, the contractor will

25 determine if the applicant is suitable for employment. The

26 Warden shall certify steps #1-8 have been completed with

27 satisfactory results and submit this certification with the

28 applicant's information to the BOP for conditional approval. The

29 applicant's information shall include the following: full name,

30 date of birth, driver's license number and issuing state, social

31 security number and position applied for.

32 The contractor shall also certify the HSPD-12 requirements listed

33 above have been completed for applicants requiring access to

34 federal information systems. The contractor's request for

35 conditional approval for these applicants must include the

36 schedule date for the OPM-NACI investigation and indicate the

37 request is for a moderate risk level position.

38 After receiving the BOP's conditional approval, the contractor

39 shall complete the following steps:

40

- 41 11) Conduct a urinalysis in accordance with P.S. 3735.04,

1 Drug Free Workplace, dated 6/30/97;

- 2 12) Applicant shall complete Supplemental Questionnaire for
3 Selected Positions (OPM SF-85P-S) or approved
4 equivalent;
5 13) Notify COR of Limited Background Investigation (LBI)
6 initiation.

7 Positions requiring the OPM SF-85P-S or equivalent are those
8 employees required to carry firearms during the course of their
9 employment.

10 Contractor responsibilities subsequent to EOD date:

- 11
12 14) Notify COR within 24 hours of actual EOD;
13 15) Receipt and review of LBI report (Section J).
14

15 The BOP retains authority to approve all contractor staff,
16 subcontractor employees and volunteers who work or have contact
17 with federal inmates under the terms of this contract. No
18 individual who is under supervision or jurisdiction of any
19 parole, probation or correctional authority shall be employed.

20 The contractor shall develop procedures to coordinate with the
21 COR to process and initiate NCIC/NLETS functions in accordance
22 with P.S. 1280.11, JUST, NCIC, and NLETS Telecommunication
23 Systems (Management and Use), dated 1/7/00, for criminal history
24 checks to maintain institution security. NCIC/NLETS may not be
25 utilized for Justice Employment checks. The contractor shall
26 adhere to the Federal Bureau of Investigation (FBI) Criminal
27 Justice Information Services (CJIS) Security Addendum as included
28 in Section J of the contract. The contractor shall ensure use of
29 NCIC/NLETS is performed only to the direct benefit and
30 furtherance of the contract.

31 The contractor shall develop procedures to coordinate with the
32 COR to process and submit the forms required to obtain a NACI in
33 accordance with the provisions of HSPD-12 as located in Section I
34 of the contract and as required by OPM.

35 Within one year of each onsite employee's EOD, the contractor
36 shall obtain, review, identify and resolve derogatory information
37 contained on the LBI results using the Adjudication Standards for
38 Resolving Limited Background Investigations and Periodic
39 Reinvestigations outlined in Section J. The contractor shall
40 determine the employee's suitability for employment under this

1 contract. Investigations with little or no derogatory
2 information will be reviewed and forwarded to the COR within 90
3 days of the investigation completion date. Investigations
4 requiring resolution of derogatory information will be forwarded
5 within 180 days of the investigation completion date. Extended
6 adjudication time frames on a case-by-case basis may be requested
7 from the COR.

8 The contractor shall ensure all employees and full-time
9 subcontractor employees are reinvestigated as prescribed in the
10 Scope and Coverage of a Periodic Reinvestigation in Section J of
11 the contract.

12 Upon receipt, review and resolution of any derogatory information
13 contained in the reinvestigation report, the Warden shall forward
14 to the COR a written final determination regarding the employee's
15 continued employment under this contract. A copy of the
16 reinvestigation report results shall be attached.

17 The contractor shall maintain all personnel records on site for
18 the duration of the contract and make these records available to
19 the BOP upon request.

20 Waivers

21 If the applicant does not meet the BOP's current Guidelines and
22 is still a desirable employee, the contractor may request a
23 written waiver to the Guidelines, submitted to the COR, which
24 includes:

- 25 1) details and circumstances of the applicant's behavior
26 which is outside the Guidelines;
- 27 2) reason(s) why the applicant should receive further
28 consideration; and
- 29 3) availability of other suitable applicants.

30 Other Requirements

31
32 The contractor shall not employ any individual who has a felony
33 or misdemeanor conviction of domestic violence.

34 The contractor shall not employ any individual who is not a U.S.
35 citizen unless otherwise approved by the CO. Citizens of the
36 United States include those who were: born in the United States
37 (the fifty states, District of Columbia, Puerto Rico, Guam (since

1 1950) or the United States Virgin Islands); born outside the
2 United States to parents who are citizens of the United States,
3 one of which was physically present in the United States or one
4 of its outlying possessions for a continuous period of one year
5 at any time prior to the birth of the person (in some situations
6 only one person has to be a citizen); naturalized as a U.S.
7 citizen; or otherwise granted citizenship under authorities
8 described in law, beginning at 8 USC 1401. For non-citizen
9 applicants of subcontractors, the contractor must seek approval
10 from the CO. Non-citizen applicants of subcontractors must be
11 citizens of an allied nation as defined by OPM (see
12 <http://www.opm.gov/employ/html/Citizen.htm>).

13 All applicants or subcontractors (U.S. citizen or otherwise) must
14 have, immediately prior to applying for a position:

- 15 1) resided in the United States three of the past five
16 years;
- 17 2) worked for the United States overseas in a federal or
18 military capacity; or
- 19 3) been a dependent of a federal or military employee
20 serving overseas.

21 The CO has final approval authority for non-citizen and non-
22 residency employment for all potential employees and
23 subcontractors.

24 The contractor shall maintain verification of training and
25 experience which shall include credentials for all professional
26 staff. All credentials shall be kept current and maintained for
27 the duration of the individual's performance under the contract.

28 Employment Agreement

29 In the absence of a collective bargaining agreement, the
30 contractor must enter into a written employment agreement with
31 each employee assigned to work at the contractor's facility.
32 This agreement must provide, in recognition of the public safety
33 requirements for uninterrupted services at the contractor's
34 facility and in return for adequate consideration, including
35 grievance procedures, the contractor employee agrees not to
36 strike or otherwise interrupt normal operations at the
37 contractor's facility without giving 30 days advance written
38 notice.

1 The contractor must ensure a contingency plan covering work
2 actions or strikes is developed and maintained in a secure
3 location.

4 In the event the contractor negotiates collective bargaining
5 agreements applicable to the work force under the contract, the
6 contractor must use its best efforts to ensure such agreements
7 contain provisions designed to ensure continuity of services.
8 All such agreements entered into during the contract period of
9 performance should provide grievances and disputes involving the
10 interpretation or application of the agreement will be settled
11 without resorting to strike, lockout or other interruption of
12 normal operations.

13 For this purpose, each collective bargaining agreement should
14 provide an effective grievance procedure with arbitration as its
15 final step unless the parties mutually agree upon some other
16 method of assuring continuity of operations. As part of such
17 agreements, management and labor should agree to cooperate fully
18 with the Federal Mediation and Conciliation Service. The
19 contractor shall include the substance of this clause (paragraph,
20 provision, etc.) in any subcontracts for protective services.

21
22 Staffing

23 The following are essential personnel with respective minimum
24 qualification requirements and are critical for performance of
25 the contract. The contractor may use other titles. Within 15
26 days of contract award, the contractor shall submit a written
27 request (to include a resume) to the COR for conditional
28 contractor employment approval of the Project Coordinator,
29 Warden(s) and Associate Warden(s). The 15-day period may be
30 extended for the Warden(s) and Associate Warden(s) positions if
31 requested in writing by the contractor and approved by the CO.

32 Project Coordinator - Knowledge and experience within the
33 last five years in planning and executing similar contract
34 requirements as contained within this SOW.

35 Warden(s) - Knowledge of program objectives, policies,
36 procedures and requirements for managing a secure
37 correctional facility. A minimum of ten years experience in
38 corrections or related field with experience in the
39 management of a correctional facility at the Associate
40 Warden level or above.

1 Associate Warden(s) - Knowledge of program objectives,
2 policies, procedures and requirements for managing a
3 correctional facility. A minimum of ten years experience in
4 corrections or related field with five years experience in
5 the field of corrections at the level of mid-management.

6 The essential personnel listed below are critical for the
7 performance of this contract: knowledge of program objectives,
8 policies, procedures and requirements specific to their
9 department. A minimum of five years experience specific to their
10 department is required.

11 Administrator, Religious Services
12 Case Management Coordinator
13 Chief, Correctional Services
14 Computer Services Manager
15 Correctional Shift Supervisors
16 Facilities Manager/Administrator
17 Food Service Administrator
18 Human Resource Manager
19 Inmate Systems/Records Office Manager
20 Intelligence Officer
21 Medical Services Administrator
22 Quality Control Specialist
23 Safety/Environmental Specialist

24 The Administrator, Religious Services shall meet the
25 certification standards of the American Correctional Chaplains
26 Association.

27 The CO may reduce the monthly invoice for salaries and benefits
28 on any unfilled essential position.

29 Subcontractors

30 Full-time Subcontractors: The contractor shall complete steps
31 #1-15, as outlined in Employment Procedures above, for each full-
32 time subcontractor employee. Any full-time subcontractor
33 requiring SENTRY access must also have the HSPD-12 requirements
34 completed.

35 Part-time Subcontractors: The contractor, at a minimum, shall
36 complete the following for all part-time subcontractors:

- 1 1) Employment Eligibility Verification (Form I-9);
- 2 2) Coordinate the process for BOP staff to conduct
- 3 criminal history checks - NCIC/NLETS.

4 Any part-time subcontractor requiring SENTRY access must also
5 have the HSPD-12 requirements completed.

6 The contractor shall use the BOP's current Guidelines when
7 determining subcontractor employment. In addition, the
8 contractor shall not hire any subcontractor, full time or part
9 time, who under the following circumstances: knows any person or
10 has any relatives who are currently incarcerated in the facility;
11 has any criminal charges currently pending; or is currently under
12 any incarceration order, probation or court supervision.

13 Subcontractor employees are required to adhere to the
14 contractor's Standards of Conduct mentioned below. The BOP has
15 the authority to approve all subcontractors who have contact with
16 federal inmates under the terms of this contract.

17 Volunteers

18 The contractor shall develop written procedures for the use,
19 security and supervision of volunteers. The procedures shall
20 outline record keeping, identification badges and escort
21 protocols. The contractor shall include these procedures in the
22 Personnel Policy Manual.

23
24 Volunteers must be 18 years old or older. Ex-offenders with at
25 least three years of crime-free conduct after release, or with a
26 favorable report upon completion of probation or parole, may be
27 utilized as volunteers. Volunteers shall not be granted waivers
28 for unescorted status or passes.

29 The contractor shall complete the following for each volunteer
30 working in the facility:

- 31 1) Full name and personal information, (e.g., address,
32 date of birth, driver's license number and issuing
33 state, social security number);
- 34 2) Complete and submit FBI fingerprint form (FD-258);
- 35 3) Coordinate the process for BOP staff to conduct
- 36 criminal history checks - NCIC/NLETS.

1 The contractor, at a minimum, shall review the volunteer's
2 personal information. The COR will review any criminal
3 background information to determine if the applicant is suitable
4 in accordance with BOP's current Guidelines for entrance into the
5 facility.

6 Volunteers are required to adhere to the contractor's Standards
7 of Conduct mentioned below. The BOP has the authority to approve
8 all volunteers who have contact with federal inmates under the
9 terms of this contract.

10 Standards of Conduct

11 The contractor shall develop written Standards of Conduct on
12 employee conduct, ethics and responsibility. The contractor's
13 Standards of Conduct shall include those standards defined in
14 Section J. These standards shall be a part of the Personnel
15 Policy Manual. The contractor shall document and ensure all
16 employees review the Standards of Conduct annually. In addition
17 to employees, subcontractors and volunteers are also required to
18 adhere to the Standards of Conduct at all times. Employees,
19 subcontractors and volunteers shall receive Standards of Conduct
20 Training as part of their individual institutional
21 familiarization and annual training. Notices explaining
22 employees rights to report misconduct and contact information for
23 all investigative authorities of competent jurisdiction shall be
24 prominently displayed.

25 The contractor shall refer allegations of employee, subcontractor
26 or volunteer misconduct in accordance with procedures defined by
27 the BOP. The contractor shall cooperate fully with the cognizant
28 authority in any investigation of alleged misconduct.

29 The Government reserves its right, consistent with its
30 obligations under applicable law, to conduct investigations of
31 any alleged misconduct which has the potential to adversely
32 impact the programs or operations of the DOJ and BOP, including
33 the care, custody, health and safety of inmates and BOP staff or,
34 where applicable, the correctional institution and to withdraw
35 final employment approval authority for any employee as warranted
36 by Standards of Conduct violations.

37 **E. Training and Staff Development**

38 The Government will provide specialized training to assist the

1 contractor in performing some specialized requirements. The
2 training will be provided to the contractor at no cost and on a
3 one-time basis only. Contract employees' travel/lodging expenses
4 will not be paid by the BOP. To receive the training, the
5 contractor must submit a written request to the COR outlining the
6 training participants and time frame for training.

7 1. Records Office (Records Office Staff)

8 Training

- 9 a. Movement Coordination Training - 6 hours
10 b. Principles of Sentence Computation (includes
11 maintenance, retirement and disposal of inmate files) -
12 32 hours
13 c. Advanced Sentence Computations - 32 hours

14 Self Study Courses and Modules

- 15 a. Mail Room Self Study and Survival Skills Guide
16 b. Receiving and Discharge Self Study and Survival Skills
17 Guide
18 c. Processing Inmates In-Out Module
19 d. Detainers, Writs and IAD Module
20 e. Mailroom Management Module
21 f. Sentence Computation and Judgement and Commitment File
22 Module

23 2. Correctional Programs (Affected Staff)

- 24 a. Case Management/Central Inmate Monitoring (includes
25 Victim Notification System) - 24 hours
26 b. Inmate Discipline Training - 24 hours
27 c. Disciplinary Hearing Officer (DHO) Training - 24 hours
28 d. Joint Automated Booking System (JABS) - 16 hours
29 e. NCIC/NLETS (Practitioner/Administrator) - training disk
30 f. Adam Walsh Training - 4 hours

31
32 3. Other

- 33 a. Human Resource Management (includes background
34 investigation issues) - 24 hours
35 b. Basic SENTRY - 2 hours
36 c. Central Inmate Monitoring Certification Correspondence
37 Course

38 The contractor may request, at its expense and subject to the
39 approval of the COR, additional Government training to supplement

1 the initial training outlined above or other training as it
2 applies to BOP-mandated contract performance.

3 The contractor shall develop and implement a comprehensive staff
4 training program addressing the institution's sexual
5 abuse/assault prevention and intervention program. Written
6 policy, procedure and practice shall provide all staff, to
7 include volunteers, receive such training prior to assumption of
8 duties and on an annual basis as part of the institution's in-
9 service training plan.

10 Pre-service and in-service training shall be augmented with
11 specialized training and continuing education for appropriate
12 staff (e.g., case managers, counselors, psychology services
13 staff, chaplaincy staff, correctional officers, investigatory
14 officials, health/mental health care providers, etc.).

15 The contractor shall provide disturbance control training to
16 appropriate staff.

17

18 **F. Case Records**

19 Inmate Files

20 All inmate files (e.g., central files, medical files, judgment
21 and commitment (J&C) files, etc.) are to be prepared, maintained
22 and disposed of in accordance with BOP format and procedures.

23 Policy and procedures shall be developed to ensure the
24 confidentiality and security of all inmate central files (e.g.,
25 J&C files, central files, United States Parole Commission mini-
26 files) in accordance with P.S. 5800.13, Inmate Systems Management
27 Manual, dated 6/28/02, P.S. 5800.11, Inmate Central File,
28 Privacy Folder, and Parole Mini-Files, dated 12/31/97, and in
29 accordance with all applicable federal provisions (e.g., 5 USC
30 552 and 552a).

31 Records Office Procedures

32 The contractor shall interact with other agencies to satisfy
33 outstanding inmate obligations, including, but not limited to:

- 34 1) processing of federal and state writs;
35 2) administration of the Interstate Agreement on

1 Detainers;
2 3) detainer inquiries;
3 4) lodging and removal of detainees;
4 5) notification requests from other agencies; and
5 6) coordination of transfer/inmate movement in and out of
6 the facility in accordance with P.S. 5800.13, Inmate
7 Systems Management Manual, dated 6/28/02, Chapter 8;
8 P.S. 5875.12, Transfer of Inmates to State Agents for
9 Production on State Writs, dated 7/31/03; and P.S.
10 5800.12, Receiving and Discharge Manual, dated 8/17/98.

11 No BOP inmate shall be admitted to the institution unless
12 designated by the BOP. No BOP inmate shall be permanently
13 released from custody without BOP written approval.

14 Sentence computations shall be completed in accordance with P.S.
15 5800.13, Inmate Systems Management Manual, dated 6/28/02; P.S.
16 5880.28, Sentence Computation Manual (CCA of 1984), dated
17 7/20/99; 28 CFR 523; and federal criminal code and rules prior to
18 being submitted to the BOP for review.

19 The contractor shall use SENTRY for the following procedures:
20 admissions and releases; inmate counts; medical data; inmate
21 work, housing assignments, classification and programming;
22 education data; discipline data; victim/witness program; sentence
23 computations, including good time; and United States Parole
24 Commission actions. The contractor has the option to use SENTRY
25 for any other procedures as approved by the COR.

26 The contractor shall: maintain inmate J&C files; maintain file
27 accountability and security; respond to inmate inquiries; respond
28 to outside requests for information; compute sentences and
29 determine release dates; enter sentence computations in SENTRY;
30 update sentence computations according to amended court orders;
31 post good conduct time for sentence computations; verify release
32 methods and dates prior to an inmate's release; scan all J&C file
33 documents and electronically submit to BOP; and make any changes
34 as directed by the BOP.

35 The contractor shall sign the Release Authorization after
36 certification and final audit has been performed by BOP staff.
37 In instances of immediate release, the BOP will certify the
38 contractor's sentence computation.

39 The contractor shall comply with the Privacy Act of 1974 (5 USC

1 552a) and 28 CFR Parts 16 and 513.

2 Pre-Sentence Investigation Reports

3 An inmate's Pre-Sentence Investigation Reports (PSR) and
4 Statements of Reasons (SOR) from criminal judgments are provided,
5 where authorized by the court, to the contractor to facilitate
6 sentence administration functions only (e.g., classification,
7 designation, programming, sentence calculation, pre-release
8 planning, escape apprehension, prison disturbance response,
9 sentence commutation, pardon and deportation proceedings of the
10 inmate). The contractor is prohibited from disclosing copies of,
11 or information from, these documents to persons unrelated to the
12 inmate's sentence administration. Requests for access to these
13 documents from any persons unrelated to the offender's sentence
14 administration should be referred to the BOP in accordance with
15 28 CFR 513.

16 The contractor must provide inmates local access to review their
17 own PSRs and SORs but is prohibited from allowing inmates to
18 obtain and/or possess photocopies. Local access means contractor
19 staff must provide inmates reasonable opportunities to locally
20 review their PSRs and SORs as staff time and official duties
21 permit. During local reviews, inmates are allowed to make
22 handwritten notes, including hand copying the document word-for-
23 word. Only the photocopy replication of these documents is
24 prohibited.

25 PSRs and SORs are part of the inmate's central file, and the
26 contractor shall manage these documents in accordance with P.S.
27 5800.11, Inmate Central File, Privacy Folder, and Parole
28 Mini-Files, dated 12/31/97. For example, when inmates are
29 transferred from the contractor facility to another facility, the
30 entire inmate central file shall be transferred to the new
31 facility. Similarly, when an inmate is released from the
32 sentence, the entire inmate central file shall be archived as a
33 BOP record.

34 **G. Information Systems and Research**

35 Information Systems

36 The BOP information system environment includes mainframe,
37 Local Area Network (LAN) and Wide Area Network (WAN) components.

1 The BOP mainframe software environment exists in an internally
2 developed application named SENTRY which is used to support
3 facility operations. The contractor shall provide and maintain
4 hardware and software to access SENTRY in the manner referenced
5 in Section J to operate the facility.

6 The contractor shall appoint a SENTRY security manager who shall
7 be the contractor's point of contact for SENTRY use at the
8 institution. It is suggested the SENTRY security manager be a
9 collateral duty appointment. All contractor and subcontractor
10 staff being granted access to SENTRY shall sign a SENTRY Rules of
11 Behavior form located in Section J. The SENTRY security manager
12 shall keep these on file.

13 The technical hardware environment in which computer services are
14 to be performed consists of IBM-compatible Personal Computers
15 (PC) operating on a LAN. In addition to providing for the inter-
16 connection of PC workstations, the LAN also provides connections
17 to a BOP centralized gateway which connects to an IBM-compatible
18 mainframe computer located in a DOJ data center.

19 All network operating system hardware furnished by the
20 contractor shall be compatible with BOP equipment throughout
21 the life of the contract at the contractor's expense. **The**
22 **network switching infrastructure must be Cisco hardware and**
23 **software. BOP National Network Communications staff must be**
24 **provided enable password access to all the Cisco infrastructure**
25 **equipment.**

26 The contractor is required to provide the hardware and software
27 contained in Section J in order to participate in the BOP's
28 information system environment.

29 All network operating system software, applications software and
30 configurations not furnished by the Government shall be the same
31 release, version and configuration currently specified by the
32 contract. The contractor shall adhere to P.S. 1237.14, Personal
33 Computers and Network Standards, dated 5/7/07, and its associated
34 Technical Bulletins.

35 The contractor shall ensure the inmate "automated system of
36 records" is compatible with standard BOP facility and operational
37 requirements.

1 If it is technically feasible and if approved by the BOP Chief
2 Information Officer (CIO), the contractor shall be permitted
3 access to the following programs: Victim Notification System
4 (VNS), Centra, Web 106, Joint Automated Booking System (JABS) and
5 the Magic Help Desk (one license per facility). Access shall be
6 coordinated through the COTR and COR.

7 The contractor shall adhere to P.S. 1237.13, Information
8 Security, dated 3/31/06, which governs such areas as: security
9 for and access to sensitive information and systems; minimum
10 personnel security pre-requisites for computer system users and
11 administrators; and security and access to computer rooms, etc.

12 The contractor shall ensure fundamental information technology
13 resources (computer hardware, network and operating system
14 software and telecommunications facilities) used in performance
15 of this contract function properly and are maintained in good
16 operating condition. A minimum Operational Availability Rate
17 (OAR) of 97% is required for all such resource components. The
18 contractor shall ensure such resources are compatible with
19 existing BOP equipment, systems and data exchange functions.

20 GroupWise shall be configured as an external domain to the BOP
21 primary domain and shall have no physical or logical connections
22 to any internal or external mail system other than the BOP.

23 Unless specifically approved by the BOP CIO and the COR, the
24 contractor's network shall have no physical or logical
25 connectivity to any external systems except to the BOP WAN.

26 The contractor shall have video conferencing capabilities which
27 can be utilized for Government supplied training, inmate legal
28 hearings as required by the Government, conferences, etc. In
29 order to support video conferencing, the video teleconference
30 device must be approved by the Computer Services and User Support
31 Branch prior to purchase. The device must be statically
32 addressed with an address provided by the BOP National Network
33 Communications (NNC) Branch. The LAN port used for the video
34 unit must be capable of fixed speed and duplex configuration and
35 verified by NNC.

36
37 Research

38 Advance approval from the COR shall be obtained for all proposed
39 research projects. These include projects conducted by the
40 contractor, subcontractors or any other party. The COR shall be

1 advised of the progress of all research projects, have total
2 access to all documents and be provided a copy of the final
3 report prior to any publication.

4 The contractor is required to participate in any research task
5 pursued by the Government and shall gather and provide any
6 information requested. Contractor participation is anticipated
7 to be primarily in the area of gathering and submitting
8 statistical information.

9 At the discretion of the Government, an independent evaluator,
10 compensated by the Government, may interview and/or administer
11 surveys to staff and inmates.

12 **H. Physical Plant**

13 The facility shall be operated and maintained to ensure inmates
14 are housed in a safe, secure and humane manner. All equipment,
15 supplies and services shall be contractor furnished except as
16 otherwise noted in this contract.

17 The facility shall be designed, constructed, operated and
18 maintained in accordance with all applicable federal, state and
19 local laws, regulations, codes, guidelines and policies. In the
20 event of a conflict between federal, state or local laws, codes,
21 regulations or requirements, the most stringent shall apply. In
22 the event there is more than one reference to a safety, health or
23 environmental requirement in an applicable law, standard, code,
24 regulation or Government policy, the most stringent requirement
25 shall apply.

26 The contractor shall provide and maintain an electronic security
27 alarm system which will identify any unauthorized access to the
28 institution's secure perimeter.

29 The facility shall comply with the International Code Council
30 (ICC) family of codes, including, but not limited to, the
31 following:

- 32 1) International Building Code (IBC);
- 33 2) International Plumbing Code (IPC);
- 34 3) International Mechanical Code (IMC); and
- 35 4) International Energy Conservation Code (IECC).

1 The contractor shall comply with the National Electric Code
2 (NEC). Fire protection and life safety issues shall be governed
3 by the latest edition of the National Fire Protection Association
4 (NFPA) 101, Code for Safety to Life from Fire in Buildings and
5 Structures, and applicable National Fire Codes (NFC). Should
6 conflicts occur between other codes and NFC, NFC shall apply.
7 The contractor shall comply with state and local building codes
8 to the maximum extent possible.

9 The facility shall comply with the Seismic Safety of Federal and
10 Federally Assisted or Regulated New Building Construction (E.O.
11 12699). The seismic safety requirements, as set forth in the ICC
12 family of codes, are the minimum standards. Should the code
13 applicable for the state in which the facility is located be more
14 stringent than the other codes set forth herein, the state code
15 shall prevail. If the code cannot be applied, then the locally
16 adopted codes would prevail for building standards and seismic
17 acceptability.

18 The facility shall comply with the requirements of the American
19 with Disabilities Act (ADA). All areas of the buildings and site
20 shall meet these requirements.

21 Activities implemented, in whole or in part, with federal funds,
22 must comply with applicable legislation and regulations
23 established to protect the human or physical environment and to
24 ensure public opportunities for review. The contractor shall
25 remain in compliance with federal statutes during performance of
26 the contract to include, but not be limited to, the Clean Air
27 Act, Clean Water Act, Endangered Species Act, Resource
28 Conservation and Recovery Act and other applicable laws,
29 regulations and requirements. The contractor shall also comply
30 with all applicable limitations and mitigation identified in any
31 Environmental Assessment or Environmental Impact Statement
32 prepared in conjunction with the contract pursuant to the
33 National Environmental Policy Act, 42 USC 4321.

34 The contractor shall be responsible for and shall indemnify and
35 hold the Government harmless for any and all spills, releases,
36 emissions, disposal and discharges of any toxic or hazardous
37 substance, pollutant or waste, whether sudden or gradual, caused
38 by or arising under the performance of the contract or any
39 substance, material, equipment or facility utilized therefore.
40 For the purposes of any environmental statute or regulation, the
41 contractor shall be considered the "owner and operator" for any
42 facility utilized in the performance of the contract and shall

1 indemnify and hold the Government harmless for the failure to
2 adhere to any applicable law or regulation established to protect
3 the human or physical environment. The contractor shall be
4 responsible in the same manner as above regardless of whether
5 activities leading to or causing a spill, release, emission or
6 discharge are performed by the contractor, its agent or designee,
7 an inmate, visitor or any third party.

8 Should any spills or releases of any substance into the
9 environment occur, the contractor shall immediately report the
10 incident to the CO. The liability for the spill or release of
11 such substances rests solely with the contractor and its agents.

12 A safety program shall be maintained in compliance with all
13 applicable federal, state and local laws, statutes, regulations
14 and codes. The contractor shall comply with the requirements of
15 the Occupational Safety and Health Act of 1970, 29 USC 651, et
16 seq., and all codes and regulations associated with 29 CFR 1910
17 and 1926.

18 All fire detection, communication, alarm, annunciation,
19 suppression and related equipment shall be operated, inspected,
20 maintained and tested in accordance with the most current edition
21 of NFPA 72, National Fire Alarm Code. Contractor shall provide
22 proof of testing and inspections as listed in NFPA 72 and NFPA
23 13, Installation of Sprinkler Systems, when required.

24 Promptly after the occurrence of any physical damage to the
25 institution (including disturbances), the contractor shall report
26 such damage to the COR. It shall be the responsibility of the
27 contractor to repair such damage, rebuild or restore the
28 institution consistent with the master design and construction
29 specifications for the facility at no cost to the Government.
30 Any deviation from the original design and construction
31 specifications shall require the prior written concurrence of the
32 CO.

33 The BOP anticipates a nominal number of BOP staff will be on site
34 to monitor contract performance and manage other BOP interests
35 associated with operation of the facility. With BOP concurrence,
36 the contractor shall designate approximately 2,500 square feet of
37 secure administrative office space for BOP staff operations as
38 indicated in Section J. BOP office space shall be located within
39 close proximity to the administrative office space for the
40 contractor's staff.

1 The contractor shall provide operational space for the Executive
2 Office for Immigration Review (EOIR) and United States
3 Immigration and Customs Enforcement (ICE) operations. EOIR and
4 ICE will require appropriate space to accommodate video
5 conferencing equipment for use in immigration removal processing.
6 Space requirements should, at a minimum, allow for the use of
7 video conferencing equipment for small groups of inmates and
8 escorting staff and one office for ICE. With BOP concurrence,
9 the contractor shall designate an area or multiple use space to
10 accommodate a video courtroom equal to approximately 300 square
11 feet and a separate office space for ICE at 150 square feet to be
12 located near each other and inside the secure perimeter of the
13 facility as indicated in Section J.

14 All office and multiple use space shall be climate controlled and
15 complete with appropriate electrical, communication and phone
16 connections. The contractor shall be responsible for all
17 maintenance, security and costs associated with space designated
18 for Government staff.

19 The contractor shall provide no less than 10 parking spaces for
20 Government use.

21 **I. Security and Control**

22 Use of Force

23 Any use of force by the contractor shall at all times be
24 consistent with all applicable policies of the Government. All
25 use of lethal force by the contractor or any other authority
26 shall be in compliance with P.S. 5500.12, Correctional Services
27 Procedures Manual, dated 10/10/03, Chapter 7, Section 702, Use of
28 Firearms. All use of less lethal force by the contractor or any
29 other authority shall be in compliance with P.S. 5566.06, Use of
30 Force and Application of Restraints, dated 11/30/05.

31 All use of force incidents shall be reported in accordance with
32 P.S. 5500.12, Correctional Services Procedures Manual, dated
33 10/10/03, Chapter 6, Sections 602, 604 and 605, After-Action
34 Review and Reporting.

35 Arrest Authority

36 The contractor shall have appropriate arrest authority in order
37 to maintain the security of the correctional institution.

1 The contractor shall ensure the arrest authority meets the
2 following standards so an officer or employee of the contractor
3 may:

- 4 1) make arrests on or off facility property without
5 warrant for the following violations regardless of
6 where the violation may occur: assaulting staff,
7 escape, attempted escape and assisting escape;
- 8 2) make arrests on facility property without warrant for
9 the following violations: theft, depredation of
10 property, contraband, mutiny and/or riot and trespass;
11 and
- 12 3) arrest without warrant for any other offense committed
13 on facility property if necessary to safeguard
14 security, good order or Government property

15 if such officer or employee of the contractor has reasonable
16 grounds to believe the arrested person is guilty of such offense
17 and if there is likelihood of such person's escaping before an
18 arrest warrant can be obtained. If the arrested person is a
19 fugitive from custody, such inmate shall be returned to custody.

20 Inmate Accountability

21 SENTRY shall be used for reporting all official counts.
22 Documentation shall be maintained to support all counts.

23 Key Control

24 The contractor shall develop policy and procedures for the
25 maintenance and security of keys and locking mechanisms to
26 include: method of inspection to expose compromised locks or
27 locking mechanisms; method of replacement for damaged keys and/or
28 locks; preventative maintenance schedule for servicing locks and
29 locking mechanisms; restrictions on removal of keys from the
30 facility and issuance of emergency keys. The contractor shall
31 notify the BOP in the event any key or locking mechanism is lost
32 or compromised.

33 Tool Control

34 All controlled tools, equipment and hazardous materials shall be
35 classified by security risk.

1 Inmate Transportation

2 The contractor is responsible for the movement/transportation of
3 all inmates within a 400 mile radius of the contract facility.
4 The contractor shall utilize restraint equipment identical to the
5 BOP's [**Handcuffs:** stainless, nickel-plated steel, 10oz/12oz; **Leg**
6 **Irons:** standard, nickel-plated steel, with approximately a 14 x
7 ½ inch chain; **Martin Chain (Waist Chain):** chains shall be of
8 case-hardened variety with a minimum breaking strength of
9 approximately 800 pounds; **American Padlock** with a PTKB-1 key-way
10 code to be provided by on-site staff] when one-for-one equipment
11 exchange is required (e.g., airlifts).

12 Intelligence Operations

13 Policy and procedures for collecting, analyzing, disseminating
14 and safeguarding intelligence information regarding issues
15 affecting safety, security and the orderly operation of the
16 facility shall be developed.

17 The contractor shall have a position at the institution dedicated
18 to intelligence operations. The position shall be known as an
19 Intelligence Officer (IO).

20 The contractor shall develop a urine and alcohol surveillance
21 program at the facility which complies with P.S. 6060.08, Urine
22 Surveillance and Narcotic Identification, dated 3/8/01, and CFR
23 28.550.10. Only laboratories certified by the Substance Abuse
24 and Mental Health Services Administration, Department of Health
25 and Human Services, shall be used for urine surveillance.

26 If authorized to do so under applicable law, the IO shall be
27 responsible for administration of the inmate telephone monitoring
28 program. These responsibilities include, but are not limited to:
29 gathering intelligence from monitored inmate telephone calls and
30 producing concise intelligence summaries of the calls; subject
31 matter expertise on inmate telephone monitoring procedures; and
32 use of telephone monitoring equipment.

33 All requests by law enforcement authorities, other than BOP
34 staff, regarding inmate telephone monitoring shall be immediately
35 referred to the COR.

36 The IO office shall have SENTRY access. The IO will be required

1 to utilize various BOP information data bases in the performance
2 of required duties. All IO computer hardware/software and
3 related telephone recording equipment/monitoring media shall be
4 designated as "Sensitive But Unclassified." Areas containing
5 such equipment shall be designated as "Restricted" and "Limited
6 Access" areas. Inmates are prohibited from entering or working
7 in the IO office and the inmate telephone monitoring and
8 telephone media library rooms.

9
10 The IO shall submit information and reports as requested by the
11 BOP. The IO shall provide the BOP with quarterly intelligence
12 updates relating to intelligence gathered by using the Automated
13 Intelligence Management System (AIMS). The IO shall participate
14 in meetings and training as requested by the BOP.

15 Intervention Equipment

16 The contractor shall submit to the COR a proposed inventory of
17 intervention equipment for approval (e.g., weapons, munitions,
18 chemical agents, electronics/stun technology, etc.) intended for
19 use during performance of this contract 30 days prior to NTP.
20 The contractor shall submit any changes to the intervention
21 equipment inventory to the COR for approval prior to use.

22 The use and carrying of weapons for training shall meet all
23 federal, state and local laws and regulations.

24 Reporting

25 The contractor shall report all criminal activity related to the
26 performance of this contract to the BOP and the appropriate law
27 enforcement investigative agency (e.g., state/local authorities,
28 Federal Bureau of Investigation, United States Marshals Service).

29 The contractor shall telephonically report immediately any
30 serious incident to the COR and submit a report of the incident
31 using Report of Incident (Form BP-A583) by the next business day.
32 Serious incidents include, but are not limited to: activation of
33 disturbance control team(s); disturbances (including gang
34 activities, group demonstrations, food boycotts, work strikes,
35 work-place violence, civil disturbances/protests); staff use of
36 force, including use of immediate, calculated lethal and less
37 lethal force; inmates in restraints more than eight hours;
38 assaults on staff/inmates resulting in injuries requiring medical
39 attention (does not include routine medical evaluation after the
40 incident); fights resulting in injuries requiring medical

1 attention; fires; full or partial lock down of the facility;
2 escapes; weapons discharge; suicide attempts; deaths; hunger
3 strikes; adverse incidents that attract unusual interest or
4 significant publicity; adverse weather (e.g., hurricanes, floods,
5 ice/snow storms, heat waves, tornadoes); fence damage; power
6 outages; bomb threats; central inmate monitoring cases (non-
7 separation) transported to a community hospital; significant
8 environmental problems that impact the facility operations;
9 transportation accidents (airlift, bus, etc.) resulting in
10 injuries, death or property damage; and inmate sexual assaults.

11 An After-Action Review Report (Form BP-A586) shall be generated
12 for all major incidents in accordance with P.S. 5500.12,
13 Correctional Services Procedures Manual, dated 10/10/03.

14 Attempts to apprehend escapee(s) shall be in accordance with the
15 contractor's established emergency plans and procedures set forth
16 in P.S. 5553.07, Escapes/Deaths Notifications, dated 2/10/06, and
17 Report of Incident (Form BP-A583).

18 Investigations

19 The Government may investigate any incident pertaining to
20 performance of this contract. The contractor shall cooperate
21 with the Government on all such investigations.

22 Sexual Assault

23 The contractor shall comply with the policies and procedures for
24 establishment of a sexual abuse/assault program as contained in
25 P.S. 5324.06, Sexually Abusive Behavior Prevention and
26 Intervention Program, dated 4/27/05.

27 **J. Discipline**

28 The contractor shall comply with the policy and procedures for
29 inmate discipline as contained in 28 CFR 541 and P.S. 5270.07,
30 Inmate Discipline and Special Housing Units, dated 3/20/06. All
31 data regarding the discipline incident report process for inmates
32 shall be entered into SENTRY.

33 **K. Inmate Rights**

34 In addition to the contractor's grievance policy, the contractor

1 shall develop procedures for inmates to file administrative
2 remedy appeals in accordance with 28 CFR Part 542 for issues
3 outside the contractor's scope of responsibility as determined by
4 the BOP. The contractor shall accept and respond to the appeal
5 to the extent possible with further appeal to the BOP. Appeals
6 to the BOP must be submitted in the English language.

7 The contractor shall stock and provide inmates with BOP
8 administrative remedy forms. The contractor shall utilize SENTRY
9 to facilitate the administrative remedy process. When relief is
10 granted upon appeal, the contractor shall take corrective action
11 as indicated in the response.

12 The contractor shall comply with the Religious Freedom
13 Restoration Act of 1993, 42 USC 2000bb, et seq., and ensure the
14 religious services programs are consistent with this Act.

15 **L. Reception and Orientation**

16 Admission and Release Procedures

17 The contractor shall comply with P.S. 5800.12, Receiving and
18 Discharge Manual, dated 8/17/98, when entering inmate admission
19 and release data.

20 The search of inmates admitted to the facility or released to any
21 authority shall include a strip search performed by contractor
22 staff. The search shall be conducted by persons of the same
23 gender except in urgent circumstances.

24 Inmates shall be fingerprinted using Government supplied forms
25 and submitted to the FBI in accordance with P.S. 5800.12,
26 Receiving and Discharge Manual, dated 8/17/98.

27 The intake process shall include, at a minimum, medical, social
28 and psychological screening within 24 hours of inmate arrival at
29 the facility and prior to inmate release to the general
30 population. For all newly committed inmates, a psychological
31 assessment shall be completed within 14 days of arrival at the
32 facility. For inmates transferring from a BOP institution, a
33 psychological update of the inmate is sufficient in lieu of the
34 psychological assessment.

35 The contractor shall ensure all requirements related to P.S.
36 5180.04, Central Inmate Monitoring System, dated 8/16/96, are

1 maintained.

2 In cases where inmates are being transferred to or from foreign
3 countries, 28 CFR 527 and 18 USC 4100, et seq., shall be
4 followed.

5 P.S. 5580.07, Personal Property, Inmate, dated 12/28/05, provides
6 procedures related to inmate property. Property of inmates
7 transferred to other facilities shall meet the requirements of
8 the above Program Statement. In the event property outside the
9 scope of P.S. 5580.07 accompanies an inmate departing the
10 contract facility, the property shall be returned to the facility
11 for disposition at the contractor's expense. All inmate personal
12 property shall be inventoried and an Inmate Personal Property
13 Record (Form BP-A383) completed upon inmate admission or
14 discharge.

15 DNA Analysis Procedures

16 The contractor shall develop and implement procedures to comply
17 with the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-
18 546) and USA Patriot Act (P.L. 107-560). These laws require DNA
19 samples to be obtained from inmates convicted of qualifying
20 federal offenses as determined by the Attorney General. A list
21 of qualifying offenses, subject to change by determination of the
22 Attorney General, is included as an attachment in Section J.
23 Subsequent changes to the list of qualifying offenses shall be
24 disseminated to the contractor by the COTR. The law applies to
25 inmates with current or past qualifying offenses. The contractor
26 shall develop procedures to identify inmates currently in custody
27 who meet the statutory requirement for DNA testing. Inmates
28 coming into custody will have DNA requirements identified by the
29 BOP.

30 The FBI will supply standardized DNA collection kits to the
31 contractor. The FBI analyzes the collected samples and maintains
32 the Combined DNA Index System (CODIS).

33 The contractor shall adhere to the SENTRY instructions for DNA
34 collection as provided by the BOP. Inmates found to have
35 qualifying offenses will be identified thru SENTRY. DNA sampling
36 must occur prior to an inmate release. If an inmate has already
37 provided a DNA sample as identified in SENTRY, another sample is
38 not required.

39 The contractor shall provide notification using a BOP approved

1 format of the Notice of Release and Arrival (Form BP-A714) to the
2 appropriate authorities (United States Probation or Court
3 Services or Offender Supervision Agency) of each inmate releasing
4 to a term of community supervision and subject to this law,
5 indicating if a DNA sample has been collected.

6 **M. Classification**

7 Inmates shall be housed in a unit where the contractor shall
8 ensure appropriate supervision, informal interaction and early
9 problem identification and resolution is provided.

10 Unit team members shall be accessible from the housing unit and
11 available to the population. Individual and group counseling
12 shall be available.

13 Programming shall be reviewed with individual inmates on a
14 regular basis.

15 The contractor shall enter and keep current all required SENTRY
16 transactions and written documentation related to the
17 classification and program review of inmates, progress reports
18 and Central Inmate Monitoring System. A system of records and
19 review to ensure compliance with P.S. 5100.08, Inmate Security
20 Designation and Custody Classification, dated 9/12/06, and 28 CFR
21 shall be maintained.

22 The contractor shall follow all applicable provisions related to
23 the Violent Crime Control and Law Enforcement Act of 1994 (P.L.
24 103-332) ensuring all notification requirements are accomplished
25 for appropriate inmates.

26 The facility shall develop and maintain a financial
27 responsibility system to assist the inmate in developing a
28 financial plan to meet legitimate financial obligations in
29 accordance with 28 CFR 545.10.

30 The contractor shall develop policy and procedures for the
31 facility concerning victim and/or witness notification for
32 appropriate inmates which meet the requirements outlined in
33 28 CFR 551 Subpart M, §551.150-551.153; Victim and Witness
34 Protection Act of 1982 (P.L. 97-291); Crime Control Act of 1990
35 (P.L. 101-647); and Violent Crime Control and Law Enforcement Act
36 of 1994 (P.L. 103-332).

1 The contractor shall develop policy and procedures to comply with
2 the provisions of the Adam Walsh Child Protection and Safety Act
3 of 2006 (H.R. 4472) as outlined in the Procedures for
4 Implementation of Walsh Act Civil Commitment of Sexually
5 Dangerous Persons located in Section J of the contract.

6 The procedures shall ensure the contractor reviews all inmate
7 files to determine qualifying conduct for establishing an
8 appropriate Adam Walsh Case Management Assignment (CMA)
9 assignment. No inmate shall be released without a Walsh CMA
10 assignment.

11 **N. Health Care**

12 The contractor shall provide all essential health care services
13 while meeting the applicable standards and levels of quality
14 established by the ACA and the designated BOP National Health
15 Care Accreditation Provider, The Joint Commission. In addition,
16 the contractor shall adhere to all applicable federal, state and
17 local laws and regulations governing delivery of health services.

18 The contractor's facility shall obtain full accreditation by the
19 BOP's accepted medical accreditation organization within 24
20 months of the NTP and shall maintain continual compliance with
21 the accreditation standards during performance of the contract.
22 The BOP's current medical accreditation is by The Joint
23 Commission.

24 Failure to perform in accordance with contract requirements and
25 to obtain full accreditation by the BOP's accepted medical
26 accreditation organization within 24 months of the NTP may result
27 in a reduction of the monthly operating price in accordance with
28 the contract terms.

29 The BOP has established standards of medical care to be provided
30 to all individuals for whom they are responsible, regardless of
31 the setting in which they receive such care. These standards are
32 articulated through BOP Program Statements (P.S.), Operations
33 Memoranda (OM), Technical Reference Manuals (TRM) and clinical
34 practice guidelines. The contractor shall establish policies,
35 procedures and protocols which assure the services it provides
36 meet these standards.

37 The list below is provided for reference. There are portions of
38 particular BOP Program Statements included in this list for which

1 compliance is mandatory (e.g., mortality review, testing for
 2 tuberculosis and other infectious diseases). The sections and
 3 the specific requirements are outlined later in the SOW.

4 P.S. 5310.12 Psychology Services Manual, dated 3/7/95
 5 P.S. 6010.01 Psychiatric Treatment and Medication,
 6 Administration Safeguards for, dated 9/21/95
 7 P.S. 6010.02 Health Services Administration, dated 1/15/05
 8 P.S. 6013.01 Health Services Quality Improvement, dated
 9 1/15/05
 10 P.S. 6027.01 Health Care Provider Credential Verification,
 11 Privileges, and Practice Agreement Program,
 12 dated 1/15/05
 13 P.S. 6031.01 Patient Care, dated 1/15/05
 14 P.S. 6080.01 Autopsies, dated 5/27/94
 15 P.S. 6090.01 Health Information Management, dated 1/15/05
 16 P.S. 6190.03 Infectious Disease Management, dated 6/28/05
 17 P.S. 6270.01 Medical Designations and Referral Services
 18 for Federal Prisoners, dated 1/15/05
 19 P.S. 6340.04 Psychiatric Services, dated 1/15/05
 20 P.S. 6360.01 Pharmacy Services, dated 1/15/05
 21 P.S. 6370.01 Laboratory Services, dated 1/15/05
 22 P.S. 6400.02 Dental Services, dated 1/15/05
 23 PRG G6000I.04 Program Review Guidelines - Health Services
 24 Institution, dated 4/26/06
 25 TRM 6001.03 SENTRY Sensitive Medical Data/Medical Duty
 26 Status/Acuity Status, dated 6/8/99
 27 TRM 6501.06 Pharmacy, dated 2/28/01

28 Administration

29 Whenever possible, health care services shall be provided within
 30 the facility Health Services Unit (HSU). The contractor shall
 31 establish arrangements with local health care providers for
 32 emergency and medical services necessary for outpatient and
 33 inpatient health care not provided within the facility.

34 The contractor shall provide a minimum of one negative pressure
 35 room within the institution with the ventilation rate a minimum
 36 of 12 air exchanges per hour. The room shall also have an
 37 exhaust system to direct flow of air from the room to the
 38 outdoors or through High-Efficiency Particulate Air (HEPA)
 39 filters. The contractor shall have a negative pressure sensor
 40 device that will continuously monitor the pressure within the

1 room.

2 The contractor shall provide adequate space for examination and
3 treatment of the patient population, along with medical equipment
4 to provide care required by the population. Space allocations
5 shall include:

- 6 • space for privacy in consultation and physical
7 examination,
- 8 • facilities for providing urgent care,
- 9 • storage and disposal of biohazardous waste,
- 10 • dental treatment area,
- 11 • secure pharmacy area,
- 12 • specimen collection area, and
- 13 • secure medical record storage.

14 Medical equipment should allow providers to conduct routine
15 physical examinations, diagnose and treat minor injuries,
16 evaluate emergency conditions and life support equipment as
17 appropriate to the setting (e.g., automatic external
18 defibrillators or other similar device). The contractor shall
19 maintain a medical equipment preventive maintenance plan.

20 Services

21 The contractor shall have written plans, procedures and
22 associated protocols for:

- 23 • routine (ambulatory) health care, mental health and
24 dental services;
- 25 • 24/7 access to urgent/emergency medical treatment,
26 including medical, mental health and dental
27 emergencies;
- 28 • utilization of infirmary or "observation units" if they
29 exist;
- 30 • initial health screening;
- 31 • health appraisal examination;
- 32 • daily triage of complaints;
- 33 • access to care procedures (scheduling appointments,
34 consultations, diagnostic or treatment procedures, how
35 care is provided in segregation or detention areas);
- 36 • special medical programs and services for, but not
37 limited to:
 - 38 • management of chronic and acute medical

- 1 conditions;
- 2 • convalescent care;
- 3 • mental health and substance abuse services;
- 4 • health care specialists;
- 5 • physical therapy services;
- 6 • ancillary services - radiology, laboratory, etc.;
- 7 • dental services (routine and emergency);
- 8 • pharmaceutical services and supplies;
- 9 • optometry services to include the provision of
- 10 medically necessary eyeglasses;
- 11 • health education;
- 12 • medical diets;
- 13 • medical management related to the use of force and
- 14 restraints;
- 15 • medical management of hunger strikes;
- 16 • surveillance, control, diagnosis and treatment of
- 17 infectious diseases; and
- 18 • quality assurance/improving organizational performance
- 19 provider licensure, credentialing, peer review.

20 Staffing

21 The contractor shall submit written plans and procedures for

22 health care staffing of the facility. The plan will:

- 23
- 24 • specify the duties and responsibilities of all staff
- 25 providing clinical services;
- 26 • specify the numbers and mix of staff providing
- 27 services;
- 28 • define the supervision of staff providing services;
- 29 • ensure all duties and responsibilities of the clinical
- 30 staff are consistent with applicable state licensing
- 31 laws or regulations covering the practice of medicine,
- 32 nursing, dentistry or other regulated clinical
- 33 professions;
- 34 • ensure duties and responsibilities do not exceed the
- 35 scope of practice as defined for any provider;
- 36 • define the mechanism by which the contractor will
- 37 ensure staff performing medical services are licensed
- 38 or certified as required by law or regulation;
- 39 • define the procedures for primary source verification
- 40 of credentials;
- 41 • define the process for granting privileges to licensed
- 42 independent practitioners and how other providers are

1 authorized to carry out their duties (agreements,
2 protocols, standing orders, etc.).

3 Pharmacy Services

4 The contractor shall adhere to Part 1 of the Pharmacy TRM, the
5 BOP National Formulary. The contractor shall obtain signed
6 informed consents for medications used for psychiatric treatment
7 which is located in the Pharmacy TRM.

8 Infectious Disease Management Program

9 The contractor shall comply with all Occupational Safety and
10 Health Administration (OSHA) regulations in the delivery of
11 health care services. The contractor shall ensure all inmates
12 are tested in accordance with P.S. 6190.03, Infectious Disease
13 Management, dated 6/28/05.

14 The contractor shall comply with the most recent Centers for
15 Disease Control and Prevention/Morbidity and Mortality Weekly
16 Report (CDC/MMWR) "Prevention and Control of Tuberculosis in
17 Correctional Facilities: Recommendations of the Advisory Council
18 for the Elimination of Tuberculosis" and "Guidelines for
19 Preventing Transmission of Mycobacterium Tuberculosis in Health-
20 care Facilities."

21 The contractor shall comply with the most recent Department of
22 Health and Human Services (DHHS) and United States Public Health
23 Service (USPHS) guidelines related to the treatment of HIV and
24 AIDS. These guidelines are available at www.aidsinfo.nih.gov.
25 Specific guidelines include:

- 26 • "Guidelines for the Use of Antiretroviral Agents in
27 HIV-Infected Adults and Adolescents"
- 28 • "Guidelines for the Prevention of Opportunistic
29 Infections in Persons Infected with HIV"
- 30 • "Guidelines for the Management of Occupational
31 Exposures to HBV, HCV, and HIV and Recommendations for
32 Postexposure Prophylaxis"
- 33 • "Management of Possible Sexual, Injecting-Drug-Use, or
34 Other Nonoccupational Exposure to HIV, Including
35 Considerations Related to Antiretroviral Therapy"
- 36 • Prevention and Treatment of Tuberculosis Among Patients
37 Infected with Human Immunodeficiency Virus: Principles

1 of Therapy and Revised Recommendations"

2 The contractor shall comply with the most recent National
3 Institutes of Health (NIH) "Consensus Development Conference
4 Statement on the Management of Hepatitis C."

5 Preventive Health Services

6 The contractor shall provide preventive health care to include
7 immunizations and medical screening procedures consistent with
8 those recommended by the United States Preventive Health Task
9 Force.

10 Management of Chronic Medical Conditions

11 For the treatment of chronic diseases, the contractor shall use
12 current evidence-based clinical treatment guidelines promulgated
13 by nationally recognized sources, such as the National Asthma
14 Education Program; Joint National Committee on Prevention,
15 Detection, Evaluation and Treatment of High Blood Pressure;
16 National Cholesterol Education Program; American Diabetes
17 Association; and American Psychiatric Association. The BOP
18 Health Services Division has issued clinical treatment guidelines
19 from the Office of the Medical Director based upon these and
20 other nationally recognized guidelines and tailored to the
21 correctional environment. These are available from the Health
22 Services Division or at www.nicic.org. The contractor shall
23 specify which guidelines it has chosen to use and will be
24 benchmarked against those guidelines.

25 Quality Improvement

26 The contractor shall establish a clinical care quality assessment
27 and improvement program along with a quality measurement system
28 for health care services. The quality of services shall be
29 assessed through this program, and the findings shall be
30 available to the BOP upon request.

32 Organ Donations/Transplants

33 All issues related to organ donations/transplants will be
34 immediately reported to the COR for consultation with the BOP
35 Medical Director who will evaluate on a case-by-case basis.

1 Inmate Death

2 In the event of inmate death, the contractor shall immediately
3 notify the COTR and submit a written report to the COR and BOP
4 Medical Director via GroupWise at BOP-HSD\Assistant Director
5 within 24 hours. Also, a copy of this report must be sent to the
6 BOP Office of Quality Management (OQM) via GroupWise at BOP-
7 HSD\Quality Management. The written report shall include, at a
8 minimum: name of the deceased, age, register number, date of
9 death, preliminary cause of death, place of death, narrative
10 containing brief clinical synopsis of events leading to death
11 (including staff response and hospitalization) and past medical
12 history. If an autopsy is to be performed, this information
13 should be included. If the death occurred in the community
14 hospital, length of hospitalization or emergency care must be
15 included.

16 If death is due to violence, an accident surrounded by unusual or
17 questionable circumstances or is sudden and the deceased has not
18 been under immediate medical supervision, the contractor shall
19 notify the coroner of the local jurisdiction to request review of
20 the case and, if necessary, examination of the body (e.g.,
21 autopsy). The contractor shall obtain the autopsy report if one
22 is performed and submit it along with the Mortality Review Report
23 mentioned below. If the autopsy, toxicology or tissue analysis
24 is not completed by the coroner in the 30-day time frame
25 mentioned below, the contractor will notify OQM via GroupWise and
26 forward the results as soon as they are available. The
27 contractor shall establish coroner notification procedures
28 outlining such issues as performance of an autopsy, who will
29 perform the autopsy, obtaining state-approved death certificates
30 and local transportation of the body.

31 Within 30 days of an inmate death, the Mortality Review Committee
32 will complete the Mortality Review Report in its entirety and
33 send it, accompanied by the original health record, to the Health
34 Services Division, Office of Quality Management. Final autopsy
35 reports, toxicology studies, death certificates, etc. are to be
36 forwarded to OQM via trackable mail immediately upon receipt.
37 The contractor is required to conduct the mortality review using
38 the Multi-Level Mortality Review (Form BP-A563) and to submit to
39 the BOP Medical Director via GroupWise with a copy to the COR.
40 P.S. 6013.01, Health Services Quality Improvement, dated 1/15/05,
41 should be consulted for guidance. The BOP will have an external
42 consultant review the report and provide written recommendations
43 to the contractor via the Medical Director.

1 If the Mortality Review Committee finds opportunities to improve
2 the quality of care, the plan of action for improvement should be
3 considered and, if appropriate, incorporated into the
4 contractor's Quality Control Program. If the external consultant
5 recommends improvement action, the contractor must address each
6 recommendation and report any actions taken to the BOP Medical
7 Director within 90 days of receipt of the recommendations.

8 The contractor is responsible for preparation and transportation
9 of the body to the designated family member, nearest of kin or
10 Consular Officer of the inmate's country of legal residence.

11 Personal property of the deceased inmate shall be inventoried and
12 forwarded to the designated family member, nearest of kin or
13 Consular Officer of the inmate's country of legal residence.

14 Medical Records

15 Consistency in content and format of medical records of inmates
16 transferring between contract and BOP facilities is a critical
17 component of care for inmates.

18 The contractor shall adhere to P.S. 6090.01, Health Information
19 Management, dated 1/15/05, in preparing, formatting, documenting,
20 maintaining, releasing of information and all medico-legal
21 aspects of an inmate's medical record. The contractor is
22 responsible for supplying medical record folders, consistent with
23 the specification provided by the BOP, only for those inmates who
24 are new designations into the facility or in cases where
25 transferred medical records cannot be located. The Government
26 shall provide the contractor a copy of all applicable Government
27 forms necessary to document an inmate's medical record.

28 Data Collection and Management

29 The contractor shall comply with P.S. 6031.01, Patient Care,
30 dated 1/15/05, on Sensitive Medical Data/Medical Duty Status
31 (SMD/MDS) for the reporting and accountability of medical data on
32 all inmates assigned to the facility, including utilizing the
33 SMD/MDS TRM.

34 Data collected for the assessment of the quality of care or for
35 accreditation purposes will be made available to the BOP upon
36 request.

1 Medical Redesignation Requests

2 The contractor shall comply with P. S. 6270.01, Medical
3 Designations and Referral Services for Federal Prisoners, dated
4 1/15/05, regarding transfers and medical designations of inmates
5 assigned to the facility. Medical designations to BOP medical
6 centers or other Government facilities will be at the sole
7 discretion of the BOP. In order to transport, the inmate must be
8 medically cleared and stable for their mode of travel.

9 **O. Work and Correctional Industries**

10 Inmate labor shall be used in accordance with the inmate work
11 plan developed by the contractor. The inmate work plan may
12 include work or program assignments for industrial, maintenance,
13 custodial, service or other jobs.

14 Inmates shall not be used to perform the responsibilities or
15 duties of an employee of the contractor. Appropriate safety/
16 protective clothing and equipment shall be provided to the inmate
17 population as appropriate. Inmates shall not be assigned work
18 considered hazardous or dangerous. This includes, but is not
19 limited to, areas or assignments requiring great heights, extreme
20 temperatures, use of toxic substances or unusual physical
21 demands.

22 As applicable, inmates shall be paid identical rates of pay as
23 those established by the BOP. Current established rates are in
24 P.S. 5251.06, Inmate Work and Performance Pay, dated 10/1/08, and
25 28 CFR 545.20. The contractor shall develop procedures whereby
26 inmates receiving performance pay who are found through the
27 disciplinary process to have committed a level 100 or 200 series
28 drug- or alcohol-related prohibited act will have performance pay
29 reduced to maintenance pay level.

30 **P. Academic and Vocational Education**

31 The contractor may provide voluntary educational programs (e.g.,
32 English-as-a-Second-Language).

33 The contractor shall comply with the Protection of Children from
34 Sexual Predators Act of 1998 (P.L. 105-314). Inmates shall be
35 restricted from access to interactive computer services.

36 Newspapers and other reading materials in languages applicable to

1 the inmate population shall be provided in sufficient quantity
2 and in a timely manner.

3 The contractor shall develop and make available to all inmates an
4 education program which addresses the subject of sexual
5 assault/sexual abuse. The content of the educational program
6 must include topics such as: recognizing behaviors that are
7 inappropriate, harassing or assaultive; how to seek protection;
8 privacy rights; medical/psychological programs for victims of
9 abuse; and how to make confidential reporting of sensitive issues
10 to institution staff, BOP or DOJ Office of Inspector General
11 (OIG). The contractor shall augment the educational program by
12 distributing informational posters and pamphlets to the inmate
13 population.

14 **Q. Recreation and Activities**

15 The contractor shall comply with Section 611 of P.L. 104-208,
16 Title I, Section 101(a) (the Zimmer Amendment), which addresses
17 use of recreational equipment and materials by federal inmates.
18 The contractor shall develop adequate and meaningful recreation
19 programs for inmates at the facility.

20 The contractor shall not permit any of the restricted items or
21 practices identified in Sections 612 and 615 of The Commerce,
22 Justice, State Appropriations Act of 2000 (P.L. 106-113), as
23 amended or re-authorized, in the facility.

24

25 **R. Telephone**

26 The contractor shall provide a telephone system for inmates
27 capable of accommodating both debit and collect telephone calls.
28 The contractor shall establish procedures that permit inmates to
29 make telephone calls, including in cases of emergency or
30 indigence.

31 The contractor shall implement telephone limitations as directed
32 by the BOP.

33 Inmates in the Special Housing or Control Unit are entitled to a
34 minimum of one social call per month.

35 The system shall prevent inmates from calling any telephone
36 number not included on the inmate's official telephone list.
37 Once an inmate submits the initial list, it must be processed

1 (ordinarily within five work days) and may contain up to 30
2 telephone numbers the inmate is authorized to call. Calls may be
3 made via debit or collect procedures except as otherwise
4 authorized by the Warden of the facility for good cause. The
5 contractor shall ensure any individual (United States residents
6 only) placed on an inmate's telephone list receives notice they
7 have been placed on such a list and document same. The
8 contractor shall ensure the individual is provided with the means
9 to remove themselves from the list.

10 A telephone number for a victim or a witness (as identified on
11 the Pre-Sentence Investigation Report or as otherwise verified by
12 staff) or telephone numbers assigned to any BOP institution,
13 office or component or any telephone number of a recently
14 separated or current contract/BOP employee may not be placed on
15 an inmate's telephone list without the Warden's express written
16 permission.

17 The contractor shall allow each inmate the opportunity to update
18 their telephone list no more than three times per month except as
19 otherwise authorized by the Warden of the facility for good
20 cause.

21 If authorized to do so under applicable law, the contractor shall
22 monitor and record inmate telephone conversations. The
23 contractor shall provide notice to inmates of the potential for
24 monitoring. However, the contractor shall also provide
25 procedures at the facility for inmates to be able to place
26 unmonitored telephone calls to their attorneys of record.

27 Telephone rates shall not exceed the dominant carrier residential
28 tariff rate and shall conform to all applicable federal, state
29 and local telephone regulations.

30 Any income received by the contractor as a result of inmate
31 telephone calls which is in excess of expenses incurred (to
32 include refunds/rebates from carriers) shall offset the cost of
33 this contract. The contractor shall provide the CO with copies
34 of any contracts between the contractor and the inmate telephone
35 system provider(s). The contractor shall provide the CO with all
36 documentation in support of any agreement the contractor has
37 regarding income, refunds, rebates and other monetary or non-
38 monetary reimbursements involving the inmate telephone system.
39 The contractor shall also provide the CO and COR with copies of
40 all invoices and other documentation of expenses incurred and
41 income received in regards to the inmate telephone system with

1 its monthly request for contract payment and apply the credit
2 against the monthly payment. The CO and COR shall have total
3 access to all telephone operation records.

4 [End of Section]

RFP-PCC-0014**SECTION H - SPECIAL CONTRACT REQUIREMENTS****H.1 CHANGE IN ESSENTIAL PERSONNEL**

Following contract award, any change in essential personnel during contract performance is subject to the review and approval of the Contracting Officer's Representative. The contractor shall submit evidence that the qualifications of the prospective replacement personnel are equal to or greater than personnel vacating the positions. Such requests for review and approval shall be in writing. Failure of the contractor to timely fill any essential position may result in an invoice reduction from the day of the vacancy.

The following positions are considered essential personnel:

- Project Coordinator
- Warden(s)
- Associate Warden(s)
- Administrator, Religious Services
- Case Management Coordinator
- Chief, Correctional Services
- Computer Services Manager
- Correctional Shift Supervisors
- Facilities Manager/Administrator
- Food Service Administrator
- Human Resource Manager
- Inmate Systems/Records Office Manager
- Intelligence Officer
- Medical Services Administrator
- Quality Control Specialist
- Safety/Environmental Specialist

H.2 POST-AWARD PERFORMANCE CONFERENCE

A post-award performance conference between the Bureau of Prisons (BOP) and the contractor will be held prior to issuance of the Notice to Proceed.

The purpose of the post-award performance conference is to: discuss and develop a mutual understanding concerning scheduling and administering the work; introduce BOP and contractor staff; and resolve as many potential problems as possible before performance.

Contractor participation in the post-award performance conference is required. The Project Coordinator, and other contractor personnel as identified by the Contracting Officer, will be required to attend the post-award performance conference.

[End of Section]

Attachment J-19 INFORMATION SYSTEMS EQUIPMENT

The contractor's information systems must conform to:

1. P.S. 1237.13, Information Security, dated 3/31/06;
2. P.S. 1237.14, Personal Computers and Network Standards, dated 5/7/07;
3. P.S. 1237.15, Information Resources Protection, dated 12/31/07;
4. P.S. 1280.11, JUST, NCIC, and NLETS Telecommunication Systems (Management and Use), dated 1/7/00; and
5. DOJ 2640.2F, Information Technology Security, dated 11/26/08.

The above program statements and DOJ order detail the requirements. The following requirements, however, highlight information which may not be included in the above documents.

All of the software listed below is a requirement. The Local Area Network (LAN) workstation equipment list details the minimum requirements for new purchases. Please note: equivalent software versions must be maintained as required by Bureau of Prison (BOP) policy (i.e., technical bulletins) throughout the life of the contract.

The BOP shall provide the following:

Circuit to the BOP's Network Control Center (Channel Service Unit/Data Service Unit, Router, Dial-up Modem) will be ordered by the BOP.

For connection to the BOP Wide Area Network (WAN), the contractor is required to provide:

1. Any required extension of the telecommunications Dmarc (including any inside wiring).
2. 100 MB Ethernet connection from the Cisco infrastructure LAN to the WAN contractor provided router to allow connection to the BOP WAN.
3. Future wide area network enhancements may necessitate additional changes.

To connect to the BOP LAN, the contractor shall provide the following:

1. Ethernet cable plant which consists of single-mode and/or multi-mode fiber backbone and category 6 cable lobes. (If existing cabling is different, it must be approved through National Network Communications.)

2. Administrative file server.

Suggested server specifications: Proliant ML 370 G5 HPM Tower or Rack Model with Dual Xeon 5160 3Ghz CPU's and minimum of 6 x 146GB hard drives, including Hard Drive Retention.

Configuration details: Dual Processor Proliant ML 370 G5, Two (2) x Dual Core Intel XEON 5160 3.00Ghz CPU with 1333Mhz FSB, 4GB PC2-5300 (4 x 1GB DIMM's spread between 2 memory boards for 4:1 interleaving support), 2nd memory board, 4MB Cache per CPU, 5U Rack Chassis, embedded dual 100/1000 NIC's, 6 x 146GB 10k rpm SAS drives, PCI-e P400 DAC w/512MB RAM, RAID 5 with on-line spare, Novell OES 2 certified, redundant fans and power, DVD-ROM and floppy disk drive, Integrated Advanced Lights Out II, Insight Manager, rapid deploy rails, 9 total IO slots: 2 PCI-x, 6 PCI-Express, 1 PCI Express for RAID Controller, 3 Yr 24x7 4HR NBD On-Site Warranty. Also includes PCI-e U320 SCSI controller card to provide 1 external SCSI 68-pin connection for use with external tape backup.

Annual Novell software maintenance and support is required.

- 2a. A Windows 2003 Server to be used as an application server for Anti-Virus functions and to serve as a Microsoft Windows Software Update Services (WSUS) Server. This can be a desktop class machine with a minimum of 1 GB of RAM.
3. Cisco Ethernet switches for new and existing facilities protected by an Uninterruptible Power Supply. The switches must be a Cisco 3560 switch - standard image with strong crypto. The router must be a Cisco 2811 for layer 3 with a Flash Upgrade from 64MB to 128MB (Factory Installed) and the Advanced Security 3DES/AES Feature Set.
4. Network interface cards, cables and UPS's for the servers and workstations on the LAN.
5. Network backup: Spectra Logic 2K AIT-5 tape backup library with (Syncsort Backup Express Version 3.x, compatible with Suse Linux 10 SP2; and Novell OES 2 SP1, appropriate application agents as needed such as GroupWise are also required.
6. For workstations and printers, there will be no static IP addresses. Most addresses should be obtained via a BOP DHCP server. Any necessary static addresses will be assigned by National Network Communications. No public IP addresses are authorized.
7. Multiple network segments will be connected by Cisco Ethernet switches.

8. A detailed diagram of all network cable runs, drops and equipment will be provided to National Network Communications.

All contractor network operating system software and configurations, including servers and workstations, applications and configurations, shall be of the same release, version and configuration used by the BOP throughout the life of the contract. The contractor shall be advised of changes to hardware/software and configuration requirements by the BOP in the same manner as BOP facilities are notified (typically email). Minimum software requirements include:

1. Novell Open Enterprise Server(OES 2(SP1)SuSE Linux 10 SP 2), E-DIR 8.8.4, Novell LDAP V3,all are 64 bit Version.
2. GroupWise 7 SP 3.
3. Windows XP Professional SP3 with maintenance and Microsoft Internet Explorer Browser 7 128 bit encryption. Additionally, all workstations will be required to have the DOJ security Baseline configuration know as the FDCC security policies.
4. Norton Anti-Virus Corporate Edition Version 10.1 MR 6 or higher (as specified by OIS technical bulletins) for Windows. This version will be run on the Windows 2003 application server to provide anti-virus functions for the Windows desktops only.
- 4a. McAfee Anti-Virus (MFE VirusScan En Linux W/P:1 GL (P+)) to be used on the OES2 servers to provide anti-virus functions ONLY on the Linux servers.
5. Minimum of Corel Office Suite X4 or current edition, including WordPerfect, Quattro Pro and Presentations.
6. Network Software Associate's NS Elite Win 95/NT clients, required until web SENTRY implementation. Supplied by BOP.
7. Microsoft SNA Client. Supplied by BOP.
8. Screen Pass 5.1 or higher.
9. Novell Client 4.91 SP5 or higher.
10. Adobe 8 Reader or higher.
11. Microsoft Internet Explorer 7 128 bit encryption.

All Internet protocol addresses shall be obtained from the BOP. The local BOP Network shall not be connected to any other external or corporate network.

The GroupWise system shall be a stand-alone primary domain that will connect up to the Bureau GroupWise system as an external domain. Shared Network printers shall connect directly to the network.

1. All contractor standard LAN workstations shall include:

Desktop computer specifications:

Current BOP configuration:

Windows XP Pro SP3 required.

HP dc7800 Minitower with 17" monitor: CMT chassis, Intel Core 2 Duo E6600 Processor, 2.4Ghz CPU, 4MB L2 cache, 1066Mhz FSB, 1GB PC2-5300 DDR2 667Mhz RAM - 1 DIMM, 80GB 7200rpm SATA HDD, 48X/32X DVD/CDRW Combo Drive, 1.44MB Floppy Drive, Integrated Intel GMA 3000 with 256MB shared video, 10/100/1000 integrated NIC, internal speaker, USB Keyboard/Optical Mouse, 4 PCI Slots all full height (2 x PCI, 1 x PCIe, 1 x PCIx), 8 USB slots, serial, parallel, choice of Windows XP Pro SP3 or Vista Business 32-bit , 3 Yr NBD On-Site Warranty with Hard Drive Retention. (Note on choice of OS: Vista Business license includes full downgrade rights to XP for subsequent upgrade back to Vista). Currently Windows XP Pro SP3 is the BOP standard OS.

Headsets w/microphone (optional, but required for Centra training sessions).

2. Fully 100% HP-compatible Laser/Inkjet network/local printers. Network print servers must be NDPS aware and OES2/SuSE Linux compliant with iPrint implementation.
3. Only one NIC (Network Interface Card) shall be attached to the workstation connected to the BOP WAN. No connection to an external system is authorized. Only BOP-approved hardware and software shall be connected to or installed on any device attached to the BOP WAN/LAN. No other hardware or software may be connected without prior written approval by the BOP Chief Information Officer or Chief, Network Management Branch.

Additional requirements:

User ID Network naming standards: must use the following 7 character format; no duplicates are allowed.

The ID will consist of the facility code and any 4 digit number in sequential series (e.g., 1001,1002, etc.). Tracking of sequential numbers used will be a local responsibility.

All network user accounts that have not been logged on for 90 days must be disabled.

NOTE: BOP is currently in the process of renaming all Non-SENTRY BOPNet accounts from the seven (7) character format to an eight (8) character format. The new format will consist of the traditional three (3) character facility code followed by a five (5) character alpha numeric string.

User ID Network naming standards, security and passwords must follow standard BOP requirements and are subject to change in keeping with government security requirements.

Currently, Network/BOPNet passwords will have the following form:

- User-selected;
- Minimum length of 12 characters;
- Must contain at least 1 alphabetic character in any position;
- DOJ baseline configuration does not like a number or special character in the first position of the password and, therefore,
- Must contain at least 1 numeric character in position 2 through 10;
- Must contain at least 1 special character in position 2 through 10.
- Example: sw#32456sand

The above are mandatory Office of Management and Budget and Department of Justice password requirements.

Recommended password configuration/enforcement software is Novell Modular Authentication Services (NMAS). However, Netvision Synchronicity is also acceptable.

Passwords shall be unique and will have a maximum lifetime of 60 days. Additional requirements are specified in PS 1237.14.

BOP is currently migrating SENTRY to new web technology and migrating the BOPNet network server operating environment to Novell SuSE Linux, Open Enterprise Server, both of which may require additional software purchases in the near future. BOP will provide specific requirements as needed.

The following equipment is recommended in order for the BOP to assist the contractor with network problem resolution:

1. NetScout Distributed Sniffer. Note: The Sniffer software is installed on a customer supplied PC with two NIC cards.
2. Cisco Works 2000 Switch management software.
3. 10/100 Ethernet PCI NIC cards.

MUR718000797

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 1
2. AMENDMENT/MODIFICATION NO. 9	3. EFFECTIVE DATE Sep 29, 2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW (5006) WASHINGTON, D.C. 20534	CODE	7. ADMINISTERED BY (If other than item 6) FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW (5006) WASHINGTON, D.C. 20534	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Cornell Companies, Inc. 1700 West Loop South, Suite 1500 Houston, Texas 77027			(X)	9A. AMENDMENT OF SOLICITATION NO. RFP-PCC-0014
			<input checked="" type="checkbox"/>	9B. DATED (SEE ITEM 11) Jun 12, 2008
			<input type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NO.
			<input type="checkbox"/>	10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted;
 or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

AMMENDMENT 9 IS HEREBY ISSUED TO INCORPORATE FAR CLAUSE 52.224-54, EMPLOYMENT ELIGIBILITY VERIFICATION, INTO SECTION I (CONTRACT CLAUSES) OF RFP-PCC-0014.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

//LAST ITEM//

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin Senior Vice President, Corporate Development	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Ryan Wynne Contract Specialist
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 09/30/2009
16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 1
2. AMENDMENT/MODIFICATION NO. 10	3. EFFECTIVE DATE Oct 22, 2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW (5006) WASHINGTON, D.C. 20534	CODE	7. ADMINISTERED BY (If other than Item 6) FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW (5006) WASHINGTON, D.C. 20534	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Cornell Companies, Inc. 1700 West Loop South, Suite 1500 Houston, Texas 77027			(X)	9A. AMENDMENT OF SOLICITATION NO. RFP-PCC-0014
			<input checked="" type="checkbox"/>	9B. DATED (SEE ITEM 11) Jun 12, 2008
			<input type="checkbox"/>	10A. MODIFICATION OF CONTRACT/ORDER NO.
			<input type="checkbox"/>	10B. DATED (SEE ITEM 13)
CODE	FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
<input type="checkbox"/>	
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

AMENDMENT 10 IS HEREBY ISSUED TO INCORPORATE THE FOLLOWING UPDATED DEPARTMENT OF LABOR WAGE DETERMINATIONS INTO THE RFP-PCC0014:

WAGE DETERMINATION NO.:	REVISION NO.:	DATE OF LAST REVISION:
2005-2043	10	05/26/2009
2005-2115	8	07/17/2009
2005-2295	10	10/07/2009

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

//LAST ITEM//

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin Senior Vice President, Corporate Development	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Ryan Wynne Contract Specialist
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 10/30/2009
	16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)
	16C. DATE SIGNED

REGISTER OF WAGE DETERMINATIONS UNDER | U.S. DEPARTMENT OF LABOR
 THE SERVICE CONTRACT ACT | EMPLOYMENT STANDARDS ADMINISTRATION
 By direction of the Secretary of Labor | WAGE AND HOUR DIVISION
 WASHINGTON D.C. 20210

Shirley F. Ebbesen | Wage Determination No.: 2005-2115
 Director | Division of | Revision No.: 8
 Wage Determinations | Date Of Last Revision: 07/17/2009

States: Florida, Georgia

Area: Florida Counties of Baker, Clay, Columbia, Duval, Hamilton, Lafayette,
 Madison, Nassau, Putnam, Saint Johns, Suwannee, Taylor

Georgia Counties of Brantley, Camden, Charlton, Glynn, Pierce

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.06
01012 - Accounting Clerk II		13.29
01013 - Accounting Clerk III		16.03
01020 - Administrative Assistant		17.65
01040 - Court Reporter		14.34
01051 - Data Entry Operator I		11.02
01052 - Data Entry Operator II		13.15
01060 - Dispatcher, Motor Vehicle		16.75
01070 - Document Preparation Clerk		11.31
01090 - Duplicating Machine Operator		11.31
01111 - General Clerk I		10.69
01112 - General Clerk II		11.80
01113 - General Clerk III		18.09
01120 - Housing Referral Assistant		16.37
01141 - Messenger Courier		10.89
01191 - Order Clerk I		11.99
01192 - Order Clerk II		13.08
01261 - Personnel Assistant (Employment) I		13.07
01262 - Personnel Assistant (Employment) II		14.62
01263 - Personnel Assistant (Employment) III		16.30
01270 - Production Control Clerk		18.78
01280 - Receptionist		11.14
01290 - Rental Clerk		11.53
01300 - Scheduler, Maintenance		13.12
01311 - Secretary I		13.12
01312 - Secretary II		14.67
01313 - Secretary III		16.37
01320 - Service Order Dispatcher		14.63
01410 - Supply Technician		17.65
01420 - Survey Worker		13.76

01531 - Travel Clerk I	11.83
01532 - Travel Clerk II	12.92
01533 - Travel Clerk III	13.92
01611 - Word Processor I	12.42
01612 - Word Processor II	15.29
01613 - Word Processor III	17.11
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	18.96
05010 - Automotive Electrician	16.74
05040 - Automotive Glass Installer	14.73
05070 - Automotive Worker	14.73
05110 - Mobile Equipment Servicer	12.68
05130 - Motor Equipment Metal Mechanic	17.19
05160 - Motor Equipment Metal Worker	14.73
05190 - Motor Vehicle Mechanic	17.18
05220 - Motor Vehicle Mechanic Helper	12.01
05250 - Motor Vehicle Upholstery Worker	13.71
05280 - Motor Vehicle Wrecker	14.73
05310 - Painter, Automotive	15.73
05340 - Radiator Repair Specialist	14.73
05370 - Tire Repairer	11.70
05400 - Transmission Repair Specialist	17.19
07000 - Food Preparation And Service Occupations	
07010 - Baker	11.75
07041 - Cook I	9.87
07042 - Cook II	11.09
07070 - Dishwasher	8.00
07130 - Food Service Worker	9.21
07210 - Meat Cutter	12.87
07260 - Waiter/Waitress	9.02
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	15.02
09040 - Furniture Handler	9.62
09080 - Furniture Refinisher	15.02
09090 - Furniture Refinisher Helper	11.17
09110 - Furniture Repairer, Minor	13.09
09130 - Upholsterer	15.02
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	9.69
11060 - Elevator Operator	9.69
11090 - Gardener	12.04
11122 - Housekeeping Aide	10.26
11150 - Janitor	10.43
11210 - Laborer, Grounds Maintenance	10.60
11240 - Maid or Houseman	8.69
11260 - Pruner	10.07
11270 - Tractor Operator	11.51
11330 - Trail Maintenance Worker	10.60
11360 - Window Cleaner	11.45
12000 - Health Occupations	
12010 - Ambulance Driver	15.60
12011 - Breath Alcohol Technician	17.67
12012 - Certified Occupational Therapist Assistant	25.24
12015 - Certified Physical Therapist Assistant	20.27
12020 - Dental Assistant	15.58
12025 - Dental Hygienist	27.39

12030 - EKG Technician	19.59	
12035 - Electroneurodiagnostic Technologist		19.59
12040 - Emergency Medical Technician		15.15
12071 - Licensed Practical Nurse I	15.80	
12072 - Licensed Practical Nurse II	17.67	
12073 - Licensed Practical Nurse III	18.47	
12100 - Medical Assistant	13.02	
12130 - Medical Laboratory Technician		17.02
12160 - Medical Record Clerk	12.80	
12190 - Medical Record Technician	14.72	
12195 - Medical Transcriptionist	14.59	
12210 - Nuclear Medicine Technologist		32.90
12221 - Nursing Assistant I	9.85	
12222 - Nursing Assistant II	11.07	
12223 - Nursing Assistant III	12.08	
12224 - Nursing Assistant IV	13.56	
12235 - Optical Dispenser	17.58	
12236 - Optical Technician	13.33	
12250 - Pharmacy Technician	13.44	
12280 - Phlebotomist	13.56	
12305 - Radiologic Technologist	23.35	
12311 - Registered Nurse I	22.03	
12312 - Registered Nurse II	26.95	
12313 - Registered Nurse II, Specialist	26.95	
12314 - Registered Nurse III	32.61	
12315 - Registered Nurse III, Anesthetist	32.61	
12316 - Registered Nurse IV	39.09	
12317 - Scheduler (Drug and Alcohol Testing)		20.51
13000 - Information And Arts Occupations		
13011 - Exhibits Specialist I	17.28	
13012 - Exhibits Specialist II	21.41	
13013 - Exhibits Specialist III	26.19	
13041 - Illustrator I	17.28	
13042 - Illustrator II	21.41	
13043 - Illustrator III	26.19	
13047 - Librarian	23.72	
13050 - Library Aide/Clerk	11.27	
13054 - Library Information Technology Systems Administrator		21.41
13058 - Library Technician	12.87	
13061 - Media Specialist I	15.45	
13062 - Media Specialist II	17.28	
13063 - Media Specialist III	19.28	
13071 - Photographer I	12.92	
13072 - Photographer II	16.00	
13073 - Photographer III	18.79	
13074 - Photographer IV	22.98	
13075 - Photographer V	27.81	
13110 - Video Teleconference Technician		15.10
14000 - Information Technology Occupations		
14041 - Computer Operator I	13.44	
14042 - Computer Operator II	15.03	
14043 - Computer Operator III	16.96	
14044 - Computer Operator IV	20.82	
14045 - Computer Operator V	23.11	
14071 - Computer Programmer I	(see 1)	24.20

14072 - Computer Programmer II	(see 1)	
14073 - Computer Programmer III	(see 1)	
14074 - Computer Programmer IV	(see 1)	
14101 - Computer Systems Analyst I	(see 1)	
14102 - Computer Systems Analyst II	(see 1)	
14103 - Computer Systems Analyst III	(see 1)	
14150 - Peripheral Equipment Operator		15.41
14160 - Personal Computer Support Technician		20.82
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		28.19
15020 - Aircrew Training Devices Instructor (Rated)		34.10
15030 - Air Crew Training Devices Instructor (Pilot)		37.51
15050 - Computer Based Training Specialist / Instructor		26.70
15060 - Educational Technologist		23.96
15070 - Flight Instructor (Pilot)		37.51
15080 - Graphic Artist		20.70
15090 - Technical Instructor		20.05
15095 - Technical Instructor/Course Developer		24.53
15110 - Test Proctor		16.18
15120 - Tutor		16.18
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations		
16010 - Assembler		8.37
16030 - Counter Attendant		8.37
16040 - Dry Cleaner		10.67
16070 - Finisher, Flatwork, Machine		8.37
16090 - Presser, Hand		8.37
16110 - Presser, Machine, Drycleaning		8.37
16130 - Presser, Machine, Shirts		8.37
16160 - Presser, Machine, Wearing Apparel, Laundry		8.37
16190 - Sewing Machine Operator		11.38
16220 - Tailor		12.08
16250 - Washer, Machine		9.11
19000 - Machine Tool Operation And Repair Occupations		
19010 - Machine-Tool Operator (Tool Room)		16.70
19040 - Tool And Die Maker		21.00
21000 - Materials Handling And Packing Occupations		
21020 - Forklift Operator		13.90
21030 - Material Coordinator		18.78
21040 - Material Expediter		18.78
21050 - Material Handling Laborer		12.35
21071 - Order Filler		10.66
21080 - Production Line Worker (Food Processing)		13.90
21110 - Shipping Packer		14.88
21130 - Shipping/Receiving Clerk		14.88
21140 - Store Worker I		9.34
21150 - Stock Clerk		13.30
21210 - Tools And Parts Attendant		13.90
21410 - Warehouse Specialist		13.90
23000 - Mechanics And Maintenance And Repair Occupations		
23010 - Aerospace Structural Welder		23.79
23021 - Aircraft Mechanic I		22.43
23022 - Aircraft Mechanic II		23.79
23023 - Aircraft Mechanic III		25.17
23040 - Aircraft Mechanic Helper		14.26
23050 - Aircraft, Painter		19.52
23060 - Aircraft Servicer		16.71

23080 - Aircraft Worker	17.95
23110 - Appliance Mechanic	16.96
23120 - Bicycle Repairer	12.87
23125 - Cable Splicer	23.36
23130 - Carpenter, Maintenance	17.22
23140 - Carpet Layer	16.67
23160 - Electrician, Maintenance	18.88
23181 - Electronics Technician Maintenance I	21.28
23182 - Electronics Technician Maintenance II	22.78
23183 - Electronics Technician Maintenance III	24.27
23260 - Fabric Worker	15.41
23290 - Fire Alarm System Mechanic	17.39
23310 - Fire Extinguisher Repairer	14.36
23311 - Fuel Distribution System Mechanic	23.13
23312 - Fuel Distribution System Operator	18.23
23370 - General Maintenance Worker	15.16
23380 - Ground Support Equipment Mechanic	22.43
23381 - Ground Support Equipment Servicer	17.59
23382 - Ground Support Equipment Worker	18.89
23391 - Gunsmith I	16.81
23392 - Gunsmith II	18.67
23393 - Gunsmith III	20.74
23410 - Heating, Ventilation And Air-Conditioning Mechanic	18.10
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	19.20
23430 - Heavy Equipment Mechanic	17.54
23440 - Heavy Equipment Operator	18.30
23460 - Instrument Mechanic	23.23
23465 - Laboratory/Shelter Mechanic	17.84
23470 - Laborer	12.35
23510 - Locksmith	16.48
23530 - Machinery Maintenance Mechanic	22.01
23550 - Machinist, Maintenance	18.36
23580 - Maintenance Trades Helper	11.17
23591 - Metrology Technician I	23.23
23592 - Metrology Technician II	24.38
23593 - Metrology Technician III	25.60
23640 - Millwright	20.21
23710 - Office Appliance Repairer	21.11
23760 - Painter, Maintenance	15.02
23790 - Pipefitter, Maintenance	18.29
23810 - Plumber, Maintenance	17.19
23820 - Pneudraulic Systems Mechanic	19.01
23850 - Rigger	19.65
23870 - Scale Mechanic	16.67
23890 - Sheet-Metal Worker, Maintenance	19.44
23910 - Small Engine Mechanic	14.74
23931 - Telecommunications Mechanic I	23.22
23932 - Telecommunications Mechanic II	24.63
23950 - Telephone Lineman	20.88
23960 - Welder, Combination, Maintenance	16.28
23965 - Well Driller	18.50
23970 - Woodcraft Worker	19.01
23980 - Woodworker	12.11
24000 - Personal Needs Occupations	

24570 - Child Care Attendant	9.12	
24580 - Child Care Center Clerk	13.34	
24610 - Chore Aide	9.13	
24620 - Family Readiness And Support Services Coordinator		14.20
24630 - Homemaker	19.49	
25000 - Plant And System Operations Occupations		
25010 - Boiler Tender	22.27	
25040 - Sewage Plant Operator	20.90	
25070 - Stationary Engineer	22.27	
25190 - Ventilation Equipment Tender	15.47	
25210 - Water Treatment Plant Operator	20.90	
27000 - Protective Service Occupations		
27004 - Alarm Monitor	15.78	
27007 - Baggage Inspector	10.42	
27008 - Corrections Officer	14.43	
27010 - Court Security Officer	14.43	
27030 - Detection Dog Handler	13.68	
27040 - Detention Officer	14.43	
27070 - Firefighter	13.26	
27101 - Guard I	10.42	
27102 - Guard II	13.68	
27131 - Police Officer I	19.58	
27132 - Police Officer II	21.77	
28000 - Recreation Occupations		
28041 - Carnival Equipment Operator	10.23	
28042 - Carnival Equipment Repairer	10.38	
28043 - Carnival Equipment Worker	8.32	
28210 - Gate Attendant/Gate Tender	12.73	
28310 - Lifeguard	11.01	
28350 - Park Attendant (Aide)	14.24	
28510 - Recreation Aide/Health Facility Attendant		10.13
28515 - Recreation Specialist	17.10	
28630 - Sports Official	11.34	
28690 - Swimming Pool Operator	14.87	
29000 - Stevedoring/Longshoremen Occupational Services		
29010 - Blocker And Bracer	18.99	
29020 - Hatch Tender	18.99	
29030 - Line Handler	18.99	
29041 - Stevedore I	17.72	
29042 - Stevedore II	20.31	
30000 - Technical Occupations		
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)		35.15
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)		24.24
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)		26.69
30021 - Archeological Technician I	15.55	
30022 - Archeological Technician II	17.40	
30023 - Archeological Technician III	21.56	
30030 - Cartographic Technician	21.56	
30040 - Civil Engineering Technician	22.04	
30061 - Drafter/CAD Operator I	16.01	
30062 - Drafter/CAD Operator II	18.27	
30063 - Drafter/CAD Operator III	20.00	
30064 - Drafter/CAD Operator IV	23.88	
30081 - Engineering Technician I	12.97	
30082 - Engineering Technician II	16.57	

30083 - Engineering Technician III	20.34	
30084 - Engineering Technician IV	23.88	
30085 - Engineering Technician V	29.16	
30086 - Engineering Technician VI	35.34	
30090 - Environmental Technician	19.61	
30210 - Laboratory Technician	20.56	
30240 - Mathematical Technician	22.18	
30361 - Paralegal/Legal Assistant I	18.17	
30362 - Paralegal/Legal Assistant II	22.79	
30363 - Paralegal/Legal Assistant III	27.87	
30364 - Paralegal/Legal Assistant IV	33.75	
30390 - Photo-Optics Technician	22.18	
30461 - Technical Writer I	21.03	
30462 - Technical Writer II	25.72	
30463 - Technical Writer III	30.02	
30491 - Unexploded Ordnance (UXO) Technician I		22.34
30492 - Unexploded Ordnance (UXO) Technician II		27.03
30493 - Unexploded Ordnance (UXO) Technician III		32.40
30494 - Unexploded (UXO) Safety Escort		22.34
30495 - Unexploded (UXO) Sweep Personnel		22.34
30620 - Weather Observer, Combined Upper Air Or Surface Programs	(see 2)	19.97
30621 - Weather Observer, Senior	(see 2)	22.18
31000 - Transportation/Mobile Equipment Operation Occupations		
31020 - Bus Aide	13.82	
31030 - Bus Driver	17.28	
31043 - Driver Courier	14.66	
31260 - Parking and Lot Attendant		8.62
31290 - Shuttle Bus Driver		15.41
31310 - Taxi Driver	10.31	
31361 - Truckdriver, Light		15.41
31362 - Truckdriver, Medium		18.16
31363 - Truckdriver, Heavy		18.36
31364 - Truckdriver, Tractor-Trailer		18.36
99000 - Miscellaneous Occupations		
99030 - Cashier	8.36	
99050 - Desk Clerk	9.58	
99095 - Embalmer	24.27	
99251 - Laboratory Animal Caretaker I		10.44
99252 - Laboratory Animal Caretaker II		11.35
99310 - Mortician	24.27	
99410 - Pest Controller	14.06	
99510 - Photofinishing Worker		13.43
99710 - Recycling Laborer		13.87
99711 - Recycling Specialist		17.70
99730 - Refuse Collector		12.31
99810 - Sales Clerk	12.31	
99820 - School Crossing Guard		10.67
99830 - Survey Party Chief		18.66
99831 - Surveying Aide		10.57
99832 - Surveying Technician		14.49
99840 - Vending Machine Attendant		11.62
99841 - Vending Machine Repairer		14.63
99842 - Vending Machine Repairer Helper		11.62



ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.35 per hour or \$134.00 per week or \$580.66 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 8 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer

industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you

work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am.

If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage

determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 1
2. AMENDMENT/MODIFICATION NO. 11	3. EFFECTIVE DATE Nov 23, 2009	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (If applicable)	
6. ISSUED BY DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW (5005) WASHINGTON, D.C. 20534	CODE	7. ADMINISTERED BY (If other than Item 6) FEDERAL BUREAU OF PRISONS PRIVATIZED CORRECTIONS CONTRACTING 320 FIRST STREET, NW (5005) WASHINGTON, D.C. 20534	CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Cornell Companies, Inc. 1700 West Loop South, Suite 1500 Houston, Texas 77027			(X) 9A. AMENDMENT OF SOLICITATION NO. RFP-PCC-0014	9B. DATED (SEE ITEM 11) Jun 12, 2008
CODE				10A. MODIFICATION OF CONTRACT/ORDER NO.
FACILITY CODE				10B. DATED (SEE ITEM 13)

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted;
 or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

**13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) NO. IN ITEM 10A.	THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER
<input type="checkbox"/>	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).	
<input type="checkbox"/>	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:	
<input type="checkbox"/>	D. OTHER (Specify type of modification and authority)	

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
 AMENDMENT 11 IS HEREBY ISSUED TO INCORPORATE THE FOLLOWING UPDATED DEPARTMENT OF LABOR WAGE DETERMINATION INTO RFP-PCC-0014.

WAGE DETERMINATION NO.: 2005-2362 REVISION NO.: 10 DATE OF LAST REVISION: 10/29/2009

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

//LAST ITEM//

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Benjamin E. Erwin Senior Vice President, Corporate Development	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Ryan Wynne Contract Specialist
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED 11/23/2009
16B. UNITED STATES OF AMERICA (Signature of Contracting Officer)	16C. DATE SIGNED

Exhibit B
Contract Modification 53

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES 1 11
2. AMENDMENT/MODIFICATION NO. 0053	3. EFFECTIVE DATE See Block 16C	4. REQUISITION / PURCHASE ORDER / PROVISION N/A	FRAGMENTATION (If Applicable) 32A	
6. ISSUED BY Federal Bureau of Prisons Privatized Corrections Contracting D. Ray James Correctional Facility Highway 252 East Folkston, Georgia 31537		CODE	7. ADMINISTERED BY (If other than Item 6) James J.C.L. Spence Contracting Officer (912) 496-6981	CODE
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Cornell Companies, Inc. One Park Place, Suite 700 621 Northwest 53 rd Street Boca Raton, Florida 33487			9A. AMENDMENT OF SOLICITATION NO.	9B. DATED (See Item 11)
CODE : Tax ID# 760433642	FACILITY CODE: DUNS #797470549		X 10A. MODIFICATION OF CONTRACT/ORDER NO. DJB1PC012 /	10B. DATED (See Item 13) 01/12/2010

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above number solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods.

(a) By completing Items 8 and 15, and returning _____ copy of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
N/A

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OR CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify Authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
XX	D. OTHER (Specify type of modification and authority) Unilateral – (FAR 52.223-43) Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Year Contracts)


E. IMPORTANT: Contractor, by signing this document, certifies that the information provided is true and correct.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible).

Contract DJB1PC012 is hereby unilaterally modified as follows: Wage Determination No. CBA-2014-7174 and 2005-2115, Revision No. 14 of the Department of Labor (DOL) Wage Rates (attached page 1 of 1, and pages 1-10), are incorporated into the contract. These wage rates replace the current DOL Wage Determination No. 2005-2115, Revision No. 13. The effective date of this amendment is September 30, 2014.

The Contractor shall provide any request for equitable adjustment to the Contracting Officer, no later than November 10, 2014.

Except as provided herein, all items and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) James J.C.L. Spence Contracting Officer	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 10/10/2014

REGISTER OF WAGE DETERMINATION UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary
of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

Diane Koplewski Division of
Director Wage Determinations

Wage Determination No.: CBA-2014-7174
Revision No.: 0
Date Of Last Revision: 10/10/2014

State: Georgia

Area: Charlton

Employed on Federal Bureau of Prisons contract for Operation of a Privatized Prison.

Collective Bargaining Agreement between contractor: Cornell Companies, Inc (The GEO Group), and union: International Union, Security, Police and Fire Professionals of , effective 5/30/2014 through 7/30/2017.

In accordance with Section 2(a) and 4(c) of the Service Contract Act, as amended, employees employed by the contractor(s) in performing services covered by the Collective Bargaining Agreement(s) are to be paid wage rates and fringe benefits set forth in the current collective bargaining agreement and modified extension agreement(s).

WD 05-2115 (Rev.-14) was first posted on www.wdol.gov on 08/05/2014

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON, D.C. 20210

Diane C. Koplewski Division of
Director Wage Determinations

Wage Determination No.: 2005-2115
Revision No.: 14
Date Of Revision: 07/25/2014

States: Florida, Georgia

Area: Florida Counties of Baker, Clay, Columbia, Duval, Hamilton, Lafayette,
Madison, Nassau, Putnam, Saint Johns, Suwannee, Taylor
Georgia Counties of Brantley, Camden, Charlton, Glynn, Pierce

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		12.14
01012 - Accounting Clerk II		13.62
01013 - Accounting Clerk III		16.03
01020 - Administrative Assistant		18.33
01040 - Court Reporter		15.07
01051 - Data Entry Operator I		11.53
01052 - Data Entry Operator II		13.15
01060 - Dispatcher, Motor Vehicle		16.75
01070 - Document Preparation Clerk		11.81
01090 - Duplicating Machine Operator		11.81
01111 - General Clerk I		10.83
01112 - General Clerk II		11.82
01113 - General Clerk III		18.09
01120 - Housing Referral Assistant		16.80
01141 - Messenger Courier		10.99
01191 - Order Clerk I		12.79
01192 - Order Clerk II		13.69
01261 - Personnel Assistant (Employment) I		13.47
01262 - Personnel Assistant (Employment) II		15.07
01263 - Personnel Assistant (Employment) III		16.80
01270 - Production Control Clerk		18.80
01280 - Receptionist		11.93
01290 - Rental Clerk		12.50
01300 - Scheduler, Maintenance		13.47
01311 - Secretary I		13.47
01312 - Secretary II		15.07
01313 - Secretary III		16.80
01320 - Service Order Dispatcher		14.63
01410 - Supply Technician		18.33
01420 - Survey Worker		14.09
01531 - Travel Clerk I		12.32
01532 - Travel Clerk II		13.45
01533 - Travel Clerk III		14.49
01611 - Word Processor I		12.58
01612 - Word Processor II		15.29
01613 - Word Processor III		17.11
05000 - Automotive Service Occupations		
05005 - Automobile Body Repairer, Fiberglass		18.96
05010 - Automotive Electrician		16.74

05040 - Automotive Glass Installer	14.73
05070 - Automotive Worker	14.73
05110 - Mobile Equipment Servicer	12.68
05130 - Motor Equipment Metal Mechanic	17.19
05160 - Motor Equipment Metal Worker	14.73
05190 - Motor Vehicle Mechanic	17.18
05220 - Motor Vehicle Mechanic Helper	12.01
05250 - Motor Vehicle Upholstery Worker	13.71
05280 - Motor Vehicle Wrecker	14.73
05310 - Painter, Automotive	15.73
05340 - Radiator Repair Specialist	14.73
05370 - Tire Repairer	11.70
05400 - Transmission Repair Specialist	17.19
07000 - Food Preparation And Service Occupations	
07010 - Baker	11.75
07041 - Cook I	10.86
07042 - Cook II	12.20
07070 - Dishwasher	8.18
07130 - Food Service Worker	9.21
07210 - Meat Cutter	13.65
07260 - Waiter/Waitress	9.87
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	16.52
09040 - Furniture Handler	10.58
09080 - Furniture Refinisher	16.52
09090 - Furniture Refinisher Helper	12.29
09110 - Furniture Repairer, Minor	14.40
09130 - Upholsterer	16.52
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	10.02
11060 - Elevator Operator	10.02
11090 - Gardener	12.83
11122 - Housekeeping Aide	11.17
11150 - Janitor	11.17
11210 - Laborer, Grounds Maintenance	11.30
11240 - Maid or Houseman	8.91
11260 - Pruner	10.07
11270 - Tractor Operator	12.66
11330 - Trail Maintenance Worker	11.30
11360 - Window Cleaner	12.59
12000 - Health Occupations	
12010 - Ambulance Driver	15.60
12011 - Breath Alcohol Technician	17.67
12012 - Certified Occupational Therapist Assistant	27.76
12015 - Certified Physical Therapist Assistant	22.33
12020 - Dental Assistant	16.28
12025 - Dental Hygienist	27.39
12030 - EKG Technician	21.26
12035 - Electroneurodiagnostic Technologist	21.26
12040 - Emergency Medical Technician	15.15
12071 - Licensed Practical Nurse I	15.80
12072 - Licensed Practical Nurse II	17.67
12073 - Licensed Practical Nurse III	18.89
12100 - Medical Assistant	13.57
12130 - Medical Laboratory Technician	17.22
12160 - Medical Record Clerk	13.73
12190 - Medical Record Technician	15.38
12195 - Medical Transcriptionist	15.65
12210 - Nuclear Medicine Technologist	32.90
12221 - Nursing Assistant I	10.38
12222 - Nursing Assistant II	11.67

12223 - Nursing Assistant III	12.74
12224 - Nursing Assistant IV	14.29
12235 - Optical Dispenser	19.34
12236 - Optical Technician	14.66
12250 - Pharmacy Technician	14.44
12280 - Phlebotomist	14.29
12305 - Radiologic Technologist	23.35
12311 - Registered Nurse I	23.41
12312 - Registered Nurse II	28.64
12313 - Registered Nurse II, Specialist	28.64
12314 - Registered Nurse III	34.65
12315 - Registered Nurse III, Anesthetist	34.65
12316 - Registered Nurse IV	41.52
12317 - Scheduler (Drug and Alcohol Testing)	20.99
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	18.14
13012 - Exhibits Specialist II	22.48
13013 - Exhibits Specialist III	27.50
13041 - Illustrator I	18.79
13042 - Illustrator II	23.29
13043 - Illustrator III	28.49
13047 - Librarian	24.89
13050 - Library Aide/Clerk	12.40
13054 - Library Information Technology Systems Administrator	22.40
13058 - Library Technician	13.25
13061 - Media Specialist I	16.22
13062 - Media Specialist II	18.14
13063 - Media Specialist III	20.53
13071 - Photographer I	13.56
13072 - Photographer II	16.00
13073 - Photographer III	18.80
13074 - Photographer IV	23.00
13075 - Photographer V	27.82
13110 - Video Teleconference Technician	15.58
14000 - Information Technology Occupations	
14041 - Computer Operator I	13.44
14042 - Computer Operator II	15.03
14043 - Computer Operator III	16.96
14044 - Computer Operator IV	20.82
14045 - Computer Operator V	23.11
14071 - Computer Programmer I	24.20
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	15.41
14160 - Personal Computer Support Technician	20.82
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	28.19
15020 - Aircrew Training Devices Instructor (Rated)	34.10
15030 - Air Crew Training Devices Instructor (Pilot)	39.61
15050 - Computer Based Training Specialist / Instructor	26.70
15060 - Educational Technologist	23.96
15070 - Flight Instructor (Pilot)	37.51
15080 - Graphic Artist	22.77
15090 - Technical Instructor	20.53
15095 - Technical Instructor/Course Developer	25.11
15110 - Test Proctor	16.56

15120 - Tutor	16.56
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	8.67
16030 - Counter Attendant	8.67
16040 - Dry Cleaner	11.05
16070 - Finisher, Flatwork, Machine	8.67
16090 - Presser, Hand	8.67
16110 - Presser, Machine, Drycleaning	8.67
16130 - Presser, Machine, Shirts	8.67
16160 - Presser, Machine, Wearing Apparel, Laundry	8.67
16190 - Sewing Machine Operator	11.79
16220 - Tailor	12.51
16250 - Washer, Machine	9.44
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	18.70
19040 - Tool And Die Maker	21.00
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	15.29
21030 - Material Coordinator	18.80
21040 - Material Expediter	18.80
21050 - Material Handling Laborer	12.93
21071 - Order Filler	10.98
21080 - Production Line Worker (Food Processing)	15.29
21110 - Shipping Packer	14.88
21130 - Shipping/Receiving Clerk	14.88
21140 - Store Worker I	9.85
21150 - Stock Clerk	14.02
21210 - Tools And Parts Attendant	15.29
21410 - Warehouse Specialist	15.29
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	25.15
23021 - Aircraft Mechanic I	23.72
23022 - Aircraft Mechanic II	25.15
23023 - Aircraft Mechanic III	26.71
23040 - Aircraft Mechanic Helper	15.08
23050 - Aircraft, Painter	20.64
23060 - Aircraft Servicer	17.67
23080 - Aircraft Worker	18.98
23110 - Appliance Mechanic	18.66
23120 - Bicycle Repairer	12.87
23125 - Cable Splicer	23.45
23130 - Carpenter, Maintenance	17.98
23140 - Carpet Layer	17.55
23160 - Electrician, Maintenance	20.10
23181 - Electronics Technician Maintenance I	22.35
23182 - Electronics Technician Maintenance II	23.94
23183 - Electronics Technician Maintenance III	25.41
23260 - Fabric Worker	16.35
23290 - Fire Alarm System Mechanic	19.13
23310 - Fire Extinguisher Repairer	15.12
23311 - Fuel Distribution System Mechanic	23.13
23312 - Fuel Distribution System Operator	18.23
23370 - General Maintenance Worker	15.63
23380 - Ground Support Equipment Mechanic	23.72
23381 - Ground Support Equipment Servicer	17.67
23382 - Ground Support Equipment Worker	18.98
23391 - Gunsmith I	16.81
23392 - Gunsmith II	18.67
23393 - Gunsmith III	20.74
23410 - Heating, Ventilation And Air-Conditioning Mechanic	19.33

23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	20.50
23430 - Heavy Equipment Mechanic	18.39
23440 - Heavy Equipment Operator	20.02
23460 - Instrument Mechanic	24.25
23465 - Laboratory/Shelter Mechanic	18.79
23470 - Laborer	12.93
23510 - Locksmith	16.48
23530 - Machinery Maintenance Mechanic	22.01
23550 - Machinist, Maintenance	18.54
23580 - Maintenance Trades Helper	12.29
23591 - Metrology Technician I	24.25
23592 - Metrology Technician II	25.81
23593 - Metrology Technician III	27.31
23640 - Millwright	20.21
23710 - Office Appliance Repairer	21.11
23760 - Painter, Maintenance	16.52
23790 - Pipefitter, Maintenance	19.16
23810 - Plumber, Maintenance	18.01
23820 - Pneudraulic Systems Mechanic	20.02
23850 - Rigger	19.65
23870 - Scale Mechanic	17.55
23890 - Sheet-Metal Worker, Maintenance	19.44
23910 - Small Engine Mechanic	14.74
23931 - Telecommunications Mechanic I	23.49
23932 - Telecommunications Mechanic II	25.00
23950 - Telephone Lineman	21.89
23960 - Welder, Combination, Maintenance	16.90
23965 - Well Driller	20.02
23970 - Woodcraft Worker	20.02
23980 - Woodworker	12.71
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	9.49
24580 - Child Care Center Clerk	13.34
24610 - Chore Aide	9.44
24620 - Family Readiness And Support Services Coordinator	14.20
24630 - Homemaker	19.49
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	22.27
25040 - Sewage Plant Operator	22.26
25070 - Stationary Engineer	22.27
25190 - Ventilation Equipment Tender	15.47
25210 - Water Treatment Plant Operator	22.26
27000 - Protective Service Occupations	
27004 - Alarm Monitor	15.83
27007 - Baggage Inspector	10.51
27008 - Corrections Officer	15.87
27010 - Court Security Officer	15.87
27030 - Detection Dog Handler	13.68
27040 - Detention Officer	15.87
27070 - Firefighter	13.26
27101 - Guard I	10.51
27102 - Guard II	13.68
27131 - Police Officer I	19.58
27132 - Police Officer II	21.77
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	10.32
28042 - Carnival Equipment Repairer	10.47
28043 - Carnival Equipment Worker	8.39
28210 - Gate Attendant/Gate Tender	12.73

28310 - Lifeguard	11.29
28350 - Park Attendant (Aide)	14.24
28510 - Recreation Aide/Health Facility Attendant	10.13
28515 - Recreation Specialist	17.10
28630 - Sports Official	11.34
28690 - Swimming Pool Operator	14.87
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	18.99
29020 - Hatch Tender	18.99
29030 - Line Handler	18.99
29041 - Stevedore I	17.72
29042 - Stevedore II	22.13
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	35.77
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	24.66
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	27.16
30021 - Archeological Technician I	16.46
30022 - Archeological Technician II	18.41
30023 - Archeological Technician III	22.82
30030 - Cartographic Technician	22.82
30040 - Civil Engineering Technician	22.04
30061 - Drafter/CAD Operator I	16.46
30062 - Drafter/CAD Operator II	18.41
30063 - Drafter/CAD Operator III	20.54
30064 - Drafter/CAD Operator IV	25.27
30081 - Engineering Technician I	13.90
30082 - Engineering Technician II	16.57
30083 - Engineering Technician III	20.34
30084 - Engineering Technician IV	23.88
30085 - Engineering Technician V	29.16
30086 - Engineering Technician VI	35.34
30090 - Environmental Technician	21.21
30210 - Laboratory Technician	20.56
30240 - Mathematical Technician	22.18
30361 - Paralegal/Legal Assistant I	18.17
30362 - Paralegal/Legal Assistant II	22.79
30363 - Paralegal/Legal Assistant III	27.87
30364 - Paralegal/Legal Assistant IV	33.75
30390 - Photo-Optics Technician	22.82
30461 - Technical Writer I	22.03
30462 - Technical Writer II	26.95
30463 - Technical Writer III	32.60
30491 - Unexploded Ordnance (UXO) Technician I	22.74
30492 - Unexploded Ordnance (UXO) Technician II	27.51
30493 - Unexploded Ordnance (UXO) Technician III	32.97
30494 - Unexploded (UXO) Safety Escort	22.74
30495 - Unexploded (UXO) Sweep Personnel	22.74
30620 - Weather Observer, Combined Upper Air Or (see 2)	20.54
Surface Programs	
30621 - Weather Observer, Senior (see 2)	22.82
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	13.82
31030 - Bus Driver	18.11
31043 - Driver Courier	15.41
31260 - Parking and Lot Attendant	9.32
31290 - Shuttle Bus Driver	15.41
31310 - Taxi Driver	10.42
31361 - Truckdriver, Light	15.41
31362 - Truckdriver, Medium	18.16
31363 - Truckdriver, Heavy	19.44
31364 - Truckdriver, Tractor-Trailer	19.44

99000 - Miscellaneous Occupations	
99030 - Cashier	8.57
99050 - Desk Clerk	9.66
99095 - Embalmer	24.27
99251 - Laboratory Animal Caretaker I	10.44
99252 - Laboratory Animal Caretaker II	11.35
99310 - Mortician	24.27
99410 - Pest Controller	14.06
99510 - Photofinishing Worker	13.91
99710 - Recycling Laborer	15.26
99711 - Recycling Specialist	19.47
99730 - Refuse Collector	13.54
99810 - Sales Clerk	12.62
99820 - School Crossing Guard	11.25
99830 - Survey Party Chief	20.53
99831 - Surveying Aide	11.63
99832 - Surveying Technician	15.94
99840 - Vending Machine Attendant	11.62
99841 - Vending Machine Repairer	14.33
99842 - Vending Machine Repairer Helper	11.62

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.02 per hour or \$160.90 per week or \$696.79 per month.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 8 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the

conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am.

If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives.

Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms or the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual

cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, ~~April 2006~~, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor ~~so as to provide a reasonable~~ relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe ~~benefits shall~~ be retroactive to the commencement date of the contract. {See Section 4.6 (C) (vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) ~~is to be~~ conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent ~~information including the position of the contractor and the employees,~~ to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, ~~or~~

disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.

- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

Exhibit C
Contract Modification 88

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE DJB1PC012	
2. AMENDMENT/MODIFICATION NUMBER 0088	3. EFFECTIVE DATE 01/25/2018	4. REQUISITION/PURCHASE REQUISITION NUMBER	5. PROJECT NUMBER (If applicable) 32A
6. ISSUED BY CODE Federal Bureau of Prisons Privatized Corrections Contracting 320 First Street, NW (5005) WASHINGTON, DC 20534	BCO	7. ADMINISTERED BY (If other than Item 6) CODE	
8. NAME AND ADDRESS OF CONTRACTOR (Number, street, country, state and ZIP Code) CORNELL COMPANIES, INC. 621 NW 53RD STREET SUITE 700 BOCA RATON, FL 33487-8235 DUNS: 797470549		(X)	9A. AMENDMENT OF SOLICITATION NUMBER
CODE 760433642 FACILITY CODE 797470549			9B. DATED (SEE ITEM 11)
		X	10A. MODIFICATION OF CONTRACT/ORDER NUMBER DJB1PC012
			10B. DATED (SEE ITEM 13) 01/12/2010

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or electronic communication which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by letter or electronic communication, provided each letter or electronic communication makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

N/A

**13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.
IT MODIFIES THE CONTRACT/ORDER NUMBER AS DESCRIBED IN ITEM 14.**

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NUMBER IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) Unilateral - (FAR 52.222-41) - Service Contract Labor Standards

E. IMPORTANT: Contractor is not, is required to sign this document and return copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Contract DJB1PC012 is hereby modified to incorporate the attached Collective Bargaining Agreement, CBA-2018-10982, (SPFPA Local 469).

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Mason Lacy	
15B. CONTRACTOR/OFFEROR (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA By _____ (Signature of Contracting Officer)	16C. DATE SIGNED 01/25/2018

Previous edition unusable

REGISTER OF WAGE DETERMINATION UNDER THE SERVICE CONTRACT ACT By direction of the Secretary of Labor		U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION WASHINGTON D.C. 20210
		Wage Determination No.: CBA-2018-10982
Diane Koplewski	Division of	Revision No.: 0
Director	Wage Determinations	Date Of Last Revision: 1/25/2018

State: Georgia

Area: Charlton

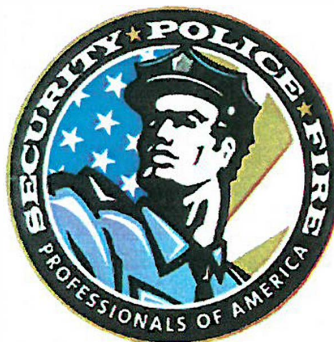
Employed on Federal Bureau of Prisons (BOP) contract for Management and Operation of a Private Prison.

Collective Bargaining Agreement between contractor: The GEO Group, Inc., and union: SPFPA Local 469, effective 11/18/2017 through 11/17/2020.

In accordance with Section 2(a) and 4(c) of the Service Contract Act, as amended, employees employed by the contractor(s) in performing services covered by the Collective Bargaining Agreement(s) are to be paid wage rates and fringe benefits set forth in the current collective bargaining agreement and modified extension agreement(s).



The GEO Group, Inc.



AGREEMENT

BETWEEN

**GEO CORRECTIONS AND DETENTION, LLC
(GEO)**

and the

**INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)**

And its Amalgamated Local 469

thereof representing the

Correctional Employees

Located at

D RAY JAMES CORRECTIONAL FACILITY

FOLKSTON, GEORGIA

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PREAMBLE

THIS AGREEMENT is entered into this 18th day of November, 2017, by and between GEO Corrections and Detention, LLC (GEO), hereinafter referred to as the “Company,” and the International Union, Security, Police and Fire Professionals of America (SPFPA), and its Amalgamated Local 469, hereinafter referred to as the “Union.”

GEO manages the D Ray James Correctional Facility in Folkston, Georgia, hereinafter referred to as the “Client”. As the management agent for the Contract Agency (s), the terms of this document are governed by Company’s contract (s) and the standards established by the Client.

WITNESSETH

WHEREAS, the parties have entered into collective bargaining negotiations, which negotiations have resulted in complete agreement between the Parties. NOW THEREFORE, it is agreed by and between the Company and the Union as follows:

ARTICLE 1 RECOGNITION AND PURPOSE

- 1.1 The Company recognizes the International Union, Security, Police and Fire Professionals of America (SPFPA), and its Amalgamated Local 469 as the exclusive collective bargaining representative for all full-time and regular part-time Correctional Officers, performing guard duties as defined in section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Company at the D. Ray James Correctional Facility, as listed in the NLRB Certification in Case Number 12-RC-097792 and excludes all other employees, including office clerical employees, professional employees, supervisors, and other employees as defined in the National Labor Relations ACT, as amended.
- 1.2 For the purpose of this Agreement, the term “Officer” or “Officers” designates only such Officers as are covered by this Agreement.
- 1.3 It is the purpose of this Agreement to promote and expand harmonious relationships between the Company and Officers represented by the Union to provide, where not inconsistent with Client rules and regulations, applicable state and federal laws and regulations required by any agency having jurisdiction over the Operations and Management Contract or Personnel Rules, for the salary structure, fringe benefits, and employment conditions of the Officers covered by this Agreement. It is recognized that a harmonious relationship can best be achieved by open dialogue, timely resolution of differences, and negotiating in good faith. Both parties agree that they share the responsibility to provide uninterrupted service to the Client.

- 1.4 The parties acknowledge that during the negotiations, which resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining; that all such subjects were discussed and negotiated upon; and that the agreements contained herein were arrived at after the free exercise of such rights and opportunities.
- 1.5 It is understood that no provisions of this Agreement will apply to any temporary supplementary correctional force transferred to work at the facility to maintain contractual obligations to the Client or during emergency situations. Unless the Client exercises its contractual option to assume operation of the facility or Officers are engaged in an adverse job action against the Company, such supplementary force will not result in job loss, or in the loss of normal hours to permanent Officers coming under this Agreement while the supplementary force is being utilized.

ARTICLE 2 UNION SECURITY

- 2.1 Officers may freely choose to exercise their right by becoming a member of the Union or refrain from doing so as established by the National Labor Relations Act, as amended, Federal or State law; and this Article.
- 2.2 The Union agrees to indemnify and hold the Company harmless against any claim, suits, judgments, or liabilities of any sort whatsoever arising out of the Company's compliance with the provisions of this Union Security Article.

ARTICLE 3 NON-DISCRIMINATION

- 3.1 The Company has the right to promulgate policies, reporting requirements and procedures regarding equal employment opportunity, discrimination and harassment. These policies, reporting requirements and procedures will, at a minimum, meet those required by the State of Georgia and Federal laws and regulations.
- 3.2 Neither the Company nor the Union shall discriminate against any Officer by reason of the following status: age, sex "except where age or sex is a bona fide occupational qualification", race or ethnic origin, color, national origin, religion, genetic information, disability, disabled or Vietnam era veteran, political affiliation, marital status, sexual orientation or membership or non-membership in a union.
- 3.3 The use of any male pronoun in this Agreement is a generic reference.

ARTICLE 4 HOURS OF WORK AND OVERTIME

- 4.1 For payroll purposes the normal work week shall commence at 12:00 AM on Sunday and ends at 11:59 PM on Saturday. It is understood that the description of a “normal work week” does not describe a pay period or the number of annual pay periods. The Company, at its sole discretion, will determine the number of annual pay periods based on its payroll system.
- 4.2 The Company shall pay overtime at the rate required by federal and state law. Overtime is based only on actual hours worked within the workweek. The payment of overtime for any hour excludes that hour from consideration for overtime payment on any other basis. There shall be no pyramiding or duplication of premium or overtime pay. In the event more than one premium seems to be due under this Agreement, only the higher premium shall apply.
- 4.3 The parties agree that the ability to work overtime is an essential function of both full-time and regular part-time Officers. An Officer may sign up to volunteer for advanced overtime in the Captain’s office. If more than one (1) Officer signed up for the overtime opportunity the last date of overtime worked will determine who is awarded the assignment (i.e. if one Officer worked overtime on Monday and the other worked on Tuesday, the Officer who worked overtime on Monday would be awarded the assignment). In the event two or more Officers worked overtime on the same date, the most senior Officer will be awarded the assignment. Once an Officer works the overtime assignment, their name shall be moved to the bottom of the mandatory overtime list. Short notice overtime shall be first offered as voluntary overtime. The Shift Captain shall ask for volunteers; if no one volunteers the assignment shall be filed as mandatory overtime. Once an Officer works the assignment, their name shall be moved to the bottom of the mandatory overtime list. The mandatory overtime list will be maintained in front entry, and updated on Monday, Wednesday, and Friday. Mandatory overtime applies to all Correctional Officers, and will only move to the bottom of the list after working a minimum of four (4) hours.
- 4.4 Officers shall remain on duty until properly relieved by another Officer. Refusal to remain on duty until properly relieved may result in disciplinary action. Refusal to obey an order, instruction, or request given by a security supervisor may result in disciplinary action.
- 4.5 Supervisory and other employees shall not perform the duties of Officers covered by this Agreement except under the following conditions:
- a. When such work is necessary for instruction and/or training purposes without relieving the Officer from duties.
 - b. To provide comfort, meal or emergency relief of Officers when other qualified Officers are not readily available

**ARTICLE 5
CALL-IN AND REPORTING PAY**

- 5.1 Officers are required to report for work at their scheduled starting times. Because a failure to report on time can cause delays in filling the requirements for shift coverage, this may cause supervisors to attempt to find replacements and places a hardship on other Officers. Failing to report to work on time may result in progressive discipline as outlined in Article-15.
- 5.2 Officers are required to call the on-site Shift Supervisor, a minimum of two (2) hours prior to the start of the scheduled shift, if they are unable to work their scheduled shift unless unable to do so due to a verifiable emergency situation. The failure to call a minimum of 2-hours prior to the start of the shift constitutes a violation and may result in progressive discipline as outlined in Article-15.
- 5.3 Officers who fail to report for duty at least two (2) consecutively scheduled workdays without notifying the Shift Supervisor or higher authority will be considered as having voluntarily abandoned their position and their employment will be terminated. This is an administrative action and does not fall under the guidelines listed in Article-15.
- 5.4 An officer who reports for work at his regular starting time or has been called in to work and has not been advised either orally or in writing not to report shall receive a minimum of four (4) hours work or four (4) hours pay at the appropriate hourly rate.
- 5.5 The provisions of Section 5.4 above shall not apply if the Company is unable to advise the officer not to report or provide the work because of acts of God, fire, snowstorm, flood, power failure, or other conditions or causes beyond the control of the Company.

**ARTICLE 6
LEAVES OF ABSENCE**

- 6.1 GEO provides leaves of absences in accordance with all applicable federal and state laws i.e., FMLA, Military leaves, etc. The protocol for such leaves can be found in the Employee Handbook or by contacting the facility Human Resources Department.
- 6.2 The Company agrees to provide the Local Union President with unpaid Union Leave to take care of union business related to this Agreement. Requests for Union Leave must be made to the Warden and may not exceed 2 days per month.

ARTICLE 7
NO STRIKE/NO LOCKOUT

- 7.1 The parties recognize the sensitive nature of the services provided by the Company to the Client and, therefore, agree that all operations of the Company shall, during the term of this Agreement, continue without interruption.
- 7.2 Under the term of this Agreement, the Union, its members and employees within the bargaining unit represented by the Union, individually and collectively, will not advocate, encourage, condone, or take part in any strike, sympathy strike, walkout, picketing, stay-in, slowdown, concerted refusal to work, or other curtailment or restricting of the Company's operations or interference with operations in or about the Company's premises, or equipment. The Company and its representatives agree not to engage in a lockout during the term of this Agreement.
- 7.3 The parties recognize the right of the Company to take such disciplinary action as the Company in its sole discretion determines appropriate, including dismissal, against any employee or employees who participate in violation of this Article, whether such action is taken against all of the participants or against only certain participants. It is understood and agreed by the parties that an Officer does have the right to file a grievance solely on the issue of whether he did, in fact, violate any provisions of this Article. Separate grievances may not be joined in arbitration.
- 7.4 Any claim, action or suit for damages or injunctive relief resulting from the Union's violation of this Article shall not be subject to the grievance and arbitration provisions of this Agreement.

ARTICLE 8
COMPANY REGULATIONS

- 8.1 The Union recognizes that it is the responsibility of Officers to familiarize themselves and learn all policies and rules established by the Company or its client, and faithfully report all violations thereof. The Union agrees that Officers shall discharge all duties as assigned to them impartially and without regard to any Union or non-union affiliation of any Officer of the Company or Client, and that failure to do so may be cause for discipline.
- 8.2 Any rules, regulations or directives which are now in effect, or which may be later imposed upon the Company by its Client, or any other Governmental Agency having jurisdiction will apply with equal force and effect to the Officers hereunder. Officers are also required to adhere to Company Rules and Regulations.
- 8.3 The Company reserves the right, from time to time, to amend, add to or delete from its Company Rules and Regulations and practices unless such amendment, addition or deletion would violate a specific provision of this Agreement.

- 8.4 Typically all work rules that could result in discipline are contained in the GEO Policies, Employee Handbook, the Collective Bargaining Agreement, Post Orders, internal memoranda or other means, i.e., posted notices, shift briefing information, etc. Should there be any work rules contained in facility policy, the Company will provide Officers reasonable access to all facility policies for which they could be disciplined or that contain information related to their jobs or the Company, except those policies that are considered privileged, confidential or sensitive by the Company, its Client or the appropriate American Correctional Association standards.
- 8.5 The Union recognizes the principle of management responsibility, and that the Company must furnish satisfactory service in accordance with the demands and directives of the Company's Client and the requirements of the particular job.

ARTICLE 9 UNION REPRESENTATIVES AND ACCESS TO FACILITY

- 9.1 Duly authorized representatives of the Union shall have reasonable access to the facility to ascertain whether the Agreement is being properly observed, provided that no interview shall be held during rush hours or interrupt operations or disrupt or interfere with the duties of any Officer. Rush Hours include, but are not limited to, count times, meal periods, major turnouts, shift changes, or other times when there is major inmate or staff movement or during an emergency situation. Union representatives and Officers of the Local may contact Shift Stewards during working hours by telephone for the purpose of conducting Union business, provided that permission to do so has first been received from the Warden or his designee.
- 9.2 Access to the facility after normal business hours (8:00 AM – 4:30 PM) will require prior approval from the Warden or his designee.
- 9.3 It is mutually understood that access to the facility is governed by Client rules, and is subject to applicable Client restrictions, and these rules and restrictions must be followed. Any representative of the International Union (or other Union representative) requesting access to the facility must obtain proper clearance from the Client through the Warden.
- 9.4 The representative of the Union shall contact the Warden, or his designee, then present themselves at the facility and inform the Warden, or his designee, of the circumstances of the visit. To the extent practicable the Union will provide the Warden with a one (1) week advanced notice before any visit by a representative of the International Union. The Company and the Union representative shall conduct themselves in such a manner as to carry out the intent and spirit of this Article.
- 9.5 The Union shall inform the Company in writing of the names of its Officers, Regional Director, International Representatives, Chief Steward and Shift Stewards who are accredited to represent it, which information shall be kept up to date at all times. Only persons so designated will be accepted by the Company as representatives of the Union.

- 9.6 The Company shall provide a Bulletin Board for use by the Union with the understanding the Union shall not post nor distribute any letters, handbills, or notices etc., elsewhere on the site. Bulletin Board postings shall not contain any partisan political literature, offensive or derogatory language, signs or symbols related to the Company, the Client, visitors, other staff or any other individual or organization. Bulletin Board postings will be limited to:
- a. Notices of Recreational-Social Events
 - b. Notice of Union Elections
 - c. Notice of Results of Union Elections
 - d. Notice of Union Meetings
 - e. Notices of Other "Official" Union Business
- 9.7 The Union may designate one (1) Officer as a Chief Steward. Additionally, the Union may designate two (2) Officers per shift to act as Shift Stewards. Each shift may have one (1) alternate, who shall function as the Shift Steward only when the regular Shift Steward is absent or unavailable. Shift Stewards and Alternates shall in each case be an Officer with Seniority and who regularly works the shift to which they are assigned. The local Union will keep the Company currently advised in writing of the identity of the Shift Stewards and their alternates, as well as the identity of the local Union officials. Only Officers named by the local Union as currently holding any of the above positions will be recognized by the Company as representing the Union.
- 9.8 No Chief Steward, Shift Steward, alternate Shift Steward, or any other local Union Officer may leave an assigned duty post or work assignment to engage in representation of Officers during a pre-disciplinary investigatory interview or disciplinary proceeding without first notifying and receiving authorization from the Shift Supervisor. The Company shall not unreasonably withhold such authorization.
- 9.9 No Chief Steward, Shift Steward, alternate Shift Steward or other Union Officer shall cause an Officer to leave their assigned post without first notifying the Shift Supervisor and receiving proper authorization.
- 9.10 The Union recognizes that representation of Officers is not meant to circumvent the normal relationship between Supervisor and Officer as it pertains to discussions and counseling. The right to Union representation shall not apply to conversations between an Officer and the Supervisor for the purpose of giving instructions concerning work performance, providing training or retraining or non-disciplinary correction of work habits or techniques.
- 9.11 The Union will be provided thirty (30) minutes to meet with new hires during new hire training.

**ARTICLE 10
DUES CHECK OFF**

- 10.1 Subject to the limitations of any state or federal law, the Company agrees to deduct from the first paycheck earned each calendar month by a member of the Union covered by this Agreement, the Union membership dues and initiation fees uniformly levied by the Union in accordance with said Union's constitution and by-laws, of each member of the Union who has in effect at that time a proper authorization card executed by the Officer, authorizing the Company to make such deductions. A minimum of fifteen (15) workdays prior to the first deduction, the Union will advise the Company of the exact dollar amount due from each Officer.
- 10.2 All sums collected in accordance with such signed authorization cards shall be remitted by the Company to the Secretary-Treasurer of the International Union SPFPA no later than the fifteenth (15th) of the month subsequent to the month in which such sums were deducted by the Company.
- 10.3 The check-off authorization card to be executed and furnished to the Company by the Union and the Officers shall be the official Union authorization for check-off of dues. The Company shall accept no other form, unless the substitute is mutually agreed upon by the parties. The form is attached as Appendix A of this Agreement.
- 10.4 The Union accepts full responsibility for the authenticity of each check-off card submitted by it to the Company, and any authorizations, which are incomplete or in error shall be disregarded by the Company, and shall be returned to the Union for correction. The Union agrees that upon receipt of proper proof, it will refund to the Officer any deduction erroneously or illegally withheld from an Officer's earnings by the Company, which has been transmitted to the Union by the Company.
- 10.5 No deduction of Union dues will be made from the wages of any Officer who has executed a check-off form and has been transferred to a job not covered by this Agreement or who is not in a pay status.
- 10.6 Anytime there is a change in the deduction authorization the Company will have a minimum of fifteen (15) workdays to put the change into effect.
- 10.7 An Officer who has executed a check-off form and who resigns or is otherwise dismissed from the employ of the Company shall be deemed to have automatically revoked his assignment, and if the Officer is recalled or re-employed, further deduction of Union dues will be made only upon execution and receipt of a new check-off form.
- 10.8 Collection of back dues owed at the time of starting deductions of any Officer, and collection of dues missed because the Officer's earnings were not sufficient to cover payment for a particular pay period, will be the responsibility of the Union, and will not be the subject of payroll deductions.
- 10.9 Deduction of membership dues shall be made, provided there is a balance in the paycheck sufficient to cover the amount after all other deductions authorized by the

Officer or required by law have been satisfied. In the event of termination of employment, the obligation of the Company to collect dues shall not extend beyond the pay period in which the Officer's last day of work occurs.

- 10.10 The Union agrees to indemnify the Company and hold it harmless against any and all claims, suits or other forms of liability which may be made against it by any party for amounts deducted from wages as herein provided.
- 10.11 Solicitation of Union membership or collection or checking of dues will not be conducted during working time. The Company agrees not to discriminate in any way against any Officer for Union activity, but such activity shall not be carried out during working hours except as specifically allowed by the provisions of this Agreement.
- 10.12 An Officer may terminate a Union dues allotment by following the procedures outlined on the official dues authorization form.

ARTICLE 11 SENIORITY

- 11.1 For the first three (3) months worked following successful completion of facility pre-service training and orientation, an Officer shall be regarded as probationary and shall have no seniority. Probationary Officers may be disciplined or dismissed without recourse to the grievance procedure. Officers dismissed during their probation do not have any rights under this Agreement. However, Probationary Officers shall be represented by the Union concerning wages, hours and working conditions, but the Company reserves the right to decide questions relating to promotions, transfers, layoffs or dismissal. The Company may, upon written notification to the Union, at its discretion, extend an Officer's probation, for additional 30 days. One additional 30 day extension may be granted with written notice to and consent from the Union.
- 11.2 Employees who have lost seniority as set forth in Section 11.6 of this Article, and employees who terminate or leave the bargaining unit prior to completion of the probationary period shall be required, upon rehire or reentry into the bargaining unit, to serve the probationary period again.
- 11.3 After completion of the probationary period an Officer's seniority under this Agreement shall revert to the Officer's date of hire at the D Ray James Correctional Facility. Seniority of Officers who start work on the same date shall be determined by the last four digits of the Officer's social security number. The lower number will be the most senior. Seniority is defined as the length of continuous service with the D Ray James Correctional Facility.

- 11.4 Seniority under this Agreement will have no influence on promotions or advancement within the Company. The benefits of seniority are limited to those specifically mentioned in this Agreement.
- 11.5 The Company agrees to prepare an updated site seniority list of Officers covered by this Agreement quarterly, a copy of which will be furnished to the Union, if requested.
- 11.6 Officers will lose their seniority, and shall be dismissed for any of the following:
- a. Is laid off for more than 12-months;
 - b. Absent due to illness or injury for more than six (6) months, or length of employment, whichever is less. Absences taken pursuant to the applicable federal or state laws are exempt under this provision;
 - c. Dismissed for Just Cause
 - d. Gives a false reason for a leave of absence or engages in other employment during such leave;
 - e. Fails to meet qualification/re-qualification requirements in accordance with the Company, the Client or other Governmental Agency's regulations having jurisdiction;
 - f. Fails to obtain or maintain a security clearance;
 - g. Fails to return from layoff upon recall as provided below;
 - h. If the Officer voluntarily resigns or retires; or
 - i. If the Officer is convicted of a felony or a misdemeanor that does not relate to a traffic violation, with the exception of DUI.
- 11.7 Layoff and recalls from layoff will be made on the basis of seniority. Officers acting as President or Vice President of the Local shall not be laid off provided that work, which they are qualified for and willing to perform is available in their present Classification. Stewards will be laid off and recalled from layoff on the same basis as provided for other Officers except that in the event a unit or shift is deactivated and is later reactivated, the Stewards shall be the first Officers to be recalled to that unit or shift, provided work which they are qualified and willing to perform is available. Positions requiring "special training or skills" will be exempt from the seniority process (Transportation Officers and Armory/Locksmith Officer).
- 11.8 Laid-off Officers shall have callback rights for a period of twelve (12) months or length of employment whichever is less, and shall retain their accumulated seniority as of the date of layoff.
- 11.9 In case of re-employment, Officers who have been laid off shall be notified to return to work, at their last known address, in reverse order of lay-off. The notice will be by certified mail return receipt. In the event a former Officer so notified fails to report for work within five (5) calendar days after receipt of such notice, his seniority shall be terminated.
- 11.10 It will be the responsibility of the laid-off Officer to keep the Company notified of any change of address, and current phone number.

- 11.11 An Officer who is activated or drafted or who volunteers for military service in the armed forces of the United States, shall accumulate full seniority during the term of such service, provided such veterans are honorably discharged from active duty and apply for reemployment as an Officer within 90 days after such discharge from military service, provided the Officer still meets all eligibility requirements. The above is limited to a 6 year period; however, in time of war there will be no limit.
- 11.12 An Officer who is or has been transferred from the bargaining unit shall cease to accumulate seniority. If the Officer returns to the bargaining unit within six (6) months he shall retain the seniority he had at the time he transferred out of the bargaining unit.

ARTICLE 12 SHIFT BID

- 12.1 There will be an annual shift bid for full time Officers in October each year, which shall take effect the first day of the first full pay period of the following month of January. Said annual shift bid shall take place prior to the annual vacation bid. The annual shift bid shall include hours of work and days off. The annual shift bid shall be awarded in accordance with union seniority. Officers with less than one (1) year of service shall be excluded from said shift bid.
- 12.2 The Company shall not arbitrarily displace Officers from their awarded shifts. The Company may temporarily reassign an Officer's shift or days off to accommodate training needs or other foreseen business needs.
- 12.3 In the event the Company declares a vacant shift after the annual shift bid, said vacancy shall be awarded in accordance with union seniority to those Officers on that shift (i.e. change of days off). In the event there are no or insufficient bidders for the vacancy, the Company may reassign an Officer who did not participate in the annual shift bid. In the event there were sufficient bidders, the resulting vacancy may be filled by a reassigned Officer who did not participate in the annual shift bid.
- 12.4 In the event that the Company initiates its Emergency Contingency Plan, the provisions of this Article shall not apply for the duration of said emergency.

ARTICLE 13 GRIEVANCE PROCEDURE AND ARBITRATION

- 13.1 The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance but within the time limits for filing grievances stated elsewhere in this Article, and encourage open communications between the Company and Officers so

that resorting to the formal grievance procedure will not normally be necessary. The parties further encourage the informal resolution of grievances whenever possible. A grievance is defined as an alleged violation of a specific term or provision of this Agreement. At each step in the grievance process, participants are encouraged to pursue appropriate modes of conflict resolution. The purpose of this Article is to promote a prompt and efficient procedure for the investigation and resolution of grievances. This grievance procedure is not intended for complaints of harassment or discrimination as referenced in the Employment Handbook and Corporate Policy.

- 13.2 It is the intent of the parties to first provide a reasonable opportunity for resolution of a dispute through the grievance procedure and arbitration process. Except as noted below, if prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in process, an Officer seeks resolution of the matter in any other forum, whether administrative or judicial, the Company shall have no obligation to entertain or proceed further with the matter pursuant to this grievance procedure.
- 13.3 An Officer who believes that any provision of this Agreement has not been properly applied or interpreted may present his grievance to be settled by the following procedures. During each step of the grievance procedure the Company has the right to perform a reasonable investigation into the complaint. The investigation may include but is not limited to: conducting interviews, having Officers prepare written statements, review records, etc.

STEP 1 The grievant and/or grievant's Steward or Union representative shall meet with the grievant's Chief of Security or his designated representative within ten (10) business days (excluding weekends and holidays) after the actions giving rise to said grievance occurred, became known or should have become known to the Officer or Union. The Chief of Security or his designated representative shall render his response to the grievant or the grievant's Steward within ten (10) business days of this meeting.

STEP 2 If the grievance is not settled in STEP 1, then the Union shall reduce the grievance to writing, and submit it to the Assistant Warden or his designated representative within ten (10) business days after the STEP 1 answer was given or was due. The Assistant Warden or his designated representative shall meet within ten (10) business days with the grievant's Steward or Union representative in an attempt to resolve the grievance. Every written grievance shall be filed on an authorized SPFPA Grievance Form and specify: (a) the date of the alleged violation; (b) all relevant facts; (c) the issue; (d) the contract provision(s) allegedly violated; (e) witnesses to the alleged violation; and (f) the remedy or relief sought. The Assistant Warden shall render a written answer to the grievance within ten (10) business days of the STEP 2 meeting.

STEP 3 If the grievance is not settled in STEP 2, then the Union shall appeal the grievance to the Warden or his designee, within ten (10) business days after the STEP 2 answer was given or due. The Warden or his designee shall meet

with the Union's designated representative within ten (10) business days in an attempt to resolve the grievance. The Warden shall render a written answer to the grievance within ten (10) business days following the STEP 3 meeting.

- STEP 4 If the grievance is not settled at STEP 3, then within ten (10) business days from the Company's Step 3 answer, the Union's Regional Vice President or his designated representative shall have the opportunity to discuss the merits of the grievance with the Company's Eastern Region Vice President or his representative. The Eastern Region Vice President or his representative shall render a written answer to the grievance within thirty (30) calendar days following this discussion. Nothing in this Article shall compel the Union's Regional Vice President or his designated representative to utilize the opportunity to discuss the grievance with the Company's Eastern Region Vice President.
- STEP 5 **Arbitration:** If the grievance is not settled at STEP 4, the party advancing the grievance may submit the matter for arbitration within thirty (30) calendar days after the Step 4 answer was given or was due. Before any issue is considered for arbitration, a grievance must be processed at each step of the grievance procedure.
- 13.4 Only those grievances which have been processed in strict accordance with the requirements of the above paragraphs and have gone through each Step of the grievance process shall be processed to arbitration in accordance with the procedures and limitations described herein.
- 13.5 Officers have the right to have a Union representative present during each Step of the grievance process. It is understood between the parties that the local Union President, Vice President (or their designee), Shift Steward or alternate may act as the representative in question.
- 13.6 As referenced in this Article, business days do not include Saturday, Sunday or Holidays.
- 13.7 The Union shall have the power to determine whether or not a grievance filed by a member of the Union should be submitted at each Step of the grievance process or if unresolved grievances should be submitted for arbitration. The time limits set forth in each step of the grievance procedure may be extended by mutual agreement in writing and such extended time limits shall then be considered as applicable to the grievance involved for the purpose of this section.
- 13.8 The Arbitrator shall be selected from a panel of seven (7) proposed arbitrators, submitted by the Federal Mediation and Conciliation Services. The party requesting arbitration shall be responsible for contacting the FMCS to obtain the list. If the two parties cannot agree on an Arbitrator during the review of the original list, a second list of prospective Arbitrators may be requested from the FMCS. If the parties still cannot agree on an

arbitrator then the strike method will be used on the second list. The party requesting arbitration will strike the list first.

- 13.9 Each dispute shall constitute a separate proceeding unless the question involved is common to more than one dispute, in which case the proceeding may be consolidated, but only with mutual consent of the parties. No grievance filed after the termination of this Agreement shall be arbitrable.
- 13.10 The Arbitrator shall be governed at all times wholly by the terms of this Agreement. The Arbitrator shall neither add to, subtract from, modify or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. The Arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted and is prohibited from using any standard not specifically specified in this Agreement, including but not limited to notions of industrial standards.
- 13.11 No claim for back wages under this Agreement shall exceed the amount of earnings the Officer would have otherwise earned by working for the Company, less any and all compensation the Officer received from any other source, including unemployment compensation. Under no circumstances will interest charges be included in any award for back pay. In the event an Officer is awarded back pay as a result of an Arbitrator's ruling, deducted from the award will be any amounts received by the Officer for unemployment compensation and interim earnings, as well as any amounts which could have been earned through reasonable efforts by the Officer to mitigate. In no event may the Arbitrator enter a monetary award for any item other than lost wages. The Arbitrator shall not have the power to award punitive or exemplary damages, attorney's fees, or any other form of non-wage damages.
- 13.12 Should either of the parties fail to attend the hearing as agreed, the Arbitrator shall be empowered to proceed with the hearing in the absence of either party, and shall be empowered to render a final decision, and award on the basis of only the evidence presented.
- 13.13 The compensation of the Arbitrator and his expenses incidental to the arbitration shall be borne equally by the parties. Each party shall bear the expense of preparing its case and shall make arrangements for and pay for the expenses of witnesses called by them. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration. The party desiring such transcript shall be responsible for scheduling a reporter to record the proceedings. The requesting party is responsible for the cost of the reporter and the transcript of the proceedings. If the opposite party timely requests a copy of the transcript at the hearing, the reporter and transcript costs will be equally split between the parties. If the opposite party does not request a copy of the transcript at the hearing they will be permitted an opportunity to

- review the transcript at a mutually convenient time. The transcript will be the official and exclusive record of the hearing.
- 13.14 The decision or award of the Arbitrator shall be final and binding upon the Company, the Union and the grievant, provided any party may appeal to an appropriate court of law a decision that was rendered by the Arbitrator acting outside of or beyond the arbitrator's jurisdiction, pursuant to applicable law.
- 13.15 Any Officer or Union policy grievance not appealed or processed strictly within the time limits and in the manner set forth in each step of the grievance procedure shall be considered settled on the basis of the last answer by the Company. Any grievance Step not answered by the Company within the time limits and in the manner set forth in each Step of the above procedure may be appealed directly to the next Step of the grievance process by the Union at any time within ten (10) business days of the Company's default.
- 13.16 No grievance shall be filed or processed if it concerns a matter occurring more than ten (10) business days before the Company or the affected Officer(s) knew or should have reasonably known that the events could result in the filing of an official grievance.
- 13.17 It is the specific intention of the parties that the grievance and arbitration procedures set forth herein are the exclusive and sole mechanism for the resolution of any grievances, disputes, disagreements or claims made under or related to this Agreement, with the exception of Company claims made as a result of a violation of Article 7 – No Strike/No Lockout. Each Step of the Grievance process must be followed unless there is written mutual consent of the parties.
- 13.18 Nothing contained herein shall prohibit the Company's ability to file and process its own grievance under the procedure outlined above.
- 13.19 In the event the parties settle any grievance prior to a final and binding determination by an Arbitrator, such settlement shall be on a non-precedent setting basis unless the parties affirmatively state otherwise in writing signed by both parties. Evidence of any such non-precedent setting settlements shall not be admissible in any proceedings under this Article, including but not limited to, arbitration hearings.
- 13.20 The Company will provide copies of all disciplinary notices to the affected Officer and to the Union upon request.

ARTICLE 14 UNIFORMS

- 14.1 Uniforms and equipment shall be supplied where required by the Company, and replaced as necessary such as if the uniform is faded, torn, patches are peeling or any condition determined by management that would otherwise cause the Officer to appear

unprofessional. Uniforms or equipment worn or used by the Officers who are on duty shall be prescribed by the Company, and no deviation from the Company's requirements shall be practiced except with the consent of the Company. The Company will maintain/repair uniforms and equipment as determined by management to include hemming, zipper repair and patch replacement.

- 14.2 The Company will provide an annual boot allowance in the amount of one hundred dollars (\$100.00) to be used for purchasing footwear meeting the Company's specifications. Footwear meeting the Company's specifications must be worn at all times. Said allowance shall be paid to Officers commensurate with their anniversary date.

ARTICLE 15 JUST CAUSE

- 15.1 Except where otherwise provided in this Agreement, where appropriate, the Company will adhere to concepts of Progressive Discipline, which it defines as the corrective process of applying penalties short of dismissal where conduct is of a less serious nature. The nature of discipline should be appropriate to the conduct and need not begin with the least serious disciplinary action. Acceptance of the principle of progressive discipline does not limit the Company's authority to immediately dismiss for serious offenses that cannot be condoned.
- 15.2 No Officer shall be disciplined or dismissed without Just Cause. The Company shall notify the Union, that the services of an Officer are no longer desirable, and that he has been disciplined or dismissed. Any Officer not granted a required security clearance by the Client shall be dismissed without recourse to grievance or arbitration procedures.
- 15.3 The following violations are representative only of the reasons that constitute Just Cause for immediate dismissal. The list of violations below is not an all-inclusive list:
- Dishonesty
 - The use, sale, possession or introduction into the facility of contraband
 - Any type of theft
 - Aiding or Abetting an escape
 - Insubordination
 - Fighting
 - Being under the influence of illegal drugs or alcohol
 - Leaving a duty post without being properly relieved
 - Inattention to post (sleeping, etc.)
 - Sexual and other forms of harassment, in conjunction with the Company's general orders and regulations
 - Unnecessary or Excessive Use of Force
 - Failure to respond to an emergency

- Failure to obey lawful orders
- Failure to fully and truthfully participate in any facility investigation or attempt to obstruct a facility investigation
- Refusal to allow a search of themselves or their property
- Falsification of Company or Client records
- Unauthorized possession of Company, Client or other's property

15.4 The Company agrees to follow the guidelines for disciplinary offenses and penalties, as may be amended from time to time. These guidelines for progressive disciplinary are contained in GEO Corporate Policy 3.2.8, Progressive Discipline and include:

- a. Counseling
- b. Written Reprimand
- c. Final Reprimand
- d. Dismissal

Note: To decide on the appropriate action the Company may consider: the seriousness of the Officer's conduct, employment record, ability to correct the conduct, actions taken for similar conduct by other Officers, how the conduct affects inmates, the Client, the public and other circumstances. At any step in the above process Officers may (at the discretion of the Company) be placed on a Work Improvement Plan (WIP) as a last attempt to assist the Officer to be successful.

- 15.5 If an Officer believes he was dismissed without Just Cause, he should notify the Local Union of his desire to file a grievance. Should the Union decide to file a grievance on behalf of the Officer they must notify the Company within ten (10) business days of the Officer receiving the notice of termination. Such grievance shall be filed beginning at Step-3 of the grievance procedure as outlined in Article-13.
- 15.6 Any Officer arrested for a felony or a misdemeanor that does not relate to a traffic violation, with the exception of DUI, will be placed on leave without pay pending resolution of any criminal prosecution stemming from the arrest. If the Officer enters a plea of guilty or nolo contendere to the criminal charges stemming from the arrest; or the Officer is found guilty of the charges stemming from the arrest, then the Officer will be terminated with no recourse to either the grievance or arbitration procedures set forth in Article 13 of this Agreement. If the Officer is found not guilty or the charges are dropped, the Officer will be reinstated with no back pay, but with no loss of seniority. The Company retains the prerogative to review the circumstances surrounding the arrest and based on its findings will take appropriate disciplinary action, if warranted.
- 15.7 An Officer interviewed concerning his discipline may request a Union representative be present during such interview. Nothing herein shall be construed to compel an Officer to have Union representation present. If an Officer requests Union representation, the Officer will not be required to respond to questions until the representative is present. Once the Union representative is present, questioning may begin and the Officer may confer with the Union representative regarding his responses. Although the Officer may

consult with the Union representative related to the issue at hand, the Company requires all interview responses come from the Officer.

- 15.8 Disciplinary actions, excluding statutory claims that have been upheld, will remain in an Officer's personnel file, but cannot be used against the Officer after the expiration of twelve (12) months from the date of the last violation.

ARTICLE 16 SAVINGS CLAUSE

- 16.1 Should any part of this Agreement, or any portion therein contained be rendered or declared illegal, invalid, or unenforceable by a court of competent jurisdiction, inclusive of appeals, if any, or by the decision of any authorized governmental agency, such invalidation of such part of this Agreement shall not invalidate the remaining portions thereof. In the event of such occurrence, the parties agree to meet as soon as practical, and if possible, to negotiate substitute provisions for such parts or portions rendered or declared illegal or invalid. The remaining parts and provisions of the Agreement shall remain in full force and effect.

ARTICLE 17 MANAGEMENT RIGHTS

- 17.1 Subject to the express provisions of this Agreement, management's rights include those listed in this Article as well as any rights that are usual and customary.
- 17.2 The management of the Company's operations and direction of the working forces, including, but not limited to: establish new jobs; abolish or change existing jobs; assign and change work duties and responsibilities; employ; promote; demote; train; transfer; lay off; recall; discipline, suspend or dismissal; determine the number of Officers necessary for any operation; determine the number of hours to be worked; schedule hours of work, including starting and quitting times and meal and break times; increase and decrease the work force; establish, change, and maintain performance standards and methods; deploy the workforce within the facility in the manner it considers the most effective and efficient to meet the operational needs; determine the qualifications, efficiency and ability of Officers; maintain the efficiency of operations and Officers; determine services to be offered; determine the source of supply for all services, goods, or materials; institute technological changes or improvements in operations; use temporary Officers from third party providers, as long as it does not result in layoff or reduction of hours of bargaining unit members; transfer operations; decide the number and location of facilities; close a facility or a portion thereof; acquire, sell to or merge with other companies; require the taking of physical, mental, drug, or alcohol tests; require Officers to consent to a background and credit checks; require Officer's complete

cooperation in investigation of potential theft or fraud; and make and revise such reasonable rules and regulations in connection with the Company's operations and the conduct and duties of its Officers in respect of such operations as are deemed advisable, will be vested exclusively in the Company, subject only to such limitations as are specifically set forth in this Agreement.

- 17.3 The Company need not necessarily exercise rights reserved to it, or if the Company does exercise its reserved rights in any particular way, such will not be deemed a waiver of its right to exercise them in other ways not in conflict with the express provisions of this Agreement. The Company maintains and retains all management rights and the enumeration of management's rights herein shall not be deemed to exclude any other management rights.

ARTICLE 18 NO FAULT ABSENTEEISM and LATE ARRIVAL

- 18.1 The procedure stated herein establishes a "no fault" point system to monitor the attendance of the Officers covered by this Agreement.
- 18.2 Prompt attendance on the job is an important part of the performance record each Officer builds from the day the Officer is hired. The success of an Officer depends in large measure on how well the Officer performs the job each day. The company is entitled to a reasonable degree of regularity in the attendance by all Officers, and disciplinary action is proper for failure to adhere to a reasonable attendance standard. The Company will focus particular attention on clear patterns of abuse, such as an unscheduled leave or "calling-out" in conjunction with days off, holidays, or vacation.
- 18.3 The Company recognizes there may be a reasonable absence due to a bona fide sickness or emergency situation, often beyond the control of the Officer, therefore this procedure allows for a number of "occurrences" before discipline is administered. For example, an "occurrence" is a single day of absence, or two or more consecutive days of absence.
- 18.4 Designed to work as a "no fault" procedure with a point system of attendance monitoring, this procedure will be consistently administered. The Officer's immediate supervisor is responsible to coach, guide and/or discipline, as appropriate, Officers who are excessively absent or late to work. Within the procedures and limitations of the CBA, the Company reserves the right to impose discipline where there is a clear pattern of misuse or intentional abuse.
- 18.5 A Rolling 6-month period is the applicable period of time within which occurrences are counted under the procedure. An Officer's record of points for absenteeism and late arrival occurrences will be tallied, tracked, trended and reported continuously through GEO's information systems.

The following accumulative total points received during the rolling 6-Month period are considered thresholds in terms of when disciplinary action may be taken:

- 3 Points ----- Coaching
- 6 Points ----- Counseling
- 8 Points ----- Written Reprimand
- 10 Points ----- Final Written Reprimand
- 12 Points ----- Dismissal

18.6 Absences for the following reasons will not add points to an Officer's record:

- a. Use of scheduled vacation time, sick leave or other scheduled leave time for doctor office appointments or medical procedure, as well as scheduled Long Term Illness time, which has been approved in advance by a supervisor. Note, however, that supervisors will question an Officer's time off when there is an apparent pattern of absences, i.e., going to the doctor every Monday or Friday, or at the beginning or end of the Officer's scheduled work week.
- b. Other authorized and approved leaves, including paid or unpaid Personal Leave, Jury Duty, Bereavement Leave, Military Leave, Family Medical Leave, Union Leave and any other form of leave required by law.

18.7 Absences for the following reasons will add points to an Officer's record:

Unexcused Absence: 6 Points: An Officer will have an unexcused absence when the Officer fails to call in an absence and show up for a scheduled shift (No Call No Show).

Unscheduled Absence: 2 Points: An Officer who is absent from work and fails to notify their supervisor as soon as possible, less than two (2) hours before their scheduled reporting time is considered to have an unscheduled absence. Officers shall be responsible for providing their expected date of return to work during such notification. Each time an Officer is absent as an unscheduled absence the Officer will receive two (2) points for the unscheduled absence "occurrence". Multiple continuous days of absence for the same reason shall be considered one "occurrence". Officers will not be required to forfeit Vacation Time to compensate the Company for an unscheduled absence.

LATE ARRIVAL: An Officer who will be late to work must notify a supervisor as soon as possible. Officers shall be responsible for providing their expected arrival time during such notification. Late arrivals that were approved in advance by a supervisor, such as for a scheduled doctor office appointment, dental appointment or other scheduled and pre-approved reason will not add points to an Officer's record.

Late Arrival: 1 Point: The following reasons will add points to an Officer's record: An Officer is considered a late arrival if the Officer arrives at work and clocks in more than seven (7) minutes after the Officer's scheduled reporting time. For example, given

the rounding in the timekeeping system, if an Officer is required to begin a shift at 6:00 AM, they would be allowed to clock in no earlier than 5:53 AM and could clock in up to 6:07 AM, and either punch time would be rounded to 6:00 AM. Those Officers clocking in more than seven (7) minutes after their scheduled reporting time will receive one (1) point.

Exclusions: Late arrivals and absences that were the result of factors outside of the Officer's control will be handled by the Facility Administrator on a case by case basis. Examples of events outside of the Officer's control include, but are not limited to: medical emergencies, car accidents, unplanned highway closures and sudden severe weather such as a tornado. Examples of events that will not be considered outside of the Officer's control include, but are not limited to: heavy traffic, lack of transportation and weather such as heavy rain. In all cases, the Company will follow the requirements of the Family and Medical Leave Act and the Americans with Disabilities Act, as well as any other applicable law.

Early Arrival: 1 Point: A non-exempt employee is considered an early arrival if the employee arrives at work and clocks-in more than seven (7) minutes before the employee's scheduled reporting time.

- 18.8 As an incentive for perfect attendance, Officers have the opportunity to earn two Perfect Attendance Days per year. If an Officer does not accrue any points for a six (6) month period between January 1st and June 30th, or between July 1st and December 31st, they will receive one personal paid holiday for each period. The holiday must be taken within the six (6) month period following the award. Officers must notify their supervisor at least two (2) weeks in advance of taking any earned personal holiday.

ARTICLE 19 JURY DUTY

- 19.1 GEO will pay the regular, full-time Officers their pay for the days that the Officer is subpoenaed for jury duty or otherwise required to testify or participate in any legal action related to Company business, as determined by GEO. This pay will be comparable to the Officer's normally scheduled shift (8, 10 or 12 hour shifts in the case of hourly employees). The Officer must furnish a written statement from the appropriate public official listing dates, hours of service and pay received. The Officer is expected to report to work if excused from jury duty if there is four (4) hours or more remaining in their shift. Time absent due to court leave when subpoenaed or otherwise required to testify or participate in any legal action related to Company business shall be counted as time worked for the purpose of computing overtime.
- 19.2 Jury duty shall not be considered as time worked for the purpose of computing overtime.

- 19.3 Officers who are summoned for jury duty or required to testify in a legal action related to Company business, and who work morning watch (2200 hrs. – 0600 hrs.), will have their shift changed to 0900 hrs. – 1700 hrs. on the week they are required to attend the jury duty/legal proceeding. The Officer is expected to report to work if excused from jury duty/legal proceeding if there is four (4) hours or more remaining in their shift.

ARTICLE 20 BEREAVEMENT LEAVE

- 20.1 Upon the death of a full-time Officer's immediate family member, the Officer will be granted up to three (3) days leave with pay (five days leave with pay if the services are more than 300 miles away), not including the Officer's regular days off, in order for the Officer to make arrangements for and to attend the funeral.
- 20.2 For the purposes of this Article immediate family member is defined as an Officer's spouse, child, step-child, parents (including current in-laws), siblings (including current in-laws), grandparents and grandchildren.
- 20.3 Bereavement Leave shall not be considered as time worked for the purposes of computing overtime.
- 20.4 Upon the death of a qualifying person under Section 20.2, the Warden, or his or her designee, will consider, on a case-by-case basis, requests to extend Bereavement Leave through the use of available vacation time.

ARTICLE 21 HOLIDAY PAY

- 21.1 The Company will provide full-time Officers the following ten (10) paid holidays regardless of the day on which the holiday falls:

New Year's Day	Labor Day
Martin Luther King's Day	Presidents' Day
Veterans Day	Memorial Day
Thanksgiving Day	Day After Thanksgiving
Independence Day	Christmas Day

- 21.2 Officers who are required to work on the holiday will be paid for all hours worked on the holiday, plus holiday pay based on their regularly scheduled workday. Appropriate overtime rules apply to the actual number of hours worked on a holiday or during a week in which a holiday falls. Holiday Pay is not included as hours worked for the purpose of calculating overtime.

- 21.3 Officers will receive Holiday Pay even if they are on approved paid time off (vacation, jury duty, bereavement leave, etc.).
- 21.4 Part-time Officers will receive holiday pay on a prorated basis, based on the number of hours worked in the pay period prior to the holiday occurring.

ARTICLE 22

VACATION

- 22.1 During the term of this Agreement, the Company will grant paid vacation to all full-time Officers based on years of service. Years of Service is determined by the Officer's Anniversary Date. Part-time Officers receive vacation pay on a prorated basis as a part of their hourly rate.

<u>Years Service</u>	<u>Annual Accrual</u>
1. More than One (1) Year but less than 5 years	80 Hours
2. More than Five (5) Years but less than 10 years	120 Hours
3. More than Ten (10) Years but less than 15 years	160 Hours
4. Fifteen (15) Years and above	200 Hours

- 22.2 Vacation shall be awarded on the anniversary of the Officer's date of hire, in one lump sum. Officers must take vacation time within the twelve (12) month period following each anniversary of their date of hire. Any unused vacation time not taken within the twelve month period will be paid out. Officers cannot carry over vacation time from one anniversary year to the next.
- 22.3 Any unused vacation time that has been awarded shall be paid at the time of separation from employment with GEO.
- 22.4 If a designated holiday named in this Agreement falls during an Officer's vacation period, such Officer shall be entitled to receive pay for such holiday.
- 22.5 Vacation time shall not be considered as time worked for the purpose of computing overtime.
- 22.6 Except as provided in sections 22.2 and 22.3, Officers entitled to vacation will not be given pay in lieu thereof.
- 22.7 As noted in Article 12 (SHIFT BID), the parties agree to an annual vacation bid. Said bid will occur after the annual shift bid and will take effect on the same schedule as the annual shift bid. Officers shall be required to bid two (2) weeks of vacation (does not have to be two consecutive weeks) in union seniority order (Officers who have accrued

80 hours of vacation will only be required to bid 1 week). Once all Officers have had an opportunity to bid vacation, those Officers with additional vacation time (i.e. 160-200 hours of accrued vacation), shall bid again in two week increments (1 week for those with 160 hours). In all cases, Officers will be able to maintain one (1) week of unscheduled vacation. Scheduled vacation may be cancelled; however, the Officer shall immediately select an available alternative week. In the event there are no available weeks, the Officer must take his or her scheduled vacation or it shall be paid out in accordance with Article 22.2 (in other words, the cancelled vacation must be paid out and is not available for use).

- 22.8 Officers may use their unscheduled vacation time to cover absences due to their own illness or injury, or any other absence covered under Article 25 (Paid Sick Leave) if they have insufficient hours of sick leave.
- 22.9 Officers with serious illnesses or injuries (or serious illnesses or injuries of immediate family members) may use scheduled vacation time after they exhaust all available sick leave and unscheduled vacation time with the Warden's approval.

ARTICLE 23 401(k) PLAN

- 23.1 All Officers are eligible to participate in the Company 401(k) and profit sharing savings plan as may be amended from time to time by the Company to ensure that the benefits are the same for all GEO Group Officers.
- 23.2 The Company will match 50% of the Officer's salary deferrals up to the first 5% of salary deferred (maximum matching contribution is 2.5% of salary).

ARTICLE 24 WAGES

- 24.1 Listed below are the Hourly Rates and the Health & Welfare Hourly Rate for covered Officers by this Agreement at the D Ray James Correctional Facility.
- A. The rates listed below are currently in effect.

Category	Hourly Rates
Correctional Officers	\$15.87
Health and Welfare	\$4.13

- B. CERT Officers shall receive premium pay of \$23.08 per pay period. Officers are only eligible to receive one premium rate under this section.
 - C. Should the Wage Determination Hourly Rate or the Health and Welfare rate change during the term of this Agreement the Company and the Union agree to reopen negotiations with regards to Wages or the Health & Welfare rate provided for in this agreement. Should any revised wage determination hourly rate be less than the hourly rates listed above, the hourly rates listed above shall prevail.
 - D. Any negotiated changes as a result of any revised Wage Determination will only become effective on the Client Contract Date once each year of the Agreement as incorporated by the Client into the Operations and Management Contract.
- 24.2 Officers shall receive the Health & Welfare hourly rate of \$4.13 per hour (based on 2080 hours per year) as a part of their wages. Officers may elect to voluntarily participate in the Company's benefits plans the costs of which will be explained in detail to each Officer. Should Officers elect not to participate in the company's benefit plans the amount of the Health and Welfare hourly rate will continue to be paid directly to the Officer in the form of wages and be reflected on their paychecks. Should an Officer choose to participate in the Company's benefit plans on a limited basis (for example taking dental or vision insurance only) any cost of the plans will be subtracted from the Health and Welfare hourly rate, with any remaining funds continuing to be paid in the form of wages.

ARTICLE 25 PAID SICK LEAVE

- 25.1 Executive Order 13706, establishing Paid Sick Leave applies to this collective bargaining agreement subject to the Service Contract Act for which the client contract is awarded. As such, GEO shall provide Officers with one (1) hour of paid sick leave for every thirty (30) hours they work, up to fifty-six (56) hours of paid sick leave each year. Officers are permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventative care; to assist a family member (or person who is like family to the Officer) who is ill, injured, or has other health related needs, including preventative care; or for reasons resulting from, or to assist a family member (or person who is like family to the Officer) who is a victim of domestic violence, sexual assault, or stalking. Additional information regarding this Executive Order is available at www.dol.gov/whd/govcontracts.
- 25.2 Effective November 18, 2017, the Company shall front load twenty-four (24) hours of paid sick leave. Officers shall continue to accrue the balance of fifty-six (56) hours of paid sick leave as defined in Article 25.1. The front loading of hours shall only occur on November 18, 2017.

- 25.3 The accrual year begins on November 18, 2017 and ends on November 17 each year.

ARTICLE 26
HEALTH INSURANCE AND BENEFITS

- 26.1 Effective the first day of the month coincident with or following 30-days of employment, full-time Officers may elect to enroll in:

- a. The Company's Group Health Insurance Plans, plan with optional family coverage.
- b. Flexible Spending Accounts

The Company has established and pays the administrative costs related to pre-taxed Medical and Dependent Care Flexible Spending Accounts (FSA). Officers have the opportunity, through pre-taxed payroll deductions, to participate in these FSA programs up to the limits established by law. For additional information Officers should contact their facility Human Resources Office. For decisions related to income tax considerations, Officers should consult with the IRS or a personal financial advisor.

- 26.2 Effective the first day of the month coincident with or following 90-days of employment full-time Officers may elect to participate in Company's dental, vision, group life insurance, disability, legal and voluntary benefit plans. Specific information related to these plans is available from the facility Human Resources Department. The terms and conditions of said plans are not subject to the grievance and arbitration procedures established herein.

- 26.3 The Company reserves the exclusive right to make or modify HEALTH AND WELLNESS benefits at any time during the life of this Agreement. The Company also reserves the exclusive right to modify the choice of service providers.

- 26.4 The Company shall discuss with the Union any changes or modifications to the Health and Wellness benefits prior to implementation or open enrollment.

- 26.5 Health and Wellness Benefits shall not be subject to the grievance procedures set forth in this Agreement.

- 26.6 Employee Assistance Program

To assist Officers in both work related and non-work related issues, the Company provides an Employee Assistance Program (EAP). Program participation may be voluntary or in some instances required by the Company. The provisions of the EAP are not subject to the grievance and arbitration process. Specific information related to the EAP may be found in the facility Human Resources Office and/or GEO Corporate

Human Resources. The EAP is available for Officers and their families. All information, whether voluntary or required by management, is strictly confidential.

ARTICLE 27

WAIVER OF BARGAINING RIGHTS AND AMENDMENTS TO AGREEMENT

- 27.1 During the negotiations resulting in this Agreement, the Company and the Union each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining; all such subjects were discussed and negotiated upon; and the agreements contained herein were arrived at after the free exercise of such rights and opportunity.
- 27.2 This Agreement supersedes any previous agreements, rules, regulations or customs governing the Company, its employees and the Union. The parties agree that they will not be bound by any past understandings or practices adopted by them or by other companies in the Company's industry unless those understandings or practices are agreed to in writing or incorporated in writing in the terms of this Agreement. Arbitration decisions and grievance procedure settlements rendered or reached concerning any other companies in the Company's industry shall not be considered as precedent under this Agreement and cannot be introduced as evidence or received into the record of any grievance proceeding or arbitration conducted under this Agreement.
- 27.3 Any changes in this Agreement, whether by addition, waiver, deletion, amendments or modifications, must be reduced to writing and executed by both the Company and the Union.

ARTICLE 28

OUTSIDE EMPLOYMENT

- 28.1 All Officers employed at the facility must obtain written approval from the Warden prior to becoming committed to Secondary Employment. Such approval will not be unreasonably withheld nor will it be arbitrary or capricious. Secondary Employment must not interfere with required duties or expectations, directly or indirectly create a conflict of interest or a situation that would be prohibited by State or Federal Law. Officers who are approved for Secondary Employment must advise their secondary employer that they (the Officer) are expected to respond without delay to emergency situations that occur at the Facility.
- 28.2 Any Officer who violates any provision of this Article may be subject to discipline in accordance with Article 14.

**ARTICLE 29
DRUG AND ALCOHOL TESTING**

- 29.1 The Union collectively and its members individually recognize the sensitive nature of the Company's business. As such, each recognizes that maintaining a drug and alcohol-free work place is essential to the safety and security of all Officers, the general public, the inmates and the institution.
- 29.2 The Union collectively and the members individually agree that the Company has the right to implement policies and procedures related to drug and alcohol testing and that these policies may include provisions for both cause and prevention testing.
- 29.3 Drug testing includes provisions for testing for Cause and Prevention. Procedures are found in GEO Policy #3.2.6 and 3.2.6-A, Drug Free Workplace. The Company may amend this policy from time to time.
- 29.4 When the Company has a "reasonable" suspicion to believe that an Officer is in violation of Company Rules of Conduct related to the use of alcohol or drugs, the Warden or his designee may require the Officer to submit to an alcohol and/or drug test. Procedures are established in GEO Policy #3.2.6 and 3.2.6-A, Drug Free Workplace.
- 29.5 If an Officer refuses to submit to a drug screening or alcohol test, the Officer shall be warned that such refusal constitutes grounds for immediate dismissal and then be allowed an opportunity to submit to the testing as though the Officer had originally complied with the order.
- 29.6 The Union collectively and the members individually agree that drug testing policies or regulations of the Company, Client or other regulating authority are subject to review and change. Changes made by the Company, Client or other regulating agencies will be binding on the parties to this Agreement. Changes will be communicated to the Union prior to implementation.

**ARTICLE 30
DURATION**


Except as otherwise provided herein, this Agreement becomes effective on November 18, 2017, and shall continue in force and effect until midnight November 17, 2020, and from year to year thereafter, unless either party receives written notice from the other party, not less than sixty (60) days, nor more than ninety (90) days, immediately prior to the expiration date, of its intention to amend, modify or terminate this Agreement, provided that if the Company shall cease to operate at this site, this Agreement shall automatically terminate and the rights and obligations of both the Union and the Company hereunder, shall automatically cease except with reference to those Officers covered herein shall remain in the employment of the Company for the purpose of performing work arising from the termination provisions of the Company's agreement with the

Client, and as to such Officers, this Agreement shall continue in effect until termination of employment of such Officers.


IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hand and seals, and caused this instrument to be clearly executed this 18th day of November 2017.

GEO Corrections and Detention, LLC (GEO)

International Union, Security, Police and Fire Professionals of America (SPFPA)
And its Amalgamated Local 469




Christopher D. Ryan
Executive Vice President, HR




Rick O'Quinn
Vice President, Region 2



Tracy Johns
Warden



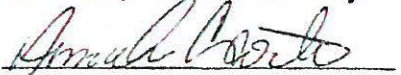
Pam Paolantonio
Local 469, President



Roger Gillis
Local 469, Vice President



Dawn Ulrich
Local 469, Financial Secretary



Amber Carter
Local 469, Chief Steward

Exhibit D
Contract Modification 53, Incorporated Collective Bargaining Agreement



AGREEMENT

BETWEEN

**THE GEO GROUP, INC.
(GEO)**

and the

**INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)**

thereof representing the

Correctional Employees

Located at

D RAY JAMES CORRECTIONAL FACILITY

FOLKSTON, GEORGIA

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PREAMBLE

THIS AGREEMENT is entered into this 30th day of May, 2014, by and between The GEO Group, Inc. (GEO), hereinafter referred to as the “Company,” and the International Union, Security, Police and Fire Professionals of America (SPFPA), hereinafter referred to as the “Union.”

The GEO Group, Inc. manages the D Ray James Correctional Facility in Folkston, Georgia, hereinafter referred to as the “Client”. As the management agent for the Contract Agency (s), the terms of this document are governed by Company’s contract (s) and the standards established by the Client.

WITNESSETH

WHEREAS, the parties have entered into collective bargaining negotiations, which negotiations have resulted in complete agreement between the Parties. NOW THEREFORE, it is agreed by and between the Company and the Union as follows:

ARTICLE 1 RECOGNITION AND PURPOSE

- 1.1 The Company recognizes the International Union, Security, Police and Fire Professionals of America (S.P.F.P.A.) as the exclusive collective bargaining representative for all full-time and regular part-time Correctional Officers, performing guard duties as defined in section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Company at the D Ray James Correctional Facility, as listed in the NLRB Certification in Case Number 12-RC-097792 and excludes all other employees, including office clerical employees, professional employees, supervisors, and other employees as defined in the National Labor Relations ACT, as amended.
- 1.2 For the purpose of this Agreement, the term “Officer” or “Officers” designates only such Officers as are covered by this Agreement.
- 1.3 It is the purpose of this Agreement to promote and expand harmonious relationships between the Company and Officers represented by the Union to provide, where not inconsistent with Client rules and regulations, applicable state and federal laws and regulations required by any agency having jurisdiction over the Operations and Management Contract or Personnel Rules, for the salary structure, fringe benefits, and employment conditions of the Officers covered by this Agreement. It is recognized that a harmonious relationship can best be achieved by open dialogue, timely resolution of differences, and negotiating in good faith. Both parties agree that they share the responsibility to provide uninterrupted service to the Client.

- 1.4 The parties acknowledge that during the negotiations, which resulted in the Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining; that all such subjects were discussed and negotiated upon; and that the agreements contained herein were arrived at after the free exercise of such rights and opportunities.
- 1.5 It is understood that no provisions of this Agreement will apply to any temporary supplementary correctional force transferred to work at the facility to maintain contractual obligations to the Client or during emergency situations. Unless the Client exercises its contractual option to assume operation of the facility or Officers are engaged in an adverse job action against the Company, such supplementary force will not result in job loss, or in the loss of normal hours to permanent Officers coming under this agreement while the supplementary force is being utilized.

ARTICLE 2 UNION SECURITY

- 2.1 Officers may freely choose to exercise their right by becoming a member of the Union or refrain from doing so as established by the National Labor Relations Act, as amended, Federal or State law; and this article.
- 2.2 The Union agrees to indemnify and hold the Company harmless against any claim, suits, judgments, or liabilities of any sort whatsoever arising out of the Company's compliance with the provisions of this Union Security Article.

ARTICLE 3 NON-DISCRIMINATION

- 3.1 The Company has the right to promulgate policies, reporting requirements and procedures regarding equal employment opportunity, discrimination and harassment. These policies, reporting requirements and procedures will, at a minimum, meet those required by the State of Georgia and Federal laws and regulations.
- 3.2 Neither the Company nor the Union shall discriminate against any Officer by reason of the following status: age, sex "except where age or sex is a bona fide occupational qualification", race or ethnic origin, color, national origin, religion, genetic information, disability, disabled or Vietnam era veteran, political affiliation, marital status, sexual orientation or membership or non-membership in a union.

- 3.3 The use of any male pronoun in this Agreement is a generic reference.

ARTICLE 4 HOURS OF WORK AND OVERTIME

- 4.1 For payroll purposes the normal work week shall commence at 12:01 AM on Monday and ends at 11:59 PM on Sunday. It is understood that the description of a “normal work week” does not describe a pay period or the number of annual pay periods. The Company, at its sole discretion, will determine the number of annual pay periods based on its payroll system.
- 4.2 The Company shall pay overtime at the rate required by federal and state law. Overtime is based only on actual hours worked within the workweek. The payment of overtime for any hour excludes that hour from consideration for overtime payment on any other basis. There shall be no pyramiding or duplication of premium or overtime pay. In the event more than one premium seems to be due under this Agreement, only the higher premium shall apply.
- 4.3.1 The parties agree that the ability to work overtime is an essential function of both full-time and regular part-time Officers. Officers will be required to work a reasonable amount of mandatory overtime. An Officer may sign up to volunteer for advanced overtime in the Captain’s office. If more than one (1) Officer signed up for the overtime opportunity the Officer with least overtime worked will be awarded the assignment. In the event two or more Officers worked the same amount of overtime, the most senior Officer will be awarded the assignment. Once an Officer works the overtime assignment, their name shall be moved to the bottom of the mandatory overtime list. Short notice overtime shall be first offered as voluntary overtime. The Shift Captain shall ask for volunteers; if no one volunteers the assignment shall be filed as mandatory overtime. Once an Officer works the assignment, their name shall be moved to the bottom of the mandatory overtime list. The mandatory overtime list will be maintained in front entry, and updated on Monday, Wednesday, and Friday. An Officer may refuse one (1) mandatory overtime assignment per quarter without discipline but will remain at the top of the mandatory overtime list. Mandatory overtime applies to all correctional officers, and will only move to the bottom of the list after working a minimum of four (4) hours.
- 4.4 Officers shall remain on duty until properly relieved by another Officer. Refusal to remain on duty until properly relieved may result in disciplinary action. Refusal to obey an order, instruction, or request given by a security supervisor may result in disciplinary action.
- 4.5 Supervisory and other employees shall not perform the duties of Officers covered by this Agreement except under the following conditions:

- a. When such work is necessary for instruction and/or training purposes without relieving the Officer from duties.
- b. To provide comfort, meal or emergency relief of Officers when other qualified Officers are not readily available

ARTICLE 5 CALL-IN AND REPORTING PAY

- 5.1 Officers are required to report for work at their scheduled starting times. Because a failure to report on time can cause delays in filling the requirements for shift coverage, this may cause supervisors to attempt to find replacements and places a hardship on other Officers. Failing to report to work on time may result in progressive discipline as outlined in Article-14.
- 5.2 Officers are required to call the on-site Shift Supervisor, a minimum of two (2) hours prior to the start of the scheduled shift, if they are unable to work their scheduled shift unless unable to do so due to a verifiable emergency situation. The failure to call a minimum of 2-hours prior to the start of the shift constitutes a violation and may result in progressive discipline as outlined in Article-14.
- 5.3 Officers who fail to report for duty at least two (2) consecutively scheduled workdays without notifying the Shift Supervisor or higher authority will be considered as having voluntarily abandoned their position and their employment will be terminated. This is an administrative action and does not fall under the guidelines listed in Article-14.
- 5.4 An officer who reports for work at his regular starting time or has been called in to work and has not been advised either orally or in writing not to report shall receive a minimum of four (4) hours work or four (4) hours pay at the appropriate hourly rate.
- 5.5 The provisions of Section 5.4 above shall not apply if the Company is unable to advise the officer not to report or provide the work because of acts of God, fire, snowstorm, flood, power failure, or other conditions or causes beyond the control of the Company.

ARTICLE 6 LEAVES OF ABSENCE

- 6.1 GEO provides leaves of absences in accordance with all applicable federal and state laws i.e., FMLA, Military leaves, etc. The protocol for such leaves can be found in the Employee Handbook or by contacting the facility Human Resources Department.

ARTICLE 7
NO STRIKE/NO LOCKOUT

- 7.1 The parties recognize the sensitive nature of the services provided by the Company to the Client and, therefore, agree that all operations of the Company shall, during the term of this Agreement, continue without interruption.
- 7.2 Under the term of this Agreement, the Union, its members and employees within the bargaining unit represented by the Union, individually and collectively, will not advocate, encourage, condone, or take part in any strike, sympathy strike, walkout, picketing, stay-in, slowdown, concerted refusal to work, or other curtailment or restricting of the Company's operations or interference with operations in or about the Company's premises, or equipment. The Company and its representatives agree not to engage in a lockout during the term of this Agreement.
- 7.3 The parties recognize the right of the Company to take such disciplinary action as the Company in its sole discretion determines appropriate, including dismissal, against any employee or employees who participate in violation of this Article, whether such action is taken against all of the participants or against only certain participants. It is understood and agreed by the parties that an employee does have the right to file a grievance solely on the issue of whether he did, in fact, violate any provisions of this Article. Separate grievances may not be joined in arbitration.
- 7.4 Any claim, action or suit for damages or injunctive relief resulting from the Union's violation of this Article shall not be subject to the grievance and arbitration provisions of this Agreement.

ARTICLE 8
COMPANY REGULATIONS

- 8.1 The Union recognizes that it is the responsibility of Officers to familiarize themselves and learn all policies and rules established by the Company or its client, and faithfully report all violations thereof. The Union agrees that Officers shall discharge all duties as assigned to them impartially and without regard to any Union or non-union affiliation of any Officer of the Company or Client, and that failure to do so may be cause for discipline.
- 8.2 Any rules, regulations or directives which are now in effect, or which may be later imposed upon the Company by its Client, or any other Governmental Agency having jurisdiction will apply with equal force and effect to the Officers hereunder. Officers are also required to adhere to Company Rules and Regulations.

- 8.3 The Company reserves the right, from time to time, to amend, add to or delete from its Company Rules and Regulations and practices unless such amendment, addition or deletion would violate a specific provision of this Agreement.
- 8.4 Typically all work rules that could result in discipline are contained in the Employee Handbook, the Collective Bargaining Agreement, Post Orders, internal memoranda or other means, i.e., posted notices, shift briefing information, etc. Should there be any work rules contained in facility policy, the Company will provide Officers reasonable access to all facility policies for which they could be disciplined or that contain information related to their jobs or the Company, except those polices that are considered privileged, confidential or sensitive by the Company, its client or the appropriate American Correctional Association standards.
- 8.5 The Union recognizes the principle of management responsibility, and that the Company must furnish satisfactory service in accordance with the demands and directives of the Company's Client and the requirements of the particular job.

ARTICLE 9 UNION REPRESENTATIVES AND ACCESS TO FACILITY

- 9.1 Duly authorized representatives of the Union shall have reasonable access to the facility to ascertain whether the Agreement is being properly observed, provided that no interview shall be held during rush hours or interrupt operations or disrupt or interfere with the duties of any Officer. Rush Hours include, but are not limited to, count times, meal periods, major turnouts, shift changes, or other times when there is major inmate or staff movement or during an emergency situation. Union representatives and Officers of the Local may contact Shift Stewards during working hours by telephone for the purpose of conducting Union business, provided that permission to do so has first been received from the Senior Warden or his designee.
- 9.2 Access to the facility after normal business hours (8:00 AM – 4:30 PM) will require prior approval from the Senior Warden or his designee.
- 9.3 It is mutually understood that access to the facility is governed by Client rules, and is subject to applicable Client restrictions, and these rules and restrictions must be followed. Any representative of the International Union (or other Union representative) requesting access to the facility must obtain proper clearance from the Client.
- 9.4 The representative of the Union shall contact the Senior Warden, or his designee, then present themselves at the facility and inform the Senior Warden, or his designee, of the circumstances of the visit. To the extent practicable the Union will provide the Senior Warden with a one (1) week advanced notice before any visit by a representative of the International Union. The Company and the Union representative shall conduct themselves in such a manner as to carry out the intent and spirit of this Article.

- 9.5 The Union shall inform the Company in writing of the names of its Officers, Regional Director, International Representatives, Chief Steward and Shift Stewards who are accredited to represent it, which information shall be kept up to date at all times. Only persons so designated will be accepted by the Company as representatives of the Union.
- 9.6 The Company shall provide a Bulletin Board for use by the Union with the understanding the Union shall not post nor distribute any letters, handbills, or notices etc., elsewhere on the site. Bulletin Board postings shall not contain any partisan political literature, offensive or derogatory language, signs or symbols related to the Company, the Client, visitors, other staff or any other individual or organization. Bulletin Board postings will be limited to:
- a. Notices of Recreational-Social Events
 - b. Notice of Union Elections
 - c. Notice of Results of Union Elections
 - d. Notice of Union Meetings
 - e. Notices of Other "Official" Union Business
- 9.7 The Union may designate one (1) Officer as a Chief Steward. Additionally, the Union may designate two (2) Officers per shift to act as Shift Stewards. Each shift may have one (1) alternate, who shall function as the Shift Steward only when the regular Shift Steward is absent or unavailable. Shift Stewards and Alternates shall in each case be an Officer with Seniority and who regularly works the shift to which they are assigned. The local Union will keep the Company currently advised in writing of the identity of the Shift Stewards and their alternates, as well as the identity of the local Union officials. Only Officers named by the local Union as currently holding any of the above positions will be recognized by the Company as representing the Union.
- 9.8 No Chief Steward, Shift Steward, alternate Shift Steward, or any other local Union Officer may leave an assigned duty post or work assignment to engage in representation of Officers during a pre-disciplinary investigatory interview or disciplinary proceeding without first notifying and receiving authorization from the Shift Supervisor. The Company shall not unreasonably withhold such authorization.
- 9.9 No Chief Steward, Shift Steward, alternate Shift Steward or other Union Officer shall cause an Officer to leave their assigned post without first notifying the Shift Supervisor and receiving proper authorization.
- 9.10 The Union recognizes that representation of Officers is not meant to circumvent the normal relationship between Supervisor and Officer as it pertains to discussions and counseling. The right to Union representation shall not apply to conversations between an Officer and the Supervisor for the purpose of giving instructions concerning work performance, providing training or retraining or non-disciplinary correction of work habits or techniques.

ARTICLE 10
DUES CHECK OFF

- 10.1 Subject to the limitations of any state or federal law, the Company agrees to deduct from the first paycheck earned each calendar month by a member of the Union covered by this Agreement, the Union membership dues and initiation fees uniformly levied by the Union in accordance with said Union's constitution and by-laws, of each member of the Union who has in effect at that time a proper authorization card executed by the Officer, authorizing the Company to make such deductions. A minimum of fifteen (15) workdays prior to the first deduction, the Union will advise the Company of the exact dollar amount due from each Officer.
- 10.2 All sums collected in accordance with such signed authorization cards shall be remitted by the Company to the Secretary-Treasurer of the International Union SPFPA no later than the fifteenth (15th) of the month subsequent to the month in which such sums were deducted by the Company.
- 10.3 The check-off authorization card to be executed and furnished to the Company by the Union and the Officers shall be the official Union authorization for check-off of dues. The Company shall accept no other form, unless the substitute is mutually agreed upon by the parties.
- 10.4 The Union accepts full responsibility for the authenticity of each check-off card submitted by it to the Company, and any authorizations, which are incomplete or in error shall be disregarded by the Company, and shall be returned to the Union for correction. The Union agrees that upon receipt of proper proof, it will refund to the Officer any deduction erroneously or illegally withheld from an Officer's earnings by the Company, which has been transmitted to the Union by the Company.
- 10.5 No deduction of Union dues will be made from the wages of any Officer who has executed a check-off form and has been transferred to a job not covered by this agreement or who is not in a pay status.
- 10.6 Anytime there is a change in the deduction authorization the Company will have a minimum of fifteen (15) workdays to put the change into effect.
- 10.7 An Officer who has executed a check-off form and who resigns or is otherwise dismissed from the employ of the Company shall be deemed to have automatically revoked his assignment, and if the Officer is recalled or re-employed, further deduction of Union dues will be made only upon execution and receipt of a new check-off form.
- 10.8 Collection of back dues owed at the time of starting deductions of any Officer, and collection of dues missed because the Officer's earnings were not sufficient to cover payment for a particular pay period, will be the responsibility of the Union, and will not be the subject of payroll deductions.

- 10.9 Deduction of membership dues shall be made, provided there is a balance in the paycheck sufficient to cover the amount after all other deductions authorized by the Officer or required by law have been satisfied. In the event of termination of employment, the obligation of the Company to collect dues shall not extend beyond the pay period in which the Officer's last day of work occurs.
- 10.10 The Union agrees to indemnify the Company and hold it harmless against any and all claims, suits or other forms of liability which may be made against it by any party for amounts deducted from wages as herein provided.
- 10.11 Solicitation of Union membership or collection or checking of dues will not be conducted during working time. The Company agrees not to discriminate in any way against any Officer for Union activity, but such activity shall not be carried out during working hours except as specifically allowed by the provisions of this Agreement.
- 10.12 An Officer may terminate a Union dues allotment by following the procedures outlined on the official dues authorization form.

ARTICLE 11 SENIORITY

- 11.1 For the first three (3) months worked following successful completion of facility pre-service training and orientation, an Officer shall be regarded as probationary and shall have no seniority. Probationary Officers may be disciplined or dismissed without recourse to the grievance procedure. Officers dismissed during their probation do not have any rights under this Agreement. However, Probationary Officers shall be represented by the Union concerning wages, hours and working conditions, but the Company reserves the right to decide questions relating to promotions, transfers, layoffs or dismissal. The Company may, upon written notification to the Union, at its discretion, extend an Officer's probation, for additional 30 days. One additional 30 day extension may be granted with written notice to and consent from the Union.
- 11.2 Employees who have lost seniority as set forth in Section 11.6 of this Article, and employees who terminate or leave the bargaining unit prior to completion of the probationary period shall be required, upon rehire or reentry into the bargaining unit, to serve the probationary period again.
- 11.3 After completion of the probationary period an Officer's seniority under this Agreement shall revert to the Officer's date of hire at the D Ray James Correctional Facility. Seniority of Officers who start work on the same date shall be determined by the last four digits of the Officer's social security number. The lower number will be the most senior. Seniority is defined as the length of continuous service with the D Ray James Correctional Facility.

- 11.4 Seniority under this Agreement will have no influence on promotions or advancement within the Company. The benefits of seniority are limited to those specifically mentioned in this Agreement.
- 11.5 The Company agrees to prepare an updated site seniority list of Officers covered by this Agreement quarterly, a copy of which will be furnished to the Union, if requested.
- 11.6 Officers will lose their seniority, and shall be dismissed for any of the following:
- a. Is laid off for more than 12-months;
 - b. Absent due to illness or injury for more than six (6) months, or length of employment, whichever is less. Absences taken pursuant to the applicable federal or state laws are exempt under this provision;
 - c. Dismissed for Just Cause
 - d. Gives a false reason for a leave of absence or engages in other employment during such leave;
 - e. Fails to meet qualification/re-qualification requirements in accordance with the Company, the Client or other Governmental Agency's regulations having jurisdiction;
 - f. Fails to obtain or maintain a security clearance;
 - g. Fails to return from layoff upon recall as provided below;
 - h. If the Officer voluntarily resigns or retires; or
 - i. If the Officer is convicted of a felony or a misdemeanor that does not relate to a traffic violation, with the exception of DUI.
- 11.7 Layoff and recalls from layoff will be made on the basis of seniority. Officers acting as President or Vice President of the Local shall not be laid off provided that work, which they are qualified for and willing to perform is available in their present Classification. Stewards will be laid off and recalled from layoff on the same basis as provided for other Officers except that in the event a unit or shift is deactivated and is later reactivated, the Stewards shall be the first Officers to be recalled to that unit or shift, provided work which they are qualified and willing to perform is available. Positions requiring "special training or skills" will be exempt from the seniority process (Transportation Officers and Armory/Locksmith Officer).
- 11.8 Laid-off Officers shall have callback rights for a period of twelve (12) months or length of employment whichever is less, and shall retain their accumulated seniority as of the date of layoff.
- 11.9 In case of re-employment, Officers who have been laid off shall be notified to return to work, at their last known address, in reverse order of lay-off. The notice will be by certified mail return receipt. In the event a former Officer so notified fails to report for work within five (5) calendar days after receipt of such notice, his seniority shall be terminated.

- 11.10 It will be the responsibility of the laid-off Officer to keep the Company notified of any change of address, and current phone number.
- 11.11 An Officer who is activated or drafted or who volunteers for military service in the armed forces of the United States, shall accumulate full seniority during the term of such service, provided such veterans are honorably discharged from active duty and apply for reemployment as an Officer within 90 days after such discharge from military service, provided the Officer still meets all eligibility requirements. The above is limited to a 6 year period; however, in time of war there will be no limit.
- 11.12 An Officer who is or has been transferred from the bargaining unit shall cease to accumulate seniority. If the Officer returns to the bargaining unit within six (6) months he shall retain the seniority he had at the time he transferred out of the bargaining unit.

ARTICLE 12 GRIEVANCE PROCEDURE AND ARBITRATION

- 12.1 The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance but within the time limits for filing grievances stated elsewhere in this Article, and encourage open communications between the Company and Officers so that resorting to the formal grievance procedure will not normally be necessary. The parties further encourage the informal resolution of grievances whenever possible. A grievance is defined as an alleged violation of a specific term or provision of this Agreement. At each step in the grievance process, participants are encouraged to pursue appropriate modes of conflict resolution. The purpose of this Article is to promote a prompt and efficient procedure for the investigation and resolution of grievances. This grievance procedure is not intended for complaints of harassment or discrimination as referenced in the Employment Handbook and Corporate Policy.
- 12.2 It is the intent of the parties to first provide a reasonable opportunity for resolution of a dispute through the grievance procedure and arbitration process. Except as noted below, if prior to seeking resolution of a dispute by filing a grievance hereunder, or while the grievance proceeding is in process, an Officer seeks resolution of the matter in any other forum, whether administrative or judicial, the Company shall have no obligation to entertain or proceed further with the matter pursuant to this grievance procedure.
- 12.3 An Officer who believes that any provision of this Agreement has not been properly applied or interpreted may present his grievance to be settled by the following procedures. During each step of the grievance procedure the Company has the right to perform a reasonable investigation into the complaint. The investigation may include but is not limited to: conducting interviews, having Officers prepare written statements, review records, etc.

- STEP 1 The grievant and/or grievant's Steward or Union representative shall meet with the grievant's Chief of Security or his designated representative within ten business days (excluding weekends and holidays) after the actions giving rise to said grievance occurred, became known or should have become known to the Officer or Union. The Chief of Security or his designated representative shall render his response to the grievant or the grievant's Steward within ten business days (excluding weekends and holidays) of this meeting.
- STEP 2 If the grievance is not settled in STEP 1, then the Union shall reduce the grievance to writing, and submit it to the Assistant Warden or his designated representative within ten business days (excluding weekends and holidays) after the STEP 1 answer was given or was due. The Assistant Warden or his designated representative shall meet within ten business days with the grievant's Steward or Union representative in an attempt to resolve the grievance. Every written grievance shall be filed on an authorized SPFPA Grievance Form and specify: (a) the date of the alleged violation; (b) all relevant facts; (c) the issue; (d) the contract provision(s) allegedly violated; (e) witnesses to the alleged violation; and (f) the remedy or relief sought. The Assistant Warden shall render a written answer to the grievance within ten business days (excluding weekends and holidays) of the STEP 2 meeting.
- STEP 3 If the grievance is not settled in STEP 2, then the Union shall appeal the grievance to the Warden or his designee, within ten business days (excluding weekends and holidays) after the STEP 2 answer was given or due. The Warden or his designee shall meet with the Union's designated representative within ten working days in an attempt to resolve the grievance. The Warden shall render a written answer to the grievance within ten business days following the STEP 3 meeting.
- STEP 4 If the grievance is not settled at Step 3, then within ten business days (excluding weekends and holidays) from the Company's Step 3 answer, the Union's Regional Vice President or his designated representative shall have the opportunity to discuss the merits of the grievance with the Company's Eastern Region Vice President or his representative. The Eastern Region Vice President or his representative shall render a written answer to the grievance within 30 calendar days following this discussion. Nothing in this Article shall compel the Union's Regional Vice President or his designated representative to utilize the opportunity to discuss the grievance with the Company's Eastern Region Vice President. If Step 4 is not utilized by the Union's Regional Vice President or his designated representative he may advance the grievance to arbitration within thirty (30) calendar days of the Company's Step 3 answer.

- STEP 5 **Arbitration:** If the grievance is not settled at Step 3 or Step 4, the party advancing the grievance may submit the matter for arbitration within thirty (30) calendar days after the Step 3 or Step 4 answer was given or was due. Before any issue is considered for Arbitration, a grievance must be processed at each step of the grievance procedure
- 12.4 Only those grievances which have been processed in strict accordance with the requirements of the above paragraphs and have gone through each Step of the grievance process shall be processed to arbitration in accordance with the procedures and limitations described herein.
- 12.5 Officers have the right to have a Union representative present during each step of the grievance process. It is understood between the parties that the local Union President, Vice President (or their designee), Shift Steward or alternate may act as the representative in question.
- 12.6 As referenced in this Article, business days do not include Saturday, Sunday or Holidays.
- 12.7 The Union shall have the power to determine whether or not a grievance filed by a member of the Union should be submitted at each step of the grievance process or if unresolved grievances should be submitted for arbitration. The time limits set forth in each step of the grievance procedure may be extended by mutual agreement in writing and such extended time limits shall then be considered as applicable to the grievance involved for the purpose of this section.
- 12.8 The Arbitrator shall be selected from a panel of seven (7) proposed arbitrators, submitted by the Federal Mediation and Conciliation Services. The party requesting arbitration shall be responsible for contacting the FMCS to obtain the list. If the two parties cannot agree on an arbitrator during the review of the original list, a second list of prospective arbitrators may be requested from the FMCS. If the parties still cannot agree on an arbitrator then the strike method will be used on the second list. The party requesting arbitration will strike the list first.
- 12.9 Each dispute shall constitute a separate proceeding unless the question involved is common to more than one dispute, in which case the proceeding may be consolidated, but only with mutual consent of the parties. No grievance filed after the termination of this Agreement shall be arbitrable.
- 12.10 The arbitrator shall be governed at all times wholly by the terms of this Agreement. The arbitrator shall neither add to, subtract from, modify or alter the terms or provisions of this Agreement. Arbitration shall be confined solely to the application and/or interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator shall refrain from issuing any statements of opinion or conclusions not essential to the determination of the issues submitted and is prohibited from using any standard not specifically specified in this Agreement, including but not limited to notions of industrial standards.

- 12.11 No claim for back wages under this Agreement shall exceed the amount of earnings the Officer would have otherwise earned by working for the Company, less any and all compensation the Officer received from any other source, including unemployment compensation. Under no circumstances will interest charges be included in any award for back pay. In the event an Officer is awarded back pay as a result of an arbitrator's ruling, deducted from the award will be any amounts received by the Officer for unemployment compensation and interim earnings, as well as any amounts which could have been earned through reasonable efforts by the employee to mitigate. In no event may the arbitrator enter a monetary award for any item other than lost wages. The Arbitrator shall not have the power to award punitive or exemplary damages, attorney's fees, or any other form of non wage damages.
- 12.12 Should either of the parties fail to attend the hearing as agreed, the Arbitrator shall be empowered to proceed with the hearing in the absence of either party, and shall be empowered to render a final decision, and award on the basis of only the evidence presented.
- 12.13 The compensation of the arbitrator and his expenses incidental to the arbitration shall be borne by the losing party. If there is no prevailing party, the arbitration costs shall be borne equally by the parties. Each party shall bear the expense of preparing its case and shall make arrangements for and pay for the expenses of witnesses called by them. The party desiring a transcript of the arbitration proceedings shall provide written notice to the other party of its intention to have a transcript of the arbitration made at least one week prior to the date of the arbitration. The party desiring such transcript shall be responsible for scheduling a reporter to record the proceedings. The requesting party is responsible for the cost of the reporter and the transcript of the proceedings. If the opposite party timely requests a copy of the transcript at the hearing, the reporter and transcript costs will be equally split between the parties. If the opposite party does not request a copy of the transcript at the hearing they will be permitted an opportunity to review the transcript at a mutually convenient time. The transcript will be the official and exclusive record of the hearing.
- 12.14 The decision or award of the arbitrator shall be final and binding upon the Company, the Union and the grievant, provided any party may appeal to an appropriate court of law a decision that was rendered by the arbitrator acting outside of or beyond the arbitrator's jurisdiction, pursuant to applicable law.
- 12.15 Any Officer or Union policy grievance not appealed or processed strictly within the time limits and in the manner set forth in each step of the grievance procedure shall be considered settled on the basis of the last answer by the Company. Any grievance step not answered by the Company within the time limits and in the manner set forth in each step of the above procedure may be appealed directly to the next step of the grievance process by the Union at any time within ten (10) work days of the Company's default.

- 12.16 No grievance shall be filed or processed if it concerns a matter occurring more than ten (10) work days before the Company or the affected Officer(s) knew or should have reasonably known that the events could result in the filing of an official grievance.
- 12.17 It is the specific intention of the parties that the grievance and arbitration procedures set forth herein are the exclusive and sole mechanism for the resolution of any grievances, disputes, disagreements or claims made under or related to this Agreement, with the exception of Company claims made as a result of a violation of Article 7 – No Strike/No Lockout. Each Step of the Grievance process must be followed unless there is written mutual consent of the parties.
- 12.18 Nothing contained herein shall prohibit the Company's ability to file and process its own grievance under the procedure outlined above.
- 12.19 In the event the parties settle any grievance prior to a final and binding determination by an arbitrator, such settlement shall be on a non precedent setting basis unless the parties affirmatively state otherwise in writing signed by both parties. Evidence of any such non precedent setting settlements shall not be admissible in any proceedings under this Article, including but not limited to, arbitration hearings.
- 12.20 The Company will provide copies of all disciplinary notices to the affected Officer or upon request to the Union.

ARTICLE 13 UNIFORMS

- 13.1 Uniforms and equipment shall be supplied where required by the Company, and replaced as necessary. Uniforms or equipment worn or used by the Officers who are on duty shall be prescribed by the Company, and no deviation from the Company's requirements shall be practiced except with the consent of the Company.
- 13.2 Uniforms, equipment, and other Company issued items remain the property of the Company and must be returned upon separation, or instead the Officer must pay eighty percent (80%) replacement cost for uniform items and pay one hundred percent (100%) of replacement cost of unreturned equipment.

ARTICLE 14 JUST CAUSE

- 14.1 Except where otherwise provided in this Agreement, where appropriate, the Company will adhere to concepts of Progressive Discipline, which it defines as the corrective process of applying penalties short of dismissal where conduct is of a less serious nature. The nature of discipline should be appropriate to the conduct and need not begin with the least serious disciplinary action. Acceptance of the principle of progressive discipline does not limit the Company's authority to immediately dismiss for serious offenses that cannot be condoned.
- 14.2 No Officer shall be disciplined or dismissed without just cause. The Company shall notify the Union, that the services of an Officer are no longer desirable, and that he has been disciplined or dismissed. Any Officer not granted a required security clearance by the Client shall be dismissed without recourse to grievance or arbitration procedures.
- 14.3 The following violations are representative only of the reasons that constitute Just Cause for immediate dismissal. The list of violations below is not an all inclusive list:
- Dishonesty,
 - The use, sale, possession or introduction into the facility of contraband,
 - Any type of theft,
 - Aiding or Abetting an escape,
 - Insubordination,
 - Fighting,
 - Being under the influence of illegal drugs or alcohol,
 - Leaving a duty post without being properly relieved,
 - Inattention to post (sleeping, etc.),
 - Sexual and other forms of harassment, in conjunction with the Company's general orders and regulations.
 - Unnecessary or Excessive Use of Force,
 - Failure to respond to an emergency,
 - Failure to obey lawful orders,
 - Failure to fully and truthfully participate in any facility investigation or attempt to obstruct a facility investigation,
 - Refusal to allow a search of themselves or their property.
 - Falsification of Company or Client records.
 - Unauthorized possession of Company, Client or other's property.
- 14.4 The Company agrees to follow the guidelines for disciplinary offenses and penalties, as may be amended from time to time. These guidelines for progressive disciplinary are contained in GEO Corporate Police 3.2.8, Progressive Discipline and include:
- a. Counseling
 - b. Written Reprimand

- c. Final Reprimand
- d. Dismissal

Note: To decide on the appropriate action the Company may consider: the seriousness of the Officer's conduct, employment record, ability to correct the conduct, actions taken for similar conduct by other Officers, how the conduct affects prisoners, the client, the public and other circumstances. At any step in the above process Officers may (at the discretion of the Company) be placed on a Work Improvement Plan (WIP) as a last attempt to assist the Officer to be successful.

- 14.5 If an Officer believes he was dismissed without just cause, he should notify the Local Union of his desire to file a grievance. Should the Union decide to file a grievance on behalf of the Officer they must notify the Company within ten (10) workdays of the Officer receiving the notice of termination. Such grievance shall be filed beginning at Step-3 of the grievance procedure as outlined in Article-12.
- 14.6 Any Officer arrested for a felony or a misdemeanor that does not relate to a traffic violation, with the exception of DUI, will be placed on leave without pay pending resolution of any criminal prosecution stemming from the arrest. If the Officer enters a plea of guilty or nolo contendere to the criminal charges stemming from the arrest; or the Officer is found guilty of the charges stemming from the arrest, then the Officer will be terminated with no recourse to either the grievance or arbitration procedures set forth in Article 12 of this agreement. If the Officer is found not guilty or the charges are dropped, the Officer will be reinstated with no back pay, but with no loss of seniority. The Company retains the prerogative to review the circumstances surrounding the arrest and based on its findings will take appropriate disciplinary action, if warranted.
- 14.7 An Officer interviewed concerning his discipline may request a Union representative be present during such interview. Nothing herein shall be construed to compel an Officer to have Union representation present. If an Officer requests Union representation, the Officer will not be required to respond to questions until the representative is present. Once the Union representative is present, questioning may begin and the Officer may confer with the Union representative regarding his responses. Although the Officer may consult with the Union representative related to the issue at hand, the Company requires all interview responses come from the Officer.
- 14.8 Disciplinary actions, excluding statutory claims that have been upheld, will remain in an Officer's personnel file, but cannot be used against the Officer after the expiration of 12 months from the date of the last violation.

ARTICLE 15
SAVINGS CLAUSE

- 15.1 Should any part of this agreement, or any portion therein contained be rendered or declared illegal, invalid, or unenforceable by a court of competent jurisdiction, inclusive of appeals, if any, or by the decision of any authorized governmental agency, such invalidation of such part of this agreement shall not invalidate the remaining portions thereof. In the event of such occurrence, the parties agree to meet as soon as practical, and if possible, to negotiate substitute provisions for such parts or portions rendered or declared illegal or invalid. The remaining parts and provisions of the agreement shall remain in full force and effect.

ARTICLE 16
MANAGEMENT RIGHTS

- 16.1 Subject to the express provisions of this Agreement, management's rights include those listed in this article as well as any rights that are usual and customary.
- 16.2 The management of the Company's operations and direction of the working forces, including, but not limited to: establish new jobs; abolish or change existing jobs; assign and change work duties and responsibilities; employ; promote; demote; train; transfer; lay off; recall; discipline, suspend or dismissal; determine the number of employees necessary for any operation; determine the number of hours to be worked; schedule hours of work, including starting and quitting times and meal and break times; increase and decrease the work force; establish, change, and maintain performance standards and methods; deploy the workforce within the facility in the manner it considers the most effective and efficient to meet the operational needs; determine the qualifications, efficiency and ability of employees; maintain the efficiency of operations and employees; determine services to be offered; determine the source of supply for all services, goods, or materials; institute technological changes or improvements in operations; use temporary employees from third party providers, as long as it does not result in layoff or reduction of hours of bargaining unit members; transfer operations; decide the number and location of facilities; close a facility or a portion thereof; acquire, sell to or merge with other companies; require the taking of physical, mental, drug, or alcohol tests; require Officers to consent to credit checks; require Officer's complete cooperation in investigation of potential theft or fraud; and make and revise such reasonable rules and regulations in connection with the Company's operations and the conduct and duties of its employees in respect of such operations as are deemed advisable, will be vested exclusively in the Company, subject only to such limitations as are specifically set forth in this Agreement.
- 16.3 The Company need not necessarily exercise rights reserved to it, or if the Company does exercise its reserved rights in any particular way, such will not be deemed a waiver of its

right to exercise them in other ways not in conflict with the express provisions of this Agreement. The Company maintains and retains all management rights and the enumeration of management's rights herein shall not be deemed to exclude any other management rights.

ARTICLE 17
NO FAULT ABSENTEEISM and TARDINESS

- 17.1 The procedure stated herein establishes a “no fault” point system to monitor the attendance of the Officers covered by this Agreement.
- 17.2 Prompt attendance on the job is an important part of the performance record each Officer builds from the day the Officer is hired. The success of an Officer depends in large measure on how well the Officer performs the job each day. The company is entitled to a reasonable degree of regularity in the attendance by all Officers, and disciplinary action is proper for failure to adhere to a reasonable attendance standard. The Company will focus particular attention on clear patterns of abuse, such as an unscheduled leave or “calling-out” in conjunction with days off, holidays, or vacation.
- 17.3 The Company recognizes there may be a reasonable absence due to a bona fide sickness or emergency situation, often beyond the control of the Officer, therefore this procedure allows for a number of “occurrences” before discipline is administered. For example, an “occurrence” is a single day of absence, or two or more consecutive days of absence.
- 17.4 Designed to work as a “no fault” procedure with a point system of attendance monitoring, this procedure will be consistently administered. The Officer’s immediate supervisor is responsible to coach, guide and/or discipline, as appropriate, Officers who are excessively absent or tardy. Within the procedures and limitations of the CBA, the Company reserves the right to impose discipline where there is a clear pattern of misuse or intentional abuse.
- 17.5 A Rolling 6-month period is the applicable period of time within which occurrences are counted under the procedure. An Officer’s record of points for absenteeism and tardiness occurrences will be tallied, tracked, trended and reported continuously through GEO’s information systems.

The following accumulative total points received during the rolling 6-Month period are considered thresholds in terms of when disciplinary action may be taken:

3 Points ----- Coaching
6 Points ----- Counseling

8 Points ----- Written Reprimand
 10 Points ----- Final Written Reprimand
 12 Points ----- Dismissal

17.6 Absences for the following reasons will not add points to an Officer's record:

- a. Use of scheduled vacation time, sick leave or other scheduled leave time for doctor office appointments or medical procedure, as well as scheduled Long Term Illness time, which has been approved in advance by a supervisor. Note, however, that supervisors will question an Officer's time off when there is an apparent pattern of absences, i.e., going to the doctor every Monday or Friday, or at the beginning or end of the Officer's scheduled work week.
- b. Other authorized and approved leaves, including paid or unpaid Personal Leave, Jury Duty, Bereavement Leave, Military Leave, Family Medical Leave, Union Leave and any other form of leave required by law.

17.7 Absences for the following reasons will add points to an Officer's record:

Unexcused Absence: 6 Points: An Officer will have an unexcused absence when the Officer fails to call in an absence and show up for a scheduled shift (No Call No Show).

Unscheduled Absence: 2 Points: An Officer who is absent from work and fails to notify their supervisor as soon as possible, less than two (2) hours before their scheduled reporting time is considered to have an unscheduled absence. Officers shall be responsible for providing their expected date of return to work during such notification. Each time an Officer is absent as an unscheduled absence the Officer will receive two (2) points for the unscheduled absence "occurrence". Multiple continuous days of absence for the same reason shall be considered one "occurrence". Officers will not be required to forfeit Vacation Time to compensate the Company for an unscheduled absence.

TARDINESS: An Officer who will be late to work must notify a supervisor as soon as possible. Officers shall be responsible for providing their expected arrival time during such notification. Late arrivals that were approved in advance by a supervisor, such as for a scheduled doctor office appointment, dental appointment or other scheduled and pre-approved reason will not add points to an Officer's record.

Late Arrival: 1 Point: The following reasons will add points to an Officer's record: An Officer is considered a late arrival if the Officer arrives at work and clocks in more than seven (7) minutes after the Officer's scheduled reporting time. For example, given the rounding in the timekeeping system, if an Officer is required to begin a shift at 6:00 AM, they would be allowed to clock in no earlier than 5:53 AM and could clock in up to 6:07 AM, and either punch time would be rounded to 6:00 AM. Those Officers clocking in more than seven (7) minutes after their scheduled reporting time will receive one (1) point.

Exclusions: Late arrivals and absences that were the result of factors outside of the Officer's control will be handled by the Facility Administrator on a case by case basis. Examples of events outside of the Officer's control include, but are not limited to: medical emergencies, car accidents, unplanned highway closures and sudden severe weather such as a tornado. Examples of events that will not be considered outside of the Officer's control include, but are not limited to: heavy traffic, lack of transportation and weather such as heavy rain. In all cases, the Company will follow the requirements of the Family and Medical Leave Act and the Americans with Disabilities Act, as well as any other applicable law.

Early Arrival: 1 Point: A non-exempt employee is considered an early arrival if the employee arrives at work and clocks-in more than seven (7) minutes before the employee's scheduled reporting time.

- 17.8 As an incentive for perfect attendance, Officers have the opportunity to earn two Perfect Attendance Days per year. If an Officer does not accrue any points for a six (6) month period between January 1st and June 30th, or between July 1st and December 31st, they will receive one personal paid holiday for each period. The holiday must be taken within the six (6) month period following the award. Officers must notify their supervisor at least two (2) weeks in advance of taking any earned personal holiday.

ARTICLE 18 JURY DUTY

- 18.1 GEO will pay the regular, full-time employees their pay for the days that the employee is subpoenaed for jury duty or otherwise required to testify or participate in any legal action related to company business, as determined by GEO. This pay will be comparable to the employee's normally scheduled shift (8, 10 or 12 hour shifts in the case of hourly employees). The employee must furnish written statement from the appropriate public official listing dates, hours of service and pay received. The employee is expected to report to work if excused from jury duty in time to perform a substantial part of a regular workday. (If any doubt exists, the employee should call his/her supervisor to determine if he should report to work.) Time absent due to court leave when subpoenaed or otherwise required to testify or participate in any legal action related to company business shall be counted as time worked for the purpose of computing overtime.
- 18.2 Jury duty shall not be considered as time worked for the purpose of computing overtime.

ARTICLE 19
BEREAVEMENT LEAVE

- 19.1 Upon the death of a full-time Officer's immediate family member, the Officer will be granted up to three (3) days leave with pay, not including the Officer's regular days off, in order for the Officer to make arrangements for and to attend the funeral.
- 19.2 For the purposes of this Article immediate family member is defined as an Officer's spouse, child, step-child, parents (including in-laws), siblings (including in-laws), grandparents and grandchildren to include the above family members of same sex couples.
- 19.3 Bereavement Leave shall not be considered as time worked for the purposes of computing overtime.
- 19.4 Upon the death of a qualifying person under Section 19.1, the Senior Warden, or his or her designee, will consider, on a case-by-case basis, requests to extend Bereavement Leave through the use of available vacation time.

ARTICLE 20
HOLIDAYS

- 20.1 The Company will provide full-time Officers the following ten (10) paid holidays regardless of the day on which the holiday falls:
- | | |
|--------------------------|------------------------|
| New Year's Day | Labor Day |
| Martin Luther King's Day | Presidents' Day |
| Veterans Day | Memorial Day |
| Thanksgiving Day | Day After Thanksgiving |
| Independence Day | Christmas Day |
- 20.2 Officers who are required to work on the holiday will be paid for all hours worked on the holiday, plus holiday pay based on their regularly scheduled workday. Appropriate overtime rules apply to the actual number of hours worked on a holiday or during a week in which a holiday falls. Holiday Pay is not included as hours worked for the purpose of calculating overtime.
- 20.3 Officers will receive Holiday Pay even if they are on approved paid time off (vacation, jury duty, bereavement leave, etc.).
- 20.3 Part-time Officers will receive holiday pay on a prorated basis, based on the number of hours worked in the pay period prior to the holiday occurring.

ARTICLE 21
VACATION

21.1 During the term of this Agreement, the Company will grant paid vacation to all full-time Officers based on years of service. Years of Service is determined by the Officer's Anniversary Date. Part-time Officers receive vacation pay on a prorated basis as a part of their hourly rate.

<u>Years Service</u>	<u>Annual Accrual</u>
1. More than One (1) Year but less than 5 years	80 Hours
2. More than Five (5) Years but less than 10 years	120 Hours
3. More than Ten (10) Years but less than 15 years	160 Hours
4. Fifteen (15) Years and above	200 Hours

21.2 Vacation shall be awarded on the anniversary of the Officer's date of hire, in one lump sum. Officers must take vacation time within the twelve (12) month period following each anniversary of their date of hire. Any unused vacation time not taken within the twelve month period will be paid out. Officers cannot carry over vacation time from one anniversary year to the next.

21.3 Any unused vacation time that has been awarded shall be paid at the time of separation from employment with GEO.

21.4 If a designated holiday named in this Agreement falls during an Officer's vacation period, such Officer shall be entitled to receive pay for such holiday.

21.5 Vacation time shall not be considered as time worked for the purpose of computing overtime.

21.6 Except as provided in sections 21.2 and 21.3, Officers entitled to vacation will not be given pay in lieu thereof.

ARTICLE 22
401(k) PLAN

22.1 All Officers are eligible to participate in the Company 401(k) and profit sharing savings plan as may be amended from time to time by the Company to ensure that the benefits are the same for all GEO Group Officers.

22.2 The Company will match 50% of the Officer's salary deferrals up to the first 5% of salary deferred (maximum matching contribution is 2.5% of salary).

ARTICLE 23
WAGES

23.1 Listed below are the Hourly Rates and the Health & Welfare Hourly Rate for covered Officers by this Agreement at the D Ray James Correctional Facility.

A. The rates listed below are currently in effect.

Category	Hourly Rates
Correctional Officers	\$15.87
Health and Welfare	\$3.81

B. CERT Officers shall receive premium pay of \$23.08 per pay period. Officers are only eligible to receive one premium rate under this section.

C. Should the Wage Determination Hourly Rate or the Health and Welfare rate change during the term of this Agreement the Company and the Union agree to reopen negotiations with regards to Wages or the Health & Welfare rate provided for in this agreement.

D. Any negotiated changes as a result of any revised Wage Determination will only become effective on the Client Contract Date once each year of the Agreement as incorporated by the Client into the Operations and Management Contract.

23.2 Officers shall receive the Health & Welfare hourly rate of \$3.81 per hour (based on 2080 hours per year) as a part of their wages. Officers may elect to voluntarily participate in the Company's benefits plans the costs of which will be explained in detail to each Officer. Should Officers elect not to participate in the company's benefit plans the amount of the Health and Welfare hourly rate will continue to be paid directly to the Officer in the form of wages and be reflected on their paychecks. Should an Officer choose to participate in the Company's benefit plans on a limited basis (for example taking dental or vision insurance only) any cost of the plans will be subtracted from the Health and Welfare hourly rate, with any remaining funds continuing to be paid in the form of wages.

ARTICLE 24
HEALTH INSURANCE AND BENEFITS

24.1 Effective the first day of the month coincident with or following 30-days of employment, full-time Officers may elect to enroll in:

a. The Company's Group Health Insurance Plans, plan with optional family coverage.

b. Flexible Spending Accounts

The company has established and pays the administrative costs related to pre-taxed Medical and Dependent Care Flexible Spending Accounts (FSA). Officers have the opportunity, through pre-taxed payroll deductions, to participate in these FSA programs up to the limits established by law. For additional information Officers should contact their Human Resources Office. For decisions related to income tax considerations, Officers should consult with the IRS or a personal financial advisor.

- 24.2 Effective the first day of the month coincident with or following 90-days of employment full-time Officers may elect to participate in Company's dental, vision, group life insurance, disability, legal and voluntary benefit plans. Specific information related to these plans is available from the facility Human Resources Department. The terms and conditions of said plans are not subject to the grievance and arbitration procedures established herein.
- 24.3 The Company reserves the exclusive right to make or modify HEALTH AND WELLNESS benefits at any time during the life of this Agreement. The Company also reserves the exclusive right to modify the choice of service providers.
- 24.4 The Company shall discuss with the Union any changes or modifications to the Health and Wellness benefits prior to implementation or open enrollment.
- 24.5 Health and Wellness Benefits shall not be subject to the grievance procedures set forth in this Agreement.
- 24.6 Employee Assistance Program

To assist Officers in both work related and non-work related issues, the Company provides an Employee Assistance Program. Program participation may be voluntary or in some instances required by the Company. The provisions of the Employee Assistance Program are not subject to the grievance and arbitration process. Specific information related to the EAP may be found in the facility Human Resource Office and/or GEO Corporate Human Resources. The EAP is available for Officers and their families. All information, whether voluntary or required by management, is strictly confidential.

ARTICLE 25

WAIVER OF BARGAINING RIGHTS AND AMENDMENTS TO AGREEMENT

- 25.1 During the negotiations resulting in this Agreement, the Company and the Union each had the unlimited right and opportunity to make demands and proposals with respect to all proper subjects of collective bargaining; all such subjects were discussed and

negotiated upon; and the agreements contained herein were arrived at after the free exercise of such rights and opportunity.

- 25.2 This Agreement supersedes any previous agreements, rules, regulations or customs governing the Company, its employees and the Union. The parties agree that they will not be bound by any past understandings or practices adopted by them or by other companies in the Company's industry unless those understandings or practices are agreed to in writing or incorporated in writing in the terms of this Agreement. Arbitration decisions and grievance procedure settlements rendered or reached concerning any other companies in the Company's industry shall not be considered as precedent under this Agreement and cannot be introduced as evidence or received into the record of any grievance proceeding or arbitration conducted under this Agreement.
- 25.3 Any changes in this Agreement, whether by addition, waiver, deletion, amendments or modifications, must be reduced to writing and executed by both the Company and the Union.

ARTICLE 26 OUTSIDE EMPLOYMENT

- 26.1 All Officers employed at the facility must obtain written approval from the Senior Warden prior to becoming committed to Secondary Employment. Such approval will not be unreasonably withheld nor will it be arbitrary or capricious. Secondary Employment must not interfere with required duties or expectations, directly or indirectly create a conflict of interest or a situation that would be prohibited by State or Federal Law. Officers who are approved for Secondary Employment must advise their secondary employer that they (the Officer) are expected to respond without delay to emergency situations that occur at the Facility.
- 26.2 Any Officer who violates any provision of this Article may be subject to discipline.

ARTICLE 27 DRUG AND ALCOHOL TESTING

- 27.1 The Union collectively and its members individually recognize the sensitive nature of the company's business. As such, each recognizes that maintaining a drug and alcohol free work place is essential to the safety and security of all Officers, the general public, the inmates and the institution.

- 27.2 The Union collectively and the members individually agree that the Company has the right to implement policies and procedures related to drug and alcohol testing and that these policies may include provisions for both cause and prevention testing.
- 27.3 Drug testing includes provisions for testing for Cause and Prevention. Procedures are found in GEO Policy #3.2.6 Personnel, Drug Free Workplace. The Company may amend this policy from time to time.
- 27.4 When the Company has a “reasonable” suspicion to believe that an Officer is in violation of Company Rules of Conduct related to the use of alcohol or drugs, the Senior Warden or his designee may require the Officer to submit to an alcohol and/or drug test. Procedures are established in GEO Policy #3.2.6. Personnel: Drug Free Workplace.
- 27.5 If an Officer refuses to submit to a drug screening or alcohol test, the Officer shall be warned that such refusal constitutes grounds for immediate dismissal and then be allowed an opportunity to submit to the testing as though the Officer had originally complied with the order.
- 27.6 The Union collectively and the members individually agree that drug testing policies or regulations of the Company, Client or other regulating authority are subject to review and change. Changes made by the Company, Client or other regulating agencies will be binding on the parties to this Agreement. Changes will be communicated to the Union prior to implementation.

ARTICLE 28 DURATION

Except as otherwise provided herein, this Agreement becomes effective on May 30, 2014, and shall continue in force and effect until midnight July 30, 2017 and from year to year thereafter, unless either party receives written notice from the other party, not less than sixty (60) days, nor more than ninety (90) days, immediately prior to the expiration date, of its intention to amend, modify or terminate this Agreement, provided that if the Company shall cease to operate at this site, this Agreement shall automatically terminate and the rights and obligations of both the Union and the Company hereunder, shall automatically cease except with reference to those Officers covered herein shall remain in the employment of the Company for the purpose of performing work arising from the termination provisions of the Company’s agreement with the Client, and as to such Officers, this Agreement shall continue in effect until termination of employment of such Officers.

IN WITNESS WHEREOF, the parties hereto have hereunto set their respective hand and seals, and caused this instrument to be clearly executed.

FOR THE COMPANY:
The GEO Group, Inc. (GEO)

FOR THE UNION:
International Union, Security, Police and Fire
Professionals of America (SPFPA)



NAME: Christopher D. Ryan

NAME: Rick O'Quinn

TITLE: VP Employee & Labor Relations

TITLE: International VP Region 2

DATE: 6-18-14

DATE: 6-18-14

Exhibit E
NLRB Petition



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 12
201 E KENNEDY BLVD STE 530
TAMPA, FL 33602-5824

Agency Website: www.nlr.gov
Telephone: (813)228-2641
Fax: (813)228-2874

February 6, 2013

STEPHEN V. FULLER
GEO CORRECTIONS AND DETENTION, LLC
ONE PARK PLACE
621 NW 53RD ST, STE700
BOCA RATON, FL 33487-8235

Re: GEO Corrections and Detention, LLC
Case 12-RC-097792

Dear Mr. Fuller:

Enclosed is a copy of a petition that INTERNATIONAL UNION, SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. This letter tells you how to contact the Board agent who will be handling this matter, explains your right to be represented, requests that you provide certain information, notifies you of a hearing, requests that you post notices, and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner MARK T. HEATON whose telephone number is (813) 228-2670. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Examiner DENISE C. MORRISON whose telephone number is (813) 228-2455.

Immediately upon receipt of the petition, the NLRB conducts an impartial investigation to determine if the NLRB has jurisdiction, if the petition is timely and properly filed, if the showing of interest is adequate, and if there are any other interested parties to the proceeding or other circumstances bearing on the question concerning representation. If appropriate, the NLRB then attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

GEO Corrections and Detention, LLC - 2 -
Case 12-RC-097792

February 6, 2013

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Requested Information:

Information Needed Immediately: To process the petition in this matter, we need certain information from you. Accordingly, please submit to this office, as soon as possible, the following information:

- (a) The correct name of your organization;
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any addenda or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);
- (c) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (d) Your position as to the appropriateness of the petitioned-for unit;
- (e) A completed commerce questionnaire (form enclosed) to enable us to determine whether the NLRB has jurisdiction in this matter;
- (f) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any; and
- (g) An alphabetized list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. This list will be used to resolve possible eligibility and unit questions as well as to determine the adequacy of the Petitioner's showing of interest. If such a list is not submitted promptly, any later submission and request for an evaluation of the Petitioner's showing of interest will be considered untimely and no check of the showing of interest will be conducted absent unusual circumstances.

Information Needed Later: If an election is agreed to or directed in this matter, the Employer must file with this office an alphabetized list of the full names and addresses of all eligible voters. We will then make the list available to all parties to the election. The list must be furnished within 7 days of the direction of, or agreement to, an election. I am advising you of this requirement now, so that you will have ample time to prepare this list.

GEO Corrections and Detention, LLC - 3 -
Case 12-RC-097792

February 6, 2013

Notice of Hearing: Enclosed is a Notice of Hearing to be conducted on February 15, 2013 if the parties do not voluntarily agree to an election. If a hearing is necessary, it is expected to run on consecutive days until concluded. The enclosed Form NLRB-4339 provides information about rescheduling the hearing. Requests for postponement of the hearing to a date more than 14 days after the petition was filed will normally not be granted absent extraordinary circumstances.

Posting Notices: The NLRB believes that employees should have information about their rights while a representation petition is pending; and employers and labor organizations should be apprised of their responsibilities to refrain from conduct which could interfere with employees' freedom of choice in an election. Accordingly, please immediately post the enclosed Notice to Employees (Form 5492) in conspicuous places in areas where employees in the petitioned-for unit work. Additional copies of the Notice to Employees are available for posting if you need them.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the NLRB will continue to accept timely filed paper documents. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB, the procedures we follow in representation cases, and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



MARGARET J. DIAZ
Regional Director

Enclosures

1. Notice of Hearing
2. Notice Regarding Representation Cases (Form 4339)
3. Statement of Standard Procedures in Formal Hearings (Form 4669)
4. Commerce Questionnaire
5. Notice to Employees (Form 5492)
6. Copy of Petition



**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**



<p>GEO CORRECTIONS AND DETENTION, LLC</p> <p style="text-align: center;">Employer</p> <p style="text-align: center;">and</p> <p>INTERNATIONAL UNION, SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)</p> <p style="text-align: center;">Petitioner</p>	<p>Case 12-RC-097792</p>
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **February 15, 2013** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at 550 WATER STREET, STE 240, JACKSONVILLE, FL 32202-5177, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. Form NLRB-4669, *Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of The National Labor Relations Act*, is attached.

Dated: February 6, 2013

Terry D. Combs, Acting Regional Director
National Labor Relations Board
Region 12
201 E Kennedy Blvd Ste 530
Tampa, FL 33602-5824

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE
THE NATIONAL LABOR RELATIONS BOARD PURSUANT TO PETITIONS FILED
UNDER SECTION 9 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted before a Hearing Officer of the National Labor Relations Board. (R CASES)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (*Copies of exhibits should be supplied to the Hearing Officer and other parties at the time the exhibit is offered in evidence.*) After the close of the hearing, one or more of the parties may wish to have corrections made in the record. All such proposed corrections, either by way of stipulation or motion, should be forwarded to the Regional Director or to the Board in Washington (*if the case is transferred to the Board*) instead of to the Hearing Officer, inasmuch as the Hearing Officer has no power to make any rulings in connection with the case after the hearing is closed. All matter that is spoken in the hearing room will be recorded by the official reporter while the hearing is in session. In the event that any party wishes to make off-the-record remarks, requests to make such remarks should be directed to the Hearing Officer and not to the official reporter.

Statements of reasons in support of motions or objections should be as concise as possible. Objections and exceptions may, on appropriate request, be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

All motions shall be in writing or, if made at the hearing, may be stated orally on the record and shall briefly state the order of relief sought and the grounds for such motion. An original and two copies of written motions shall be filed with the Hearing Officer and a copy thereof immediately shall be served on the other parties to the proceeding.

The sole objective of the Hearing Officer is to ascertain the respective positions of the parties and to obtain a full and complete factual record on which the duties under Section 9 of the National Labor Relations Act may be discharged by the Regional Director of the Board. It may become necessary for the Hearing Officer to ask questions, to call witnesses, and to explore avenues with respect to matters not raised by the parties. The services of the Hearing Officer are equally at the disposal of all parties to the proceedings in developing the material evidence.

At the close of hearing, any party who desires to file a brief may do so in the appropriate manner described below.

1 . Briefs filed with the Regional Director

Unless transfer of the case to the Board is announced prior to close of hearing, the brief should be filed in duplicate with the Regional Director. A copy must also be served on each of the other parties and proof of such service must be filed with the Regional Director at the time the briefs are filed. *Briefs submitted are to be double-spaced on 8 1/2 by 11 inch paper.*

The briefs shall be filed within 7 days after the close of the hearing unless an extension of time, not to exceed an additional 14 days on request made for good cause, before the hearing closes, is granted by the Hearing Officer. Briefs must be filed in accordance with the provisions of Section 102.111 (b) of the Board's Rules. Facsimile transmission of briefs is not permitted.

A request for an extension of time made after the close of the hearing must be received by the Regional Director, in writing, as much in advance of the date the briefs are due as possible and copies thereof must be served on the other parties by the same or faster method as used to file with the Regional Director (see 102.114 of Board's Rules).

FORM NLRB-4669
(3-12) Continued

2. Briefs filed with the Board in Washington, D.C.

a. If transfer of case to the Board is announced at the hearing

Should any party desire to file a brief with the Board, eight copies thereof shall be filed with the Board in Washington, D.C. Immediately on such filing, a copy shall be served on each of the other parties. Proof of such service must be filed with the Board simultaneously with the briefs. Such brief shall be printed on otherwise legibly duplicated: Provided, however, that carbon copies of typewritten matter shall not be filed and if submitted will not be accepted. No reply brief may be filed except on special leave of the Board. Any brief filed after transfer of the case to the Board shall be double-spaced on 8 1/2 by 11 inch paper.

The briefs shall be filed within 7 days after the close of hearing unless an extension of time, not to exceed an additional 14 days on request made for good cause, before the hearing closes, is granted by the Hearing Officer. Briefs must be filed in accordance with the provisions of Section 102.111 (b) of the Board's Rules. Facsimile transmission of briefs is not permitted.

b. Transfer of cases to the Board effected after close of hearing

Pursuant to Section 102.67 of the Board's Rules, the Regional Director may, at any time after the close of hearing and before decision, transfer a case to the Board for decision. The order transferring the case will fix a date for filing briefs in Washington, D.C.

If a brief has already been filed with the Regional Director, the parties may file eight copies of the same brief with the Board in the same manner as set forth in "a," above, except that service on other parties is not required. No further briefs shall be submitted except by special permission of the Board.

If the case is transferred to the Board before the time expires for filing of briefs with the Regional Director and before the parties have filed briefs, such briefs shall be filed as set forth in "a," above.

c. Request for extension of time to file briefs with the Board

A request for an extension of time to file briefs with the Board in Washington, D.C., made after the close of hearing must be received by the Executive Secretary's Office in Washington as much in advance of the date the briefs are due as possible but in any event no later than the close of business on the due date. Such request must be in writing and a copy shall be served immediately on each of the other parties and the Regional Director and shall contain a statement that such service has been made.

As provided in Section 102.114(a) and (e) of the Board's Rules and Regulations, service on all parties of a request for an extension of time shall be made in the same or faster manner as that utilized in filing the paper with the Board; however, when filing with the Board is accomplished by facsimile transmission or by personal service, the other parties shall be promptly notified of such action by facsimile transmission or by telephone, followed by service of a copy personally or by overnight delivery service.

FORM NLRB 4339
(2-12)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE REGARDING REPRESENTATION CASE HEARINGS

Case 12-RC-097792

Hearing Cancellation Based on Agreement of Parties: The issuance of the Notice of Hearing in this case does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments. The Board agent assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by me, will cancel the hearing.

Postponement of the Hearing: Postponement of the hearing *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing and be filed with the Regional Director;
- (2) Copies of the request must be simultaneously served on all other parties, and that fact must be noted on the request;
- (3) Absent extraordinary circumstances, the request must be received no later than 24 hours before the hearing is scheduled to begin;
- (4) Requests for postponement of the hearing to a date more than 14 days after the petition was filed will normally not be granted absent extraordinary circumstances;
- (5) Grounds must be set forth in *detail*, e.g., the unavailability of counsel and all other counsel in the law firm due to previously scheduled federal court or other U.S. Agency hearings or trials;
- (6) Alternative dates for any rescheduled hearing must be given; and
- (7) The positions of all other parties regarding the postponement and alternative hearing dates must be ascertained in advance by the requesting party and set forth in the request.

Approval of a postponement request may be conditioned upon one or more of the following:

- (1) The agreement of all parties to participate at a conference to be held at the Regional Office at least one full day before the rescheduled hearing date;
- (2) Agreement by the requestor that extensions of time for filing of briefs will not be sought or granted; and/or
- (3) The requestor's execution of stipulations on matters not in dispute, e.g., jurisdiction, labor organization status, appropriate unit.

Consecutive Days of Hearing: Once opened, it is expected the hearing will continue on consecutive business days until concluded.

STEPHEN V. FULLER
GEO CORRECTIONS AND DETENTION,
LLC
ONE PARK PLACE
621 NW 53RD ST, STE700
BOCA RATON, FL 33487-8235

DAVID HICKEY, INTERNATIONAL
PRESIDENT
INTERNATIONAL UNION, SECURITY
POLICE AND FIRE PROFESSIONALS OF
AMERICA (SPFPA)
25510 KELLY RD
ROSEVILLE, MI 48066-4932

Revised 3/21/2011		NATIONAL LABOR RELATIONS BOARD	
QUESTIONNAIRE ON COMMERCE INFORMATION			
Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.			
CASE NAME GEO Corrections and Detention, LLC		CASE NUMBER 12-RC-097792	
1. LEGAL TITLE OR ENTITY (As filed with State and/or stated in legal documents forming entity)			
2. TYPE OF ENTITY <input type="checkbox"/> CORPORATION <input type="checkbox"/> LLC <input type="checkbox"/> LLP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> OTHER (Specify)			
3. IS A CORPORATION OR LLC			
A. STATE OF INCORPORATION OR FORMATION		B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES	
4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS			
5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR			
6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed)			
A. PRINCIPAL LOCATION		B. BRANCH LOCATIONS	
7. NUMBER OF PEOPLE PRESENTLY EMPLOYED			
A. Total:		B. At the address involved in this matter:	
8. DURING THE MOST RECENT (Check appropriate box): <input type="checkbox"/> CALENDAR YR. <input type="checkbox"/> 12 MONTHS or <input type="checkbox"/> FISCAL YR (FY dates)			
			YES NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$			
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$			
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$			
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$			
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$			
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$			
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$			
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.			
I. Did you begin operations within the last 12 months? If yes, specify date: _____			
10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?			
<input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, name and address of association or group).			
11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS			
NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE			
NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

NOTICE TO EMPLOYEES

FROM THE National Labor Relations Board

A PETITION has been filed with this Federal agency seeking an election to determine whether certain employees want to be represented by a union. The case is being investigated and NO DETERMINATION HAS BEEN MADE AT THIS TIME by the National Labor Relations Board. IF an election is held Notices of Election will be posted giving complete details for voting. It was suggested that your employer post this notice so the National Labor Relations Board could inform you of your basic rights under the National Labor Relations Act.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

It is possible that some of you will be voting in an employee representation election as a result of the request for an election having been filed. While NO DETERMINATION HAS BEEN MADE AT THIS TIME, in the event an election is held, the NATIONAL LABOR RELATIONS BOARD wants all eligible voters to be familiar with their rights under the law IF it holds an election.

The Board applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of either unions or employers act in such a way as to interfere with your right to a free election, the election can be set aside by the Board. Where appropriate the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

NOTE:

The following are examples of conduct which interfere with the rights of employees and may result in the setting aside of the election.

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time within the 24-hour period before the election
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with this agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.

NATIONAL LABOR RELATIONS BOARD

an agency of the

UNITED STATES GOVERNMENT

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE

FORM NLRB-5482 (8-93)

FORM NLRB-5482(SP)
(8-95)

AVISO a los Empleados

DE PARTE DE

La Junta Nacional de Relaciones del Trabajo

UNA PETICION ha sido radicada ante esta agencia Federal solicitando una eleccion para determinar si ciertos empleados desean ser representados por una union.

El caso esta siendo investigado y la Junta Nacional de Relaciones del Trabajo NO HA HECHO DETERMINACION ALGUNA HASTA AHORA. Si se celebra una eleccion, se fijaran Avisos de Eleccion dando detalles completos acerca de la votacion.

Se sugirió a su patrono que fijara este aviso para que la Junta Nacional de Relaciones del Trabajo pudiera informaries acerca de sus derechos básicos bajo la Ley Nacional de Relaciones del Trabajo.

**BAJO LA LEY
FEDERAL
USTEDES
TIENEN EL
DERECHO A:**

- **Organizarse**
- **Constituir, Ingresar en, o ayudar a organizaciones obreras**
- **Negociar colectivamente por conjucto de representantes seleccionados por ellos mismos**
- **Actuar concertadamente con el fin de negociar colectivamente u otro fin de ayuda o proteccion mutua**
- **Negarse a tomar todas estas acciones o cualquiera de ellas a menos que, en aquellos estados en que se permitan tales acuerdos, la union y el patrono lleguen a un acuerdo legal para que los empleados satisfagan cuotas periodicas despues de hacer un pago inicial. Se puede exigir a aquellos que, no siendo miembros de la union, informan a la union que se oponen al uso de sus cuotas para fines que no sean de representacion, a que paguen su parte de los gastos hechos para realizar las actividades de representacion (tales como las negociaciones colectivas, el control contractual y la resolcion de las reclamaciones obreras).**

Es posible que algunos de ustedes voten en una eleccion para designar el representante de los empleados como resultado de haber sido radicada la solicitud de eleccion. Aun cuando NO SE HA HECHO DETERMINACION ALGUNA HASTA AHORA, en caso de celebrarse una eleccion, la JUNTA NACIONAL DE RELACIONES DEL TRABAJO desea que todos los votantes elegibles estén familiarizados con sus derechos bajo la ley SI celebra una eleccion.

La Junta aplica reglas que tienen por objeto mantener sus elecciones imparciales y honradas y que resulten en una libre seleccion. Si agentes, bien sea de las uniones o de los patronos, actúan de tal manera que interfiera con su derecho a una eleccion libre, la eleccion puede ser anulada por la Junta. Cuando es apropiado, la Junta provee otros emedios, tales como reinstalacion para los empleados despedidos por ejercer sus derechos, incluyendo paga atrasada de parte del responsable por su despido.

NOTA:

Los siguientes son ejemplos de conducta que interfiere con los derechos de los empleados y puede resultar en la anulacion de la eleccion.

- **Amenazas de pérdida de empleos o beneficios hechas por un patrono o una union**
- **Promesas o concesiones de ascensos, aumentos de sueldo, u otros beneficios para influenciar el voto de un empleado hechas por una de las partes capacitada para cumplir tales promesas**
- **El despido de empleados por un patrono para desalentar o alentar actividades unionales o una union que cause que sean despedidos para alentar actividades unionales**
- **Hacer discursos de campaña a grupos de empleados reunidos en tiempo pago por la campaña dentro del periodo de 24 horas antes de la eleccion**
- **La incitacion, bien sea por el patrono o la union, al prejuicio racial o religioso por medio de llamamientos tendientes a enardecer las animos**
- **Amenazas de fuerza o violencia fisica hechas a empleados por una union o un patrono para influenciar sus votos**

Tengan la seguridad de que SI SE CELEBRA UNA ELECCION se harán todos los esfuerzos para proteger su derecho a una libre seleccion de conformidad con la ley. La conducta impropia no será permitida. Esperamos de todas las partes que presten su completa cooperacion a esta agencia en el mantenimiento de los principios básicos de una eleccion imparcial según lo requiere la ley. La Junta Nacional de Relaciones del Trabajo como una agencia del Gobierno de los Estados Unidos no endoso ninguna de las selecciones en la eleccion.



JUNTA NACIONAL DE RELACIONES DEL TRABAJO

una agencia del

GOBIERNO DE LOS ESTADOS UNIDOS

ESTE ES UN AVISO OFICIAL DEL GOBIERNO Y NO DEBE SER MUTILADO POR NINGUNA PERSONA

FORM EXEMPT UNDER 44 U.S.C.

INTERNET FORM NLRB-502 (2-08)

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD PETITION

DO NOT WRITE IN THIS SPACE Case No. 12-RC-097792 Date Filed 2-6-13

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

- 1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
[] RC-CERTIFICATION OF REPRESENTATIVE
[] RM-REPRESENTATION (EMPLOYER PETITION)
[] RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)
[] UD-WITHDRAWAL OF UNION SHOP AUTHORITY
[] UC-UNIT CLARIFICATION
[] AC-AMENDMENT OF CERTIFICATION

2. Name of Employer: GEO Corrections and Detention, LLC; Employer Representative to contact: Stephen V. Fuller; Tel. No. 561-893-0101
3. Address(es) of Establishment(s) involved: One Park Place 521 NW 53rd Street, Suite 700, BOCA RATON, FL 33487; Fax No. 561-999-7738
4a. Type of Establishment: SECURITY; 4b. Identify principal product or service: SECURITY
5. Unit Involved: SEE ATTACHMENT A; 6a. Number of Employees in Unit: Present 235
6b. Is this petition supported by 30% or more of the employees in the unit? [X] Yes [] No

7a. [] Request for recognition as Bargaining Representative was made on (Date) NONE MADE and Employer declined recognition on or about (Date)
7b. [] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.
8. Name of Recognized or Certified Bargaining Agent (if none, so state): NONE; Affiliation:
Address: ; Tel. No.: ; Date of Recognition or Certification:
Cell No.: ; Fax No.: ; e-Mail:

9. Expiration Date of Current Contract, if any (Month, Day, Year): NO CONTRACT
10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes [] No [X]
11b. If so, approximately how many employees are participating?
11c. The Employer has been picketed by or on behalf of (Insert Name) organization, of (Insert Address) Since (Month, Day, Year)

12. Organizations or individuals other than Petitioner (and other than those named in Items 3 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (if none, so state) NONE
Table with columns: Name, Address, Tel. No., Fax No., Cell No., e-Mail

13. Full name of party filing petition (if labor organization, give full name, including local name and number): INTERNATIONAL UNION, SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)
14a. Address (street and number, city, state, and ZIP code): 2551D KELLY ROAD, ROSEVILLE, MI 48066
14b. Tel. No. EXT: 586-772-7250; 14c. Fax No.: 586-772-9644
14d. Cell No.; 14e. e-Mail:

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization): INTERNATIONAL UNION, SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.
Name (Print): David Hickey; Signature: [Signature]; Title (if any): International President
Address (street and number, city, state, and ZIP code): 2551D KELLY ROAD, ROSEVILLE, MI 48066
Tel. No.: 586-772-7250; Fax No.: 586-772-9644
Cell No.: 586-709-8563; eMail: SPFPA@spfpal.com

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Attachment A

ATTACHMENT TO PETITION:

ALL FULL TIME AND / OR REGULAR PART TIME CORRECTION AND SECURITY OFFICERS PERFORMING GUARD DUTIES AS DEFINED IN SECTION 9 (b) (3) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED EMPLOYED BY GEO CORRECTIONS AND DETENTION, LLC @ D RAY JAMES CORRECTIONAL FACILITY LOCATED 3262 HIGHWAY 252, FOLKSTON, GA 31537.

ATTACHMENT E
OGC LETTER FROM NICHOLAS MUELLER
TO JASON TORCHINSKY AND MICHAEL BAYES
MAY 1, 2018



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 1, 2018

VIA ELECTRONIC AND FIRST CLASS 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:

We are in receipt of your letter dated March 5, 2018 responding to the Commission's reason to believe finding and providing further information related to this matter. In order to further inform the Commission's evaluation of the matter, we ask that you please provide the following information:

1. In the Factual & Legal Analysis sent to your clients on January 31, 2018, footnote 40 references three matters before the National Labor Relations Board ("NLRB") in which GEO Corrections Holdings, LLC ("GC Holdings") appears to be the employer.¹ Please explain GC Holdings' role in these matters and its role in any federal contract relating to these matters. Please include copies of: all contracts related to the facilities at which the employees in these NLRB matters are employed, including but not limited to collective bargaining agreements and contracts with the federal, state, or local government, or any agency thereof. Please also include copies of any document filed with the NLRB by your clients or any other party in relation to these cases.
2. In your March 5, 2018 letter you note that GC Holdings had two external contracts, collective bargaining agreements with United Government Security Officers of America International Union ("UGSOA") and its Locals # 840 and # 880 at U.S. Immigration and Customs Enforcement ("ICE") facilities in Aurora, Colorado and Adelanto, California,

¹ Factual & Legal Analysis at 9, n.40 (referencing *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).

Jason Torchinsky, Esq.
Michael Bayes, Esq.
MUR 7180 (GEO Corrections Holdings, Inc.)
Page 2

during the 2015-2016 period. Please provide copies of those collective bargaining agreements, any contracts or agreements that those collective bargaining agreements were incorporated into, any documents or communications discussing such incorporation, and any contracts between any GEO entity² and the federal government or any agency thereof relating to the above referenced ICE facilities. Finally, please provide any contracts or agreements between GC Holdings and any other GEO entity relating to these ICE facilities or the operation of the contracts with the federal government relating to these ICE facilities.

3. Your March 5, 2018 letter further states that GC Holdings “maintains a series of ‘inter-company’ employee sharing and service agreements” and “provides corporate administrative and employee-related services to various subsidiaries and affiliates.” Please provide copies of these “employee sharing” agreements and any other contracts, agreements, documents, or communications outlining the “corporate administrative and employee-related services” that GC Holdings provides or provided to any other GEO entity. Please also include information regarding the responsibilities that any GC Holdings employees have: negotiating federal contracts for other GEO entities; and overseeing, managing or providing administrative support for any GEO entity (or its employees) holding or doing work related to federal contracts or otherwise located at or associated with a federal facility.³
4. Please state how GEO Reentry Services, LLC is taxed, as a corporation or partnership, and provide any documents necessary to substantiate your statement.

For purposes of requests for contracts between GC Holdings and any other GEO entity, please include not only formal contracts but also memorandums of understanding and any other document or communication that constitutes a formal or informal agreement relating to the scope of the particular request.

² For purposes of these requests, the term “GEO entity” is intended to include GC Holdings, as well as any parent company, subsidiary company, sister company, or other related entity, including but not limited to: The GEO Group, Inc., GEO Reentry Services, LLC, Cornell Companies, Inc., CCG I, LLC, and GEO Corrections and Detention, LLC.

³ The term federal facility here is intended to include not only facilities owned by the federal government or any agency thereof, but also private facilities where a federal contract is performed such as a privately owned prison operated pursuant to a federal contract.

Jason Torchinsky, Esq.
Michael Bayes, Esq.
MUR 7180 (GEO Corrections Holdings, Inc.)
Page 3

We ask that you provide your response no later than May 31, 2018. If you have any questions, please let me know. I can be reached at (202) 694-1577 or nmueller@fec.gov. Thank you for your attention to this matter.

Sincerely,



Nicholas Mueller
Attorney

ATTACHMENT G
OGC LETTER FROM NICHOLAS MUELLER
TO JASON TORCHINSKY AND MICHAEL BAYES
AUGUST 6, 2018



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 2018

VIA ELECTRONIC AND FIRST CLASS 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:

Thank you for your cooperation with our investigation into this matter. We have reviewed your response from June 22, 2018 and the documents you provided and we have a few follow up questions and requests. In order to further inform the Commission's evaluation of the matter, we ask that you please provide the following information:

1. In your June 22, 2018 letter you explain that "personnel employed by GEO Corrections Holdings, Inc. negotiated those contracts on behalf of other entities within The GEO Group Structure as part of the Employee Sharing Agreement." Please list all federal contracts that were being negotiated or performed in 2015 or 2016 that were negotiated by employees of GEO Corrections Holdings.¹ For each such negotiated contract, please also include the date on which negotiation began and concluded;² the dates on which performance of the contract began and concluded; the name of the GEO entity that performed the contract; and the contract number. Please also provide any employee sharing agreement under which the GEO Correction Holdings employees were "leased" to another GEO entity in order to negotiate one of these contracts.
2. On page 4 of your March 5, 2018 letter you explain that "GCH entered into both collective bargaining agreements as the nominal employer of unionized personnel at U.S.

¹ This request includes any federal contract which employees of GEO Corrections Holdings employees negotiated even if the contract was not awarded to GEO Corrections Holdings or any other GEO entity.

² The date on which negotiations began should be determined as the earlier of the commencement of negotiations or when the relevant request for proposal was sent out.

Jason Torchinsky, Esq.
Michael Bayes, Esq.
MUR 7180 (GEO Corrections Holdings, Inc.)
Page 2

Immigration and Customs Enforcement (ICE) facilities.” Please explain your use of the term “nominal employer.” In what ways was GEO Corrections Holdings the employer and in what ways were they not the employer? Please explain any legal distinction you believe exists between a “nominal employer” and an ordinary employer that would be relevant to the matter hand.

We ask that you provide your response no later than September 6, 2018. If you have any questions, please let me know. I can be reached at (202) 694-1577 or nmueller@fec.gov. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicholas Mueller', written in a cursive style.

Nicholas Mueller
Attorney

ATTACHMENT I
OGC LETTER OF NICHOLAS MUELLER
TO JASON TORCHINSKY AND MICHAEL BAYES;
DEPOSITION SUBPOENA
MAY 3, 2019



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

MAY - 3 2019

RE: MUR 7180
GEO Corrections Holdings, Inc.

Dear Messrs. Torchinsky and Bayes:

On March 31, 2018, your client, GEO Corrections Holdings, Inc., was notified that the Federal Election Commission found reason to believe that it violated provisions of the Federal Election Campaign Act of 1971, as amended.

Pursuant to its investigation of this matter, the Commission has issued the attached subpoena requiring a representative of the GEO Corrections Holdings, Inc. to appear on May 20, 2019, or another date mutually agreed upon, and give sworn testimony on which will assist the Commission in carrying out its statutory duty of supervising compliance with the Act. You are requested to provide the name(s) of the chosen representative or representatives no later than 7 days prior to the deposition.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid \$40, plus mileage. Subsequent to the deposition, your client will be sent a check for the witness fee and mileage.

Within two business days of your receipt of this notification, please confirm the scheduled appearance with me at (202) 694-1577.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Mueller".

Nicholas Mueller
Attorney

Enclosure
Subpoena

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	MUR 7180
GEO Corrections Holdings, Inc.)	
)	

DEPOSITION SUBPOENA

TO: GEO Corrections Holdings, Inc.
 c/o Jason Torchinsky, Esq.
 Holtzman Vogel Josefiak Torchinsky, PLLC
 45 North Hill Drive, Suite 100
 Warrenton, VA 20186

Pursuant to 52 U.S.C. § 30107(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to produce one or more designated representatives for deposition in a manner akin to Federal Rule of Civil Procedure 30(b)(6) to address the topics identified in the attached addendum. Notice is hereby given that the deposition is to be taken on May 20, 2019, or another mutually agreeable date, at the offices of the Federal Election Commission, 1050 First Street, NE, Washington, DC, beginning at 10:00 a.m. and continuing each day thereafter as necessary.

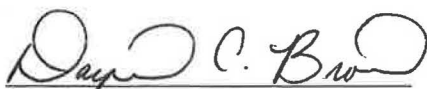
WHEREFORE, the Chair of the Federal Election Commission has hereunto set her hand in Washington, DC, on this 30th day of April, 2019.

For the Commission,



Ellen L. Weintraub
 Chair

ATTEST:



Dayna C. Brown
 Secretary of the Commission

MUR 7180
Addendum
GEO Corrections Holdings, Inc.

ADDENDUM TO SUBPOENA

The topics to be addressed at the deposition are set forth below:

- (1) The management structure and creation of internal company policies at GEO entities, including but not limited to GEO Corrections Holdings, Inc., The GEO Group, Inc. and GEO Reentry Services, LLC; this topic includes the composition, function, and practices of the corporate boards at GEO entities;
- (2) The corporate structure and tax structure of GEO entities, including but not limited to GEO Corrections Holdings, Inc., The GEO Group, Inc. and GEO Reentry Services, LLC; this topic includes how these entities fit into GEO's Real Estate Investment Trust ("REIT") structure;
- (3) The formation and practical application of employee-sharing agreements between GEO entities and particularly those involving GEO Corrections Holdings, Inc. including the work done by employees pursuant to these agreements; this topic includes the negotiation and substance of contracts negotiated by GEO Corrections Holdings, Inc. (or its employees) on its own behalf or on behalf of other GEO entities including but not limited to The GEO Group, Inc., Cornell Companies, GEO Reentry, Inc., and GEO Reentry Services, LLC;
- (4) The joint credit agreements between GEO Corrections Holdings, Inc. and The GEO Group, Inc. as referenced in The GEO Group, Inc.'s filings with the Securities and Exchange Commission as well as any other debts of GEO Corrections Holdings, Inc. incurred jointly with or otherwise in connection with any other GEO entity;
- (5) The sources of GEO Corrections Holdings, Inc.'s revenues and distributions of its profits; and
- (6) Political contributions made by GEO entities, including but not limited to GEO Corrections Holdings, Inc., The GEO Group, Inc., and GEO Group, Inc. PAC.

Questions on these topics will focus on, though not be limited to, the 2015-2016 time frame.

ATTACHMENT L
OGC LETTER FROM NICHOLAS MUELLER
TO JASON TORCHINSKY AND MICHAEL BAYES
DECEMBER 3, 2019



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 3, 2019

VIA ELECTRONIC AND FIRST CLASS 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:

On March 31, 2018, your client, GEO Corrections Holdings, Inc., was notified that the Federal Election Commission found reason to believe that it violated provisions of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. Pursuant to the Commission's reason to believe findings, the Commission initiated an investigation in this matter.

The Office of General Counsel ("OGC") is nearing the conclusion of the investigation and considering potential recommendations to the Commission. Accordingly, we write to inquire whether your client is interested in resolving this matter through pre-probable cause conciliation. Consistent with usual practice in similar cases, we expect that a request to resolve this case through early conciliation would be accompanied by an appropriate tolling agreement.

If you have any questions, please let me know. I can be reached at (202) 694-1577 or nmueller@fec.gov. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Mueller".

Nicholas Mueller
Attorney

ATTACHMENT M
MUR 6726 (CHEVRON)
COMPLAINT; ADDENDUM TO COMPLAINT
RESPONSE
FIRST GENERAL COUNSEL'S REPORT
NOTIFICATION WITH FACTUAL AND LEGAL ANALYSIS
VOTE CERTIFICATION



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2013 MAR 5 PM 12:08
215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • www.citizen.org
FEC MAIL CENTER

March 5, 2013

MUR # 6726

Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Request for investigation of Chevron USA, Inc., and the Congressional Leadership Fund, for violation of 2 USC 441c

Dear Commissioners:

Please consider the enclosed complaint against Chevron USA, Inc., and the Congressional Leadership Fund, for investigation into violations of 2 USC 441c, the prohibition on Federal contractors making campaign contributions to parties, candidates and political committees.

Sincerely,

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen

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BEFORE THE FEDERAL ELECTION COMMISSION

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FEC MAIL CENTER

Public Citizen,
Friends of the Earth,
Greenpeace,
Oil Change International

Craig Holman
Public Citizen
215 Pennsylvania Avenue SE
Washington, D.C. 20003
202-454-5182

MUR # 6726

Erich Pica
Friends of the Earth - US
2150 Allston Way, Suite 240
Berkeley, CA 94704
(510) 900-3141

Charlie Cray
Greenpeace USA
701 H Street, N.W.
Washington, D.C. 20001
(202) 462-1177

Stephen Kretzmann
Oil Change International
236 Massachusetts Avenue, NE
Suite 203
Washington, D.C. 20002
(202) 518-9029

v.

MUR No. _____

Chevron USA, Inc.
Chevron Products Company
P.O. Box 9034
Concord, CA 94524
(925) 827-7741

and

Congressional Leadership Fund
555 13th Street NW, Suite 510W
Washington, D.C. 20004

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COMPLAINT

1. Public Citizen requests that the Federal Election Commission undertake an investigation into, and enforcement action against Chevron USA, Inc., a Federal government contractor, for making a \$2.5 million contribution to the Congressional Leadership Fund, a super PAC, for the purpose of influencing the 2012 federal elections, in violation of 2 U.S.C. 441c.
2. Public Citizen also requests that the Federal Election Commission undertake an investigation into whether the Congressional Leadership Fund, a super PAC, knowingly and willfully solicited and accepted the above-mentioned contribution from a Federal government contractor in violation of 2 U.S.C. 441c.

BACKGROUND:**Prohibition on Campaign Contributions by Federal Government Contractors**

3. In addition to regulations and disclosure requirements imposed by the Federal Election Campaign Act (FECA), the campaign finance law imposes additional restrictions against campaign contributions by Federal government contractors. 2 U.S.C. 441c, labeled "Contributions by government contractors," prohibits any entity or individual who contracts with the Federal government from making campaign contributions, directly or indirectly, to any candidate, political party or political committee for the purposes of influencing federal elections, or to any such person for any political purpose or use. Nor may a candidate, political party or committee knowingly solicit such a contribution from a government contractor.
4. 2 U.S.C. 441c reads in part:
 - (a) Prohibition
It shall be unlawful for any person—
 - (1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of
 - (A) the completion of performance under; or
 - (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party,

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committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

5. Under federal law, "person" is defined quite broadly to include any individual, corporation or any other organization, except the Federal government. [2 U.S.C. 431(11)]. The ban on contributions from Federal government contractors applies only in connection with Federal elections [11 C.F.R. 115.2(a)], and does not apply to contributions from separate segregated funds (popularly known as a political action committees) of Federal contractors [2 U.S.C. 441c(b)].
6. The ban on campaign contributions from government contractors in connection with Federal elections applies to candidates, political parties and political committees, including super PACs. The Federal Election Commission has appropriately interpreted the prohibition against contractor contributions to "any political party committee, or candidate for public office or to any person for any political purpose or use" to include political committees and super PACs involved in Federal elections. The FEC has made this position clear, in testimony before Congress,¹ and in a press release following the 2011 *Carey v. FEC* decision.²
7. Most super PACs recognize the prohibition on accepting contributions from Federal contractors, including the Congressional Leadership Fund, explicitly warning potential contributors of the ban on their Web pages. The warning on the donation page of the Congressional Leadership Fund is typical for other super PACs: "Contributions to the Congressional Leadership Fund are not deductible as charitable contributions for federal income tax purposes. Contributions from foreign nationals, Federal government contractors, national banks, or corporations organized by act of Congress are prohibited."³ American Crossroads, the super PAC organized by Republican operative Karl Rove, requires contributors to certify that the donations do not come "from the treasury of an entity or person who is a Federal contractor." The same requirement and warnings are made by the super PACs that supported President Obama, Rick Santorum, Newt Gingrich and Ron Paul.⁴

¹ Holtzman Vogel Josefiak, *Blog: Federal contractors donate to super PAC backing Romney* (Mar. 19, 2012), available at: <http://www.hvjlaw.com/blog/Read.aspx?ID=1997> [noting that FEC commissioner Cynthia Bauerly, in testimony before a 2011 House oversight hearing, reiterated "that the prohibition still holds" against contractor contributions to independent-expenditure-only committees].

² Federal Election Commission, *FEC statement on Carey v. FEC* (Oct. 5, 2011) [stating that "Foreign nationals, government contractors, national banks and corporations organized by authority of any law of Congress cannot contribute to such separate accounts"].

³ Congressional Leadership Fund, donation web page, available at: <https://secure.pirvx.com/donate/FVKsA54i/Congressional-Leadership-Fund/>

⁴ Editorial, "The wall between contractors and politics," *New York Times* (Mar. 25, 2012) [noting that Romney's super PAC offered no such warning].

8. Despite the 2010 *Citizens United v. Federal Election Commission* decision by the U.S. Supreme Court – which allows direct corporate and union independent spending in Federal, state and judicial elections – government contractors remain outside the bounds of that ruling. In a recent court challenge to the Federal government contractor ban on campaign contributions – *Wagner v. FEC* – the federal district court upheld the law and did not rule on the issue of whether independent-expenditure-only PACs were subject to the prohibition.⁵
9. The Federal government contractor contribution ban, which was originally passed by Congress in 1940, is based on a long history of corruption and the appearance of corruption due to the unique circumstances of private businesses bidding for lucrative government contracts. It is designed to address two separate forms of corruption: companies using campaign donations to bribe their way into lucrative government contracts; and lawmakers extorting money from companies seeking government contracts. The federal prohibition has become known as “pay-to-play” reform and has promulgated similar legislation in 15 states and rule G-37 by the Securities and Exchange Commission in response to their own records of corruption scandals.⁶ For a case record of pay-to-play corruption scandals that have given rise to these reforms around the nation, go to: <http://www.citizen.org/documents/wagner-case-record.pdf>

CHEVRON IS A FEDERAL CONTRACTOR
SUBJECT TO THE FEDERAL PAY-TO-PLAY LAW

10. Chevron USA, Inc., is a major Federal contractor, and has been a Federal contractor at least since the year 2000, holding several current government contracts. Chevron has received hundreds of Federal contracts since the year 2000 through today valued in excess of \$1,447,643,590 (see Appendix A, Federal Contracts Received by Chevron USA, Inc.).
11. “Chevron Products Company,” a division of Chevron USA, Inc.,⁷ made a \$2.5 million contribution to the Congressional Leadership Fund, a super PAC exclusively involved in federal elections, on October 7, 2012 (see Appendix B, Congressional Leadership Fund, Pre-General Election Report to the Federal Election Commission, “Receipts and Disbursements”). Chevron’s contribution accounted for about 22 percent of the \$11.3 million in contributions the super PAC received for the 2012 elections. The sheer size of the donation raises questions whether the Congressional Leadership Fund solicited the support from Chevron or, at the very least, raises

⁵ *Wagner v. Federal Election Commission*, DDC No. 11-1841 (Nov. 2, 2012).

⁶ For a listing of states with pay-to-play laws designed to prohibit or restrict campaign contributions from government contractors, see Public Citizen’s web page at: <http://www.citizen.org/documents/pay-to-play-chart-2012.pdf>

⁷ Review of records of the Secretary of State of Pennsylvania, where Chevron, U.S.A., Inc., is incorporated, indicates that “Chevron Products Company” is not a separately incorporated entity, but a name under which Chevron, U.S.A., Inc., does business.

questions why the Congressional Leadership Fund did not check to see if Chevron is a government contractor and return the donation in compliance with the law as required and noted on the Fund's own web site.⁸

**CONGRESSIONAL LEADERSHIP FUND -
SUPER-CONNECTED SUPER PAC**

12. Founded in October 2011, the Congressional Leadership Fund, a super PAC, calls itself as "an independent expenditure fund focused solely and exclusively on maintaining the Republican majority in the House of Representatives."⁹ News reports often characterize the fund as being linked to Speaker of the House John Boehner (R-Ohio). The super PAC's Web site reports that its inaugural event featured a bevy of House Republican luminaries, including: Boehner, House Majority Leader Eric Cantor (R-Ohio), House Majority Whip Kevin McCarthy (R-Calif.), and National Republican Congressional Committee Chairman Pete Sessions (R-Texas). More than 80 Republican other House members also attended the event, according to the super PAC's account.¹⁰ The Congressional Leadership Fund shares offices and leadership personnel with the American Action Network. It is chaired by former Sen. Norm Coleman (R-Minn.), who also chairs the American Action Network. Former Reps. Tom Reynolds (R-NY), a former chairman of the National Republican Congressional Committee, and Vin Weber (R-Minn.) serve on the boards of both groups. Brian Walsh, former political director for the National Republican Congressional Committee, serves as president of both groups.¹¹

13. The Congressional Leadership Fund spent \$9,450,237 in the 2012 federal elections, all of its expenditures financing negative attack ads against 14 Democratic House candidates.¹² The Center for Responsive Politics¹³ provides a graphic of the expenditures by the Congressional Leadership Fund which is provided below:

⁸ Chevron appears to be quite aware of the potential for corruption or the appearance of corruption that may arise from very large campaign contributions. On November 20, 2012, Chevron filed an ethics complaint against New York State Comptroller Thomas DiNapoli. The complaint, which was made to the Joint Commission on Public Ethics, claims that DiNapoli received tens of thousands of dollars in campaign contributions from lawyers representing Ecuadorean villagers, who have sued Chevron in court over environmental damages. The complaint asserts the lawyers had "an illicit and unethical quid pro quo arrangement" in which the comptroller received campaign donations and other benefits in exchange for pressuring Chevron in the case. Danny Hakim, "Chevron accuses state comptroller of ethics violation. *New York Times* (Nov. 20, 2012).

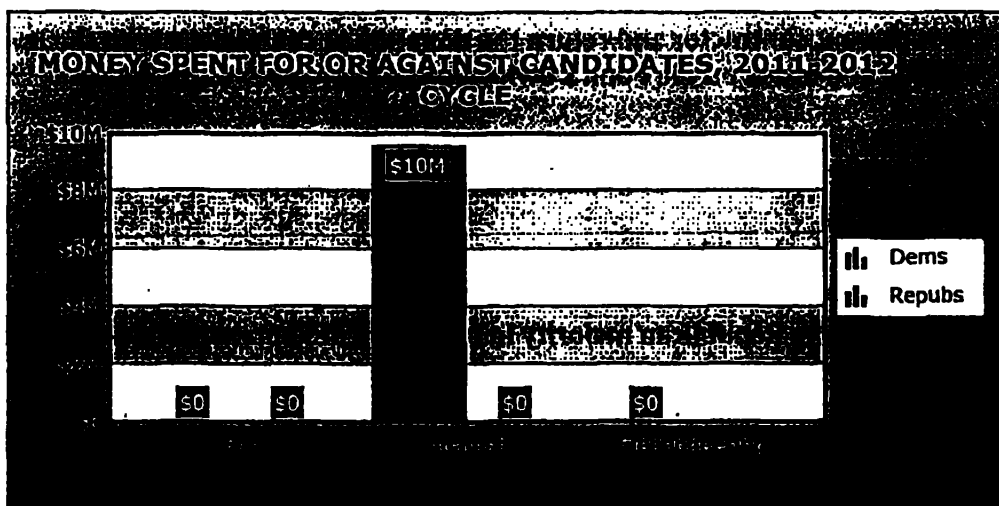
⁹ Congressional Leadership Fund, *About* (viewed on Nov. 20, 2012), <http://bit.ly/lh58X1>.

¹⁰ Congressional Leadership Fund, *About* (viewed on Nov. 20, 2012), <http://bit.ly/lh58X1>.

¹¹ Congressional Leadership Fund, *About* (viewed on Nov. 20, 2012), <http://bit.ly/lh58X1> and American Action Network, *About* (viewed on Nov. 20, 2012), <http://bit.ly/nCGk73>.

¹² The 14 Democratic House candidates targeted by the Congressional Leadership Fund attack ads were: Betty Sutton (OH), Pete Gallego (TX), Kathy Hochul (NY), Brad Schneider (IL), Patrick Krietlow (WI), Shelley

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14. Funded significantly by Chevron, the Congressional Leadership Fund ran thousands of television ads bashing these 14 candidates for everything from allegedly swearing in public and calling stay-at-home mothers "leeches" (Kyrsten Sinema) to enriching themselves with business trade deals in China (Kathy Hochul). In the last few weeks of the congressional race in Illinois, the group spent \$900,000 on a tidal wave of television ads in an effort to paint Democratic candidate Brad Schneider as supporting "extreme" tax hikes on middle-income families. One such ad ran as follows:

"Income.

You work SO hard for it. And it's never enough.

But Brad Schneider supports an extreme tax hike on the middle class...

Hurting families who can least afford it.

And while politician Brad Schneider would force you to pay more, he won't come clean about what he pays.

He's refusing to release his tax returns.

Brad Schneider: Hiding his taxes, while trying to raise yours.

The worst kind of politician."

Many of the TV ads sponsored by the Congressional Leadership Fund and financed in part by Chevron can be viewed at:

<http://www.congressionalleadershipfund.org/ads/>

Adler (NJ), Kyrsten Sinema (AZ), Mike McIntyre (NC), Lois Capps (CA), Leonard Boswell (IA), Gary McDowell (MI), John Barrow (GA), Val Demings (FL) and David Gill (IL).

¹³ <http://www.opensecrets.org/outsidespending/detail.php?cmte=C00504530&cycle=2012>

15. Super PACs are a special category of so-called "independent-spending" groups. They register with the Federal Election Commission and generally disclose their funding sources. What is troubling, however, is they show a strong propensity for *not* being independent from candidates or political parties in staffing, funding and behavior. An analysis by Public Citizen reveals that, unlike regular PACs that tend to support multiple candidates and often cross party lines, more than 52 percent of super PACs active in the 2012 elections were devoted to aiding a single candidate. Of 143 super PACs that reported spending more than \$100,000 to influence the elections, 75 advocated the election of just one candidate. These single-candidate super PACs spent about \$288 million advocating the election of their favored candidate or, more accurately, the defeat of that candidate's opponent (see Appendix C, "Super Connected").

16. An additional six super PACs, like the Congressional Leadership Fund, were closely allied with one national political party committee. Such alliances were illustrated by the super PACs' mission statements and the backgrounds of their personnel, as well as their spending decisions. Altogether, 81 of 143 (56.4 percent) active super PACs were single-candidate or party-allied electioneering entities, spending more than \$476 million in the 2012 elections. In terms of overall expenditures, the picture of these super PACs being closely connected to a single candidate or single party committee is stark, accounting for almost three-quarters of all super PAC spending. Below are the spending totals by active super PACs:

Super PACs Only - Overall Spending in 2012 Election Cycle

Category	Number of PACs	Percentage of Total PACs	Total Spending	Percentage of Total Spending
Dedicated to a single candidate	75	52.4%	\$288,472,195	45.1%
Determined by Public Citizen to be allied with a national party	6	4.4%	\$187,581,876	29.3%
Subtotal: Single candidate or party dedicated	81	56.4%	\$476,054,071	74.4%
Aided multiple candidates and not designated as party dedicated	62	43.6%	\$163,946,537	25.6%
Total	143	100.0%	\$640,000,608	100.0%

Source: Taylor Lincoln, SUPER CONNECTED (Public Citizen, 2013)

17. Furthermore, single-candidate and single-party super PACs are likely to have been established and controlled by former staff or friends of the same candidate or

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political party each super PAC supported, and they often share the same campaign vendors with the specific candidate or party supported – all of which casts grave doubts on the adequacy of the REC's current coordination rules. The Congressional Leadership Fund is no exception, which is closely aligned with the former chairman and political director of the Republican Congressional Campaign Committee.

18. These single-candidate and single-party super PACs are in essence surrogates of the candidates and party committees they support, with friends and former staff of the candidates and party committees drawn to creating super PACs because of the fact they have no limits on contributions received. The simple objective of federal campaign finance law to prevent such large contributions to candidates and party committees that may be corrupting is being undermined by super PACs. As U.S. Court of Appeals Judge Richard Posner wrote: “[It] is difficult to see what practical difference there is between super PAC donations and direct campaign donations, from a corruption standpoint. A super PAC is a valuable weapon for a campaign...; the donors to it are known; and it is unclear why they should expect less *quid pro quo* from their favored candidate if he's successful than a direct donor to the candidate's campaign would be.”¹⁴

CONCLUSION:

Chevron's Contribution to the Congressional Leadership Fund Violated 2 U.S.C. 441c

19. 2 U.S.C. 441c, labeled “Contributions by government contractors,” prohibits any entity or individual who contracts with the federal government from making campaign contributions, directly or indirectly, to any candidate, political party or political committee for the purposes of influencing federal elections, or to any such person for any political purpose or use. Nor may a candidate, political party or committee knowingly solicit such a contribution from a government contractor.
20. The federal pay-to-play law has been appropriately interpreted by the Federal Election Commission to ban donations from Federal contractors to political committees, including super PACs. The simple language of the law leaves no room for any other interpretation.
21. The federal pay-to-play law is quite broad because of the unique and pronounced opportunities for corruption and the appearance of corruption when it comes to government contractors making contributions in support of those responsible for awarding the government contracts. There is an extensive case record showing that government contractors at both the federal and state levels are particularly inclined

¹⁴ Richard Posner, *Unlimited Campaign Spending—A Good Thing?* THE BECHER-POSNER BLOG (Apr. 8, 2012), as quoted in Brief Of Amici Curiae Former Federal Election Commission Officials and Former State and Local Election And Campaign Finance Officials in Opposition to Petition for a Writ of Certiorari at 25-26, *American Tradition Partnership Inc., et al. v. Steve Bullock, Attorney General of Montana, et al.*, in the Supreme Court of the United States (May 2012), available at: <http://bit.ly/OFTuta>.

to use campaign contributions as either leverage to win a lucrative contract or extortion payment to remain in consideration for a contract.

22. Additionally, the fact that super PACs strongly tend to support a single candidate or a single political party, and are often created and controlled by friends or former staff of that candidate or party, and whose financial activity and donors are well known to the candidate or party leaders, warrants keeping super PACs within the boundaries of the pay-to-play law, as the law intended.
23. Chevron USA, Inc., a Federal contractor, made a substantial contribution to the Congressional Leadership Fund, a super PAC, to be used to promote the election and defeat of federal candidates in the 2012 elections, and thus should be found in violation of 2 U.S.C. 441c.
24. The Congressional Leadership Fund was aware that contributions to it from Federal contractors are illegal, and should have reasonably known that Chevron is a Federal contractor, and thus should be found in violation of 2 U.S.C. 441c for soliciting or accepting the \$2.5 million donation.

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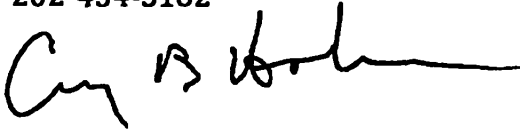
VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and beliefs, true.

Sworn pursuant to 18 U.S.C. 1001.

For Complainant:

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen
215 Pennsylvania Avenue SE-
Washington, D.C. 20003
202-454-5182

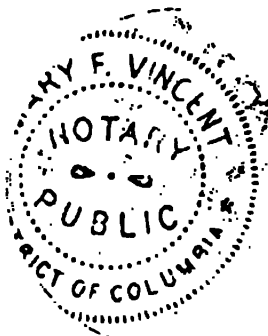


DISTRICT of COLUMBIA

Sworn and subscribed before me
This 5 day of ~~February~~ MARCH, 2013

Mary F. Vincent
Notary Public

MARY F. VINCENT
Notary Public, District of Columbia
My Commission Expires March 31, 2013



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VERIFICATION

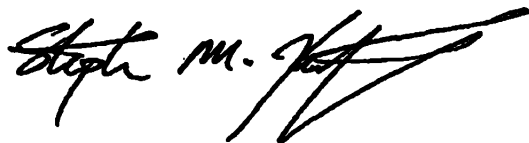
The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and beliefs, true.

Sworn pursuant to 18 U.S.C. 1001.

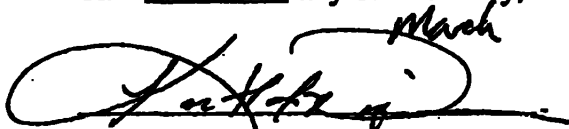
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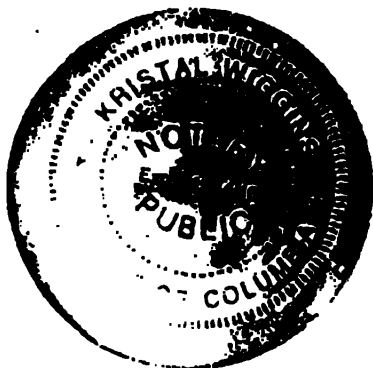
Stephen Kretzmann
Executive Director
Oil Change International
236 Massachusetts Avenue, NE
Suite 203
Washington, D.C. 20002
tel: +1 202.518.9029

14044353265



Sworn and subscribed before me
This 1 day of ~~February~~, 2013

March

Notary Public



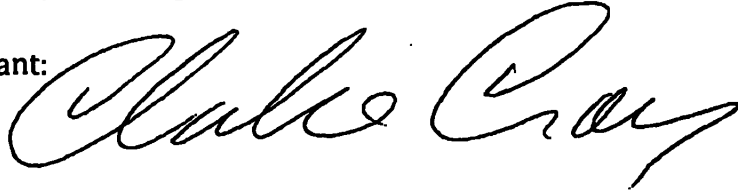
KRISTAL WIGGINS
District of Columbia Notary Public
My Commission Expires November 14, 2016

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and beliefs, true.

Sworn pursuant to 18 U.S.C. 1001.

For Complainant:



Charlie Cray
Research Specialist
Greenpeace USA
701 H Street, N.W.
Washington, D.C. 20001
tel: +1 202.462.1177

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Sworn and subscribed before me
This 20th day of February, 2013



Notary Public



VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and beliefs, true.

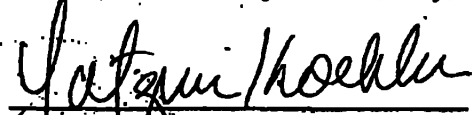
Sworn pursuant to 18 U.S.C. 1001.

For Complainant:



Erich Rica
President
1100 15th Street, NW
11th Floor
Washington, DC 20005
Tel: 202-222-0739

Sworn and subscribed before me
This 27 day of February, 2013



Notary Public

My Commission Expires
October 14, 2016



14044353267

APPENDIX A:

Federal Government Contracts Received by Chevron USA, Inc.

USASpending.Gov - "Prime Award Spending Data"

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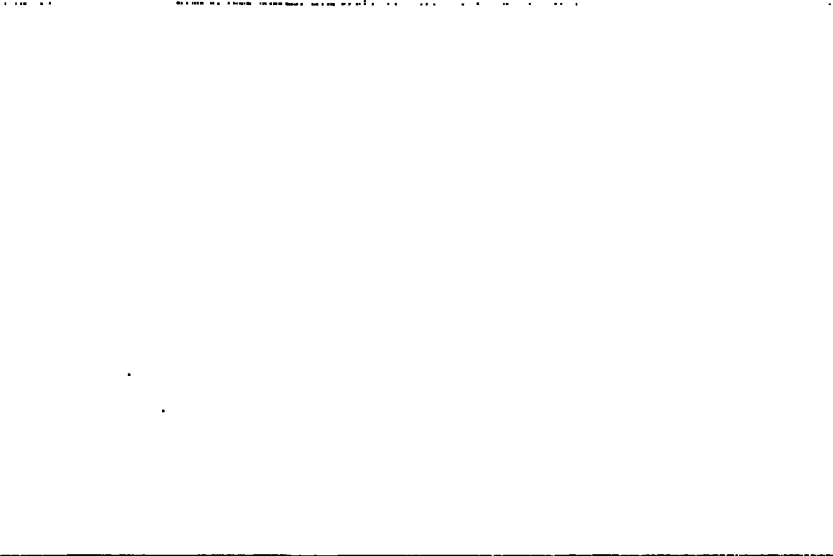
Prime Award Advanced Search Sub-award Advanced Search
NOTE: You must click [here](#) for very important D&B Information.

Prime Award Spending Data

[View Sub-award Data](#)

Filters: Search Term: **Chevron usa** [Clear All](#)

[Map](#) [Timeline](#) [Advanced Search](#)



By Type of Spending

Contracts	379
Grants	19

[More/Fewer By Type of Spending](#)

By Agency

Department of Defense..	275
Energy, Department O..	44
Homeland Security, D..	24
General Services Adm..	20
Interior, Department..	19

[More/Fewer By Agency](#)

By Extent Competed

Full and Open Compet..	233
Not Competed..	76
Competed Under Sep..	18
Not Available for Co..	10
Non-Competitive Dell..	9

[More/Fewer By Extent Competed](#)

By Recipient

Chevron Corporation..	338
Chevron Corporation ..	11
Energy Masters Inter..	11
Chevron Usa, INC...	6
Chevron Usa Inc..	5

[More/Fewer By Recipient](#)

By Product/Service Code

Liquid Propellants -..	61
Maint-Rep of Refrige..	51
Liquid Propellants A..	41
Other Professional S..	29
Other Qc/Test/Inspec..	21

[More/Fewer By Product/Service Code](#)

By Principal NAICS Description

Engineering Services..	78
Commercial and Indus..	68
Petroleum Refineries..	66
Petroleum and Petrol..	39
Commercial and Insk..	31

[More/Fewer By Principal NAICS Description](#)

By Fiscal Year

2012	105
------	-----

Sort by: [Dollars Obligated](#) Transactions/page: [25](#) [Export](#) [Summary View](#)

1 2 3 4 5 6 7 8 9 [Next](#) [Last](#)

Total Dollars:
\$1,350,872,630

Transactions:
1 to 25 of 398

Transaction # 1 (Delivery Order)

IDVPIID/PIID/MOD: SP060011D0452 / B001 / 0

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	12-17-2010
Program Source:	97-4930	Obligation Amount:	\$395,880,658
Department/Agency:	Department of Defense		
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	TURBINE FUEL, AVIATION, GRADE JP-8		

Transaction # 2 (Delivery Order)

IDVPIID/PIID/MOD: SP060012D0478 / B001 / 0

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD D1248, SAN RAMON, California	Signed Date:	05-25-2012
Program Source:	97-4930	Obligation Amount:	\$284,378,685
Department/Agency:	Department of Defense		
Product/Service:	9130: LIQUID PROPELLANTS AND FUELS, PETROLEUM BASE		
Description:	AVIATION FUEL, TURBINE, GRADE JP-8		

Transaction # 3 (Delivery Order)

IDVPIID/PIID/MOD: SP060008D0505 / B001 / 0

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	09-18-2008
Program Source:	Not reported	Obligation Amount:	\$87,998,492
Department/Agency:	Department of Defense		
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	TURBINE FUEL, AVIATION, JP8		

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Transaction # 4 (Delivery Order)

IDVPIID/PIID/MOD: SP060011D0529 / B001 / P4

Recipient: CHEVRON U.S.A. INC.
6001 BOLLINGER CANYON RD D1248, SAN RAMON, California

Reason for Modification: SUPPLEMENTAL AGREEMENT FOR WORK WITHIN SCOPE

Program Source: 97-4930

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS AND FUELS, PETROLEUM BASE

Description: THE PUROPOSE OF THIS MODIFICATION WAS TO ESTABLISH ... (More)

Signed Date:

03-20-2012

Obligation Amount:

\$84,137,740

2011	77
2010	62
2008	37
2009	37

More/Fewer By Fiscal Year

Transaction # 5 (Delivery Order)

IDVPIID/PIID/MOD: SP060009D0133 / B001 / 0

Recipient: CHEVRON U.S.A. INC.
6001 BOLLINGER CANYON RD, SAN RAMON, California

Program Source: Not reported

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE

Description: JET A W/D FSII

Signed Date:

08-21-2009

Obligation Amount:

\$70,895,913

Transaction # 6 (Delivery Order)

IDVPIID/PIID/MOD: SP060012D0553 / B001 / 0

Recipient: CHEVRON U.S.A. INC.
6001 BOLLINGER CANYON RD D1248, SAN RAMON, California

Program Source: 97-4930

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS AND FUELS, PETROLEUM BASE

Description: THE PUROPOSE OF THIS AWARD IS TO SUPPLY JAA TO DFS ... (More)

Signed Date:

01-26-2012

Obligation Amount:

\$65,921,150

Transaction # 7 (Delivery Order)

IDVPIID/PIID/MOD: SP060009D0499 / B001 / 0

Recipient: CHEVRON U.S.A. INC.
6001 BOLLINGER CANYON RD, SAN RAMON, California

Program Source: Not reported

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE

Description: TURBINE FUEL AVIATION JP8

Signed Date:

08-12-2009

Obligation Amount:

\$53,589,360

Transaction # 8 (Delivery Order)

IDVPIID/PIID/MOD: SP060010D0493 / B001 / 0

Recipient: CHEVRON U.S.A. INC.
6001 BOLLINGER CANYON RD, SAN RAMON, California

Program Source: 97-4930

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE

Description: TURBINE FUEL, AVIATION, GRADE JP-8

Signed Date:

09-30-2010

Obligation Amount:

\$43,197,568

Transaction # 9 (Delivery Order)

IDVPIID/PIID/MOD: SP060011D0529 / B001 / 0

Recipient: CHEVRON U.S.A. INC.
6001 BOLLINGER CANYON RD D1248, SAN RAMON, California

Program Source: 97-4930

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE

Description: AVIATION FUEL, TURBINE, GRADE JP-8

Signed Date:

09-30-2011

Obligation Amount:

\$32,758,841

Transaction # 10 (Delivery Order)

IDVPIID/PIID/MOD: SP060000D0536 / 8068 / 0

Recipient: CHEVRON USA INC
575 LEMON LANE, WILMUT CREEK, California

Program Source: Not reported

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE

Description:

Signed Date:

09-11-2000

Obligation Amount:

\$29,437,750

Transaction # 11 (Delivery Order)

IDVPIID/PIID/MOD: SP060002D0540 / 8060 / 0

Recipient: CHEVRON U.S.A. INC
575 MARKET ST, SAN FRANCISCO, California

Program Source: Not reported

Department/Agency: Department of Defense

Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE

Description:

Signed Date:

09-06-2002

Obligation Amount:

\$28,398,825

14044353270

Description:

Transaction # 12 (Delivery Order)

IDVPIID/PIID/MOD: SP060006D0493 / B001 / 0

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	
Program Source:	Not reported	Signed Date:	06-13-2008
Department/Agency:	Department of Defense	Obligation Amount:	\$16,015,180
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	JP8		

Transaction # 13 (Delivery Order)

IDVPIID/PIID/MOD: SP060011D0529 / B001 / P3

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD D1248, SAN RAMON, California	Signed Date:	
Reason for Modification:	EXERCISE AN OPTION	Signed Date:	02-29-2012
Program Source:	97-4930	Obligation Amount:	\$14,942,000
Department/Agency:	Department of Defense		
Product/Service:	9130: LIQUID PROPELLANTS AND FUELS, PETROLEUM BASE		
Description:	EXTEND THE ORDERING PERIOD FOR ALL CLINS TO MAY 30 ... (More)		

Transaction # 14 (Definitive Contract)

PIID/MOD: G803P10DXC0045 / 0

Recipient:	CHEVRON U.S.A. INC. 345 CALIFORNIA ST, 18TH FLR, SAN FRANCISCO, California	Signed Date:	
Program Source:	47-4513	Signed Date:	03-15-2010
Department/Agency:	General Services Administration: Public Buildings Service	Obligation Amount:	\$11,913,721
Product/Service:	Z111: MAINT-REP-ALT/OFFICE BLDGS		
Description:	APPLICABLE FUNDING AGENCY: TAS::47 4543::TAS RECOV ... (More)		

Transaction # 15 (Delivery Order)

IDVPIID/PIID/MOD: SP060010D0075 / B001 / 0

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	
Program Source:	Not reported	Signed Date:	08-20-2010
Department/Agency:	Department of Defense	Obligation Amount:	\$9,862,264
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	JET A1 W/O FSII AND JET PETROLEUM 8		

Transaction # 16 (Delivery Order)

IDVPIID/PIID/MOD: SP060009D0133 / B001 / P1

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	
Reason for Modification:	FUNDING ONLY ACTION	Signed Date:	09-21-2009
Program Source:	Not reported	Obligation Amount:	\$7,389,274
Department/Agency:	Department of Defense		
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	JET A-1 W/O FSII		

Transaction # 17 (Delivery Order)

IDVPIID/PIID/MOD: SP060009D0133 / B001 / P2

Recipient:	CHEVRON U.S.A. INC. 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	
Reason for Modification:	FUNDING ONLY ACTION	Signed Date:	09-30-2009
Program Source:	Not reported	Obligation Amount:	\$5,388,657
Department/Agency:	Department of Defense		
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	JET A-1 W/O FSII		

Transaction # 18 (Delivery Order)

IDVPIID/PIID/MOD: SP060097D0752 / B001 / 0

Recipient:	CHEVRON USA INCORPORATED (7925) 6465 DRESSAGE CROSSING, CUMMING, Georgia	Signed Date:	
Program Source:	Not reported	Signed Date:	02-13-2007
Department/Agency:	Department of Defense	Obligation Amount:	\$5,252,000
Product/Service:	9130: LIQUID PROPELLANTS -PETROLEUM BASE		
Description:	I.G6		

Transaction # 19

Federal Award ID: FC26-01NT41330: A017 (Grant)

Recipient:	CHEVRON USA INC 1301 McKinney St FL 6, Houston, Texas	Obligation Date:	09-26-2007
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Program Source: 89-0213 "Fossil Energy Research and Development"
 Department/Agency: Department of Energy
 CFDA Program: 81.089: Fossil Energy Research and Development
 Description: "CHARACTERIZING NATURAL GAS HYDRATES IN THE DEEP W ... (More)"
 Obligation Amount: \$5,071,421

Transaction # 20 (Delivery Order)

IDVPIID/PIID/MOD: W15QKN08D0457 / 0030 / 0
 Recipient: CHEVRON U.S.A. INC.
 345 CALIFORNIA ST, 18TH FLR, SAN FRANCISCO, California
 Program Source: 21-2040
 Department/Agency: Department of Defense
 Product/Service: J041: MAINT-REP OF REFRIGERATION - AC EQ
 Description: YEAR FOUR TASK ORDER 0030, 10 SEPARATE ACTIONS
 Signed Date: 09-26-2011
 Obligation Amount: \$4,468,564

Transaction # 21

Federal Award ID: FC26-01NT41330: A007 (Grant)

Recipient: CHEVRON USA INC
 Texas
 Program Source: Not reported
 Department/Agency: Department of Energy
 CFDA Program: 81.089: Fossil Energy Research and Development
 Description: "CHARACTERIZING NATURAL GAS HYDRATES IN THE DEEP W ... (More)"
 Obligation Date: 04-23-2004
 Obligation Amount: \$4,030,000

Transaction # 22

Federal Award ID: FC26-01NT41330: A018 (Grant)

Recipient: CHEVRON USA INC
 1301 McKinney St FL 6, Houston, Texas
 Program Source: 89-0213 "Fossil Energy Research and Development"
 Department/Agency: Department of Energy
 CFDA Program: 81.089: Fossil Energy Research and Development
 Description: "CHARACTERIZING NATURAL GAS HYDRATES IN THE DEEP W ... (More)"
 Obligation Date: 10-31-2007
 Obligation Amount: \$4,000,000

Transaction # 23 (Delivery Order)

IDVPIID/PIID/MOD: SP060012D0553 / B001 / P4
 Recipient: CHEVRON U.S.A. INC.
 6001 BOLLINGER CANYON RD D1248, SAN RAMON, California
 Reason for Modification: CHANGE ORDER
 Program Source: 97-4930
 Department/Agency: Department of Defense
 Product/Service: 9130: LIQUID PROPELLANTS AND FUELS, PETROLEUM BASE
 Description: THE PURPOSE OF THIS MODIFICATION IS TO EXERCISE 18 ... (More)
 Signed Date: 01-26-2012
 Obligation Amount: \$3,732,360

Transaction # 24 (Delivery Order)

IDVPIID/PIID/MOD: SP060012D0763 / B001 / 0
 Recipient: CHEVRON U.S.A. INC.
 100 CHEVRON WAY, RICHMOND, California
 Program Source: 97-4930
 Department/Agency: Department of Defense
 Product/Service: 9150: OILS AND GREASES: CUTTING, LUBRICATING, AND HYDRAULIC
 Description: LUBRICATING OIL, ENGINE, LOG AND LUBRICATING OIL, ... (More)
 Signed Date: 03-26-2012
 Obligation Amount: \$3,235,150

Transaction # 25 (Delivery Order)

IDVPIID/PIID/MOD: SP060012D4013 / B001 / 0
 Recipient: CHEVRON U.S.A. INC.
 6001 BOLLINGER CANYON RD D1248, SAN RAMON, California
 Program Source: 97-4930
 Department/Agency: Department of Defense
 Product/Service: 9130: LIQUID PROPELLANTS AND FUELS, PETROLEUM BASE
 Description: CONTRACT MEETS REQUIREMENTS REQUESTED UNDER SOLICI ... (More)
 Signed Date: 09-19-2012
 Obligation Amount: \$3,181,915

All prime awardee data as reported by agencies. The assistance prime awardee data includes agency submissions as of 03/03/2013 and the contracts prime awardee data includes procurement data downloaded from FPDS as of 03/03/2013. Please note that availability of DOD contracts prime awardee data is delayed by 90 days to protect operations tempo. All Sub-awardee data is based on prime awardee submissions from FARS, for sub-contracts as of 03/03/2013 and for sub-grants as of 03/03/2013. For more information about the data, data sources, and data timeliness, please see Learn.

14044353272

The quality procurement data is maintained by the federal agencies by annual verification and validation of their data in FPDS. For more information on how the quality is maintained and what the government is doing in ensuring the quality please see (PDF).

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IT DASHBOARD

DATA

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14044353273

APPENDIX B:

Congressional Leadership Fund -

**Pre-General Election Report to the Federal Election Commission
("Receipts and Disbursements")**

14044353274

FEC FORM 3X

REPORT OF RECEIPTS AND DISBURSEMENTS For Other Than An Authorized Committee

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT Example: If typing, type over the lines. 12FE4M5 Congressional Leadership Fund

ADDRESS (number and street) 555 13TH STREET NW SUITE 510W WASHINGTON DC 20004

2. FEC IDENTIFICATION NUMBER C C00504530 3. IS THIS REPORT NEW (N) OR AMENDED (A)

4. TYPE OF REPORT (Choose One) (a) Quarterly Reports: April 15, July 15, October 15, January 31, July 31 Mid-Year, Termination Report (b) Monthly Report Due On: Feb 20, Mar 20, Apr 20, May 20, Jun 20, Jul 20, Aug 20, Sep 20, Oct 20, Nov 20, Dec 20, Jan 31 (c) 12-Day PRE-Election Report for the: Primary, General, Convention, Special (d) 30-Day POST-Election Report for the: General, Runoff, Special Election on 11/06/2012 in the State of DC

5. Covering Period 10/01/2012 through 10/17/2012

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Charles Meachum

Signature of Treasurer Charles Meachum [Electronically Filed] Date 10/25/2012

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 5437g.

Office Use Only grid and FEC FORM 3X Rev. 12/2004

14044353275

**SUMMARY PAGE
OF RECEIPTS AND DISBURSEMENTS**

FEC Form 3X (Rev. 02/2003)

Page 2

Write or Type Committee Name

Congressional Leadership Fund

Report Covering the Period:

From:

10 / 01 / 2012

To:

10 / 17 / 2012

14044353276

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
6. (a) Cash on Hand January 1, 2012	2012	87961.11
(b) Cash on Hand at Beginning of Reporting Period.....	5888549.70	
(c) Total Receipts (from Line 19)	3105763.10	10633132.87
(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B).....	8994312.80	10721093.98
7. Total Disbursements (from Line 31).....	306047.45	2032828.63
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d)).....	8688265.35	8688265.35
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	0.00	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	0.00	



This committee has qualified as a multicandidate committee. (see FEC FORM 1M)

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Toll Free 800-424-9530
Local 202-694-1100

DETAILED SUMMARY PAGE
of Receipts

FEC Form 3X (Rev. 06/2004)

Page 3

Write or Type Committee Name

Congressional Leadership Fund

Report Covering the Period:

From:

MM / DD / YYYY
10 / 01 / 2012

To:

MM / DD / YYYY
10 / 17 / 2012

I. Receipts

COLUMN A
Total This Period

COLUMN B
Calendar Year-to-Date

11. Contributions (other than loans) From:

(a) Individuals/Persons Other
Than Political Committees

(i) Itemized (use Schedule A).....

3105663.10

10545308.87

(ii) Unitemized

100.00

324.00

(iii) TOTAL (add
Lines 11(a)(i) and (ii))..... ▶

3105763.10

10545632.87

(b) Political Party Committees

0.00

0.00

(c) Other Political Committees
(such as PACs).....

0.00

87500.00

(d) Total Contributions (add Lines
11(a)(iii), (b), and (c)) (Carry
Totals to Line 33, page 5)..... ▶

3105763.10

10633132.87

12. Transfers From Affiliated/Other
Party Committees.....

0.00

0.00

13. All Loans Received.....

0.00

0.00

14. Loan Repayments Received.....

0.00

0.00

15. Offsets To Operating Expenditures
(Refunds, Rebates, etc.)
(Carry Totals to Line 37, page 5).....

0.00

0.00

16. Refunds of Contributions Made
to Federal Candidates and Other
Political Committees.....

0.00

0.00

17. Other Federal Receipts
(Dividends, Interest, etc.).....

0.00

0.00

18. Transfers from Non-Federal and Levin Funds

(a) Non-Federal Account
(from Schedule H3).....

0.00

0.00

(b) Levin Funds (from Schedule H5).....

0.00

0.00

(c) Total Transfers (add 18(a) and 18(b))..

0.00

0.00

19. Total Receipts (add Lines 11(d),
12, 13, 14, 15, 16, 17, and 18(c))..... ▶

3105763.10

10633132.87

20. Total Federal Receipts
(subtract Line 18(c) from Line 19)..... ▶

3105763.10

10633132.87

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DETAILED SUMMARY PAGE
of Disbursements

FEC Form 3X (Rev. 02/2003)

Page 4

14044353278

II. Disbursements	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
21. Operating Expenditures:		
(a) Allocated Federal/Non-Federal Activity (from Schedule H4)		
(i) Federal Share	0.00	0.00
(ii) Non-Federal Share.....	0.00	0.00
(b) Other Federal Operating Expenditures	53956.25	453416.63
(c) Total Operating Expenditures (add 21(a)(i), (a)(ii), and (b))	53956.25	453416.63
22. Transfers to Affiliated/Other Party Committees.....	0.00	0.00
23. Contributions to Federal Candidates/Committees and Other Political Committees.....	0.00	0.00
24. Independent Expenditures (use Schedule E)	252091.20	1579412.00
25. Coordinated Party Expenditures (2 U.S.C. §441a(d)) (use Schedule F).....	0.00	0.00
26. Loan Repayments Made.....	0.00	0.00
27. Loans Made.....	0.00	0.00
28. Refunds of Contributions To:		
(a) Individuals/Persons Other Than Political Committees	0.00	0.00
(b) Political Party Committees	0.00	0.00
(c) Other Political Committees (such as PACs).....	0.00	0.00
(d) Total Contribution Refunds (add Lines 28(a), (b), and (c)).....	0.00	0.00
29. Other Disbursements	0.00	0.00
30. Federal Election Activity (2 U.S.C. §431(20))		
(a) Allocated Federal Election Activity (from Schedule H6)		
(i) Federal Share	0.00	0.00
(ii) "Levin" Share.....	0.00	0.00
(b) Federal Election Activity Paid Entirely With Federal Funds	0.00	0.00
(c) Total Federal Election Activity (add Lines 30(a)(i), 30(a)(ii) and 30(b)).....	0.00	0.00
31. Total Disbursements (add Lines 21(c), 22, 23, 24, 25, 26, 27, 28(d), 29 and 30(c)) ..	306047.45	2032828.63
32. Total Federal Disbursements (subtract Line 21(a)(ii) and Line 30(a)(ii) from Line 31).....	306047.45	2032828.63

DETAILED SUMMARY PAGE
of Disbursements

FEC Form 3X (Rev. 02/2003)

Page 5

III. Net Contributions/Operating Expenditures	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
33. Total Contributions (other than loans) (from Line 11(d), page 3)	3105763.10	10633132.87
34. Total Contribution Refunds (from Line 2B(d))	0.00	0.00
35. Net Contributions (other than loans) (subtract Line 34 from Line 33)	3105763.10	10633132.87
36. Total Federal Operating Expenditures (add Line 21(a)(i) and Line 21(b))	53956.25	453416.63
37. Offsets to Operating Expenditures (from Line 15, page 3)	0.00	0.00
38. Net Operating Expenditures (subtract Line 37 from Line 36)	53956.25	453416.63

14044353279

**SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS**

Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)		PAGE 6 OF 17	
	<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12
	<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16
				<input type="checkbox"/> 17

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

14044353280

Full Name (Last, First, Middle Initial)
A. AUGUST A. BUSCH III

Mailing Address **1 MID RIVERS MALL DR. #210**

City **ST. PETERS** State **MO** Zip Code **63376**

FEC ID number of contributing federal political committee. **C**

Name of Employer **RETIRED** Occupation **RETIRED**

Receipt For:
 Primary General
 Other (specify) ▼

Aggregate Year-to-Date ▼
50000.00

Date of Receipt
10 / 03 / 2012

Transaction ID : **SA11.101**

Amount of Each Receipt this Period
50000.00

CONTRIBUTION

Full Name (Last, First, Middle Initial)
B. STEPHEN I. CHAZEN

Mailing Address **PO BOX 427**

City **PACIFIC PALISADES** State **CA** Zip Code **90272**

FEC ID number of contributing federal political committee. **C**

Name of Employer **OCCIDENTAL PETROLEUM CORPORATION** Occupation **PRESIDENT & CEO**

Receipt For:
 Primary General
 Other (specify) ▼

Aggregate Year-to-Date ▼
50000.00

Date of Receipt
10 / 15 / 2012

Transaction ID : **SA11.106**

Amount of Each Receipt this Period
50000.00

CONTRIBUTION

Full Name (Last, First, Middle Initial)
C. RICHARD H. COLLINS

Mailing Address **8150 N CENTRAL EXPRESSWAY, SUITE 1**

City **DALLAS** State **TX** Zip Code **75206**

FEC ID number of contributing federal political committee. **C**

Name of Employer **ISTATION** Occupation **CHAIRMAN AND CEO**

Receipt For:
 Primary General
 Other (specify) ▼

Aggregate Year-to-Date ▼
25000.00

Date of Receipt
10 / 03 / 2012

Transaction ID : **SA11.99**

Amount of Each Receipt this Period
25000.00

CONTRIBUTION

SUBTOTAL of Receipts This Page (optional).....	125000.00
TOTAL This Period (last page this line number only).....	

**SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: PAGE 7 OF 17

(check only one)

<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12	<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16	<input type="checkbox"/> 17
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NAME OF COMMITTEE (in Full)
Congressional Leadership Fund

Full Name (Last, First, Middle Initial)

A. RONALD H. FIELDING

Mailing Address 42 SURFSONG RD.

City State Zip Code
KIAWAH ISLAND SC 29455

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation
RETIRED RETIRED

Receipt For: Primary General Other (specify) Aggregate Year-to-Date **10000.00**

Date of Receipt

10 / 07 / 2012

Transaction ID : SA11.104

Amount of Each Receipt this Period

10000.00

CONTRIBUTION

Full Name (Last, First, Middle Initial)

B. WILLIAM C. KUNKLER

Mailing Address 1500 NORTH LAKE SHORE DRIVE

City State Zip Code
CHICAGO IL 60610

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation
CC INDUSTRIES, INC. EXECUTIVE VICE PRESIDENT

Receipt For: Primary General Other (specify) Aggregate Year-to-Date **50000.00**

Date of Receipt

10 / 01 / 2012

Transaction ID : SA11.95

Amount of Each Receipt this Period

50000.00

CONTRIBUTION

Full Name (Last, First, Middle Initial)

C. ANDREW M. SAUL

Mailing Address 300 MAPLE AVENUE

City State Zip Code
KATONAH NY 10536

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation
SELF PRIVATE INVESTOR

Receipt For: Primary General Other (specify) Aggregate Year-to-Date **10000.00**

Date of Receipt

10 / 03 / 2012

Transaction ID : SA11.102

Amount of Each Receipt this Period

10000.00

CONTRIBUTION

SUBTOTAL of Receipts This Page (optional).....

70000.00

TOTAL This Period (last page this line number only).....

14044353281

SCHEDULE A (FEC Form 3X) ITEMIZED RECEIPTS

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: PAGE 8 OF 17

(check only one)

<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12	<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16	<input type="checkbox"/> 17
---	------------------------------	------------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

Full Name (Last, First, Middle Initial)
A. EDMUND O. SCHWEITZER III

Mailing Address **330 NW BRANDON DR.**

City	State	Zip Code
PULLMAN	WA	99163

FEC ID number of contributing federal political committee. **C**

Name of Employer	Occupation
SCHWEITZER ENGINEERING LABS	PRESIDENT AND CEO

Receipt For:

Primary General
 Other (specify) ▼

Aggregate Year-to-Date ▼ **300000.00**

Date of Receipt
10 / 03 / 2012

Transaction ID : **SA11.100**

Amount of Each Receipt this Period
300000.00

CONTRIBUTION

Full Name (Last, First, Middle Initial)
B. ALEXANDER D. STUART

Mailing Address **506 N WASHINGTON RD.**

City	State	Zip Code
LAKE FOREST	IL	60045

FEC ID number of contributing federal political committee. **C**

Name of Employer	Occupation
NORTH STAR INVESTMENTS	INVESTMENT MANAGER

Receipt For:

Primary General
 Other (specify) ▼

Aggregate Year-to-Date ▼ **10000.00**

Date of Receipt
10 / 01 / 2012

Transaction ID : **SA11.99**

Amount of Each Receipt this Period
10000.00

CONTRIBUTION

Full Name (Last, First, Middle Initial)
C. ROBERT D. STUART JR.

Mailing Address **150 FIELD DRIVE, SUITE 100**

City	State	Zip Code
LAKE FOREST	IL	60045

FEC ID number of contributing federal political committee. **C**

Name of Employer	Occupation
NORTH STAR INVESTMENTS	PRESIDENT

Receipt For:

Primary General
 Other (specify) ▼

Aggregate Year-to-Date ▼ **5000.00**

Date of Receipt
10 / 12 / 2012

Transaction ID : **SA11.105**

Amount of Each Receipt this Period
5000.00

CONTRIBUTION

SUBTOTAL of Receipts This Page (optional).....▶

315000.00

TOTAL This Period (last page this line number only).....▶

14044353282

**SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: PAGE 9 OF 17
(check only one)

<input checked="" type="checkbox"/> 11a	<input type="checkbox"/> 11b	<input type="checkbox"/> 11c	<input type="checkbox"/> 12	<input type="checkbox"/> 13	<input type="checkbox"/> 14	<input type="checkbox"/> 15	<input type="checkbox"/> 16	<input type="checkbox"/> 17
---	------------------------------	------------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

Full Name (Last, First, Middle Initial)
A. AMERICAN ACTION NETWORK

Mailing Address **555 13TH STREET NW
SUITE 510W**

City State Zip Code
WASHINGTON DC 20004-1164

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation

Receipt For: Primary General Other (specify)
Aggregate Year-to-Date **149058.87**

Date of Receipt **10 / 17 / 2012**
Transaction ID : SA11.107

Amount of Each Receipt this Period **20663.10**

CONTRIBUTION IN KIND-PAYROLL/OFFICE SPACE

Full Name (Last, First, Middle Initial)
B. BULKMATIC TRANSPORT COMPANY

Mailing Address **2001 N. CLINE AVENUE**

City State Zip Code
GRIFFITH IN 46319

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation

Receipt For: Primary General Other (specify)
Aggregate Year-to-Date **25000.00**

Date of Receipt **10 / 01 / 2012**
Transaction ID : SA11.97

Amount of Each Receipt this Period **25000.00**

CONTRIBUTION

Full Name (Last, First, Middle Initial)
C. CHEVRON

Mailing Address **PO BOX 9034**

City State Zip Code
CONCORD CA 94524

FEC ID number of contributing federal political committee. **C**

Name of Employer Occupation

Receipt For: Primary General Other (specify)
Aggregate Year-to-Date **2500000.00**

Date of Receipt **10 / 07 / 2012**
Transaction ID : SA11.103

Amount of Each Receipt this Period **2500000.00**

CONTRIBUTION

SUBTOTAL of Receipts This Page (optional).....

TOTAL This Period (last page this line number only).....

2545663.10

14044353283

**SCHEDULE A (FEC Form 3X)
ITEMIZED RECEIPTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER: (check only one)	PAGE 10 OF 17
<input checked="" type="checkbox"/> 11a 13	<input type="checkbox"/> 11b 14
<input type="checkbox"/> 11c 15	<input type="checkbox"/> 12 16
<input type="checkbox"/> 17	

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

A. CONTINENTAL INVESTORS LLC
Full Name (Last, First, Middle Initial)
Mailing Address 6300 N SAGEWOOD DR., SUITE H-110

City PARK CITY	State UT	Zip Code 84098
FEC ID number of contributing federal political committee. C		
Name of Employer		Occupation
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▾		Aggregate Year-to-Date ▾ 50000.00

Date of Receipt
10 / 01 / 2012
Transaction ID : SA11.96

Amount of Each Receipt this Period
50000.00

CONTRIBUTION

B.
Full Name (Last, First, Middle Initial)
Mailing Address

City	State	Zip Code
FEC ID number of contributing federal political committee. C		
Name of Employer		Occupation
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▾		Aggregate Year-to-Date ▾

Date of Receipt

Amount of Each Receipt this Period

C.
Full Name (Last, First, Middle Initial)
Mailing Address

City	State	Zip Code
FEC ID number of contributing federal political committee. C		
Name of Employer		Occupation
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▾		Aggregate Year-to-Date ▾

Date of Receipt

Amount of Each Receipt this Period

SUBTOTAL of Receipts This Page (optional).....	50000.00
TOTAL This Period (last page this line number only).....	3105663.10

14044353284

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s) for each category of the Detailed Summary Page	FOR LINE NUMBER: (check only one)										
	<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26	<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

14044353285

Full Name (Last, First, Middle-Initial) A. MICHAEL BYRD		Date of Disbursement MM / DD / YYYY 10 / 10 / 2012
Mailing Address 400 TREAT AVENUE, SUITE E		Transaction ID : SB.9
City SAN FRANCISCO State CA Zip Code 94110	Purpose of Disbursement TRAVEL	Amount of Each Disbursement this Period 59.23
Candidate Name	Category/Type 002	
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President State: District:	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
Full Name (Last, First, Middle Initial) B. CHARLES MEACHUM		Date of Disbursement MM / DD / YYYY 10 / 10 / 2012
Mailing Address 600 WATER ST. SW #3-14		Transaction ID : SB.6
City WASHINGTON State DC Zip Code 20024	Purpose of Disbursement TRAVEL	Amount of Each Disbursement this Period 6627.22
Candidate Name	Category/Type 002	
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President State: District:	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	
Full Name (Last, First, Middle Initial) C. BRIAN WALSH		Date of Disbursement MM / DD / YYYY 10 / 10 / 2012
Mailing Address 624 ELLEN WILSON PLACE SE		Transaction ID : SB.4
City WASHINGTON State DC Zip Code 20003	Purpose of Disbursement TRAVEL	Amount of Each Disbursement this Period 134.86
Candidate Name	Category/Type 002	
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President State: District:	Disbursement For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼	

SUBTOTAL of Disbursements This Page (optional).....▶	6821.31
TOTAL This Period (last page this line number only).....▶	

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

Full Name (Last, First, Middle Initial)

A. ADVANTAGE INC.

Mailing Address 2300 CLARENDON BLVD., SUITE 1004

City ARLINGTON State VA Zip Code 22201

Purpose of Disbursement
MESSAGE PHONE CALLS

Candidate Name

Office Sought: House Senate President
Disbursement For: Primary General
Other (specify) Other (specify) ▼

State: District:

Date of Disbursement

10 / 10 / 2012

Transaction ID : SB.1

Amount of Each Disbursement this Period

889.84

003
Category/
Type

Full Name (Last, First, Middle Initial)

B. AMERICAN ACTION NETWORK

Mailing Address 555 13TH ST NW SUITE 510W

City WASHINGTON State DC Zip Code 20004

Purpose of Disbursement
CONTRIBUTION IN KIND - PAYROLL/OFFICE SPACE

Candidate Name

Office Sought: House Senate President
Disbursement For: Primary General
Other (specify) Other (specify) ▼

State: District:

Date of Disbursement

10 / 17 / 2012

Transaction ID : SB.17

Amount of Each Disbursement this Period

20663.10

001
Category/
Type

Full Name (Last, First, Middle Initial)

C. CAPITOL COMPUTER EXCHANGE

Mailing Address 4487 FORBES BOULEVARD

City LANHAM State MD Zip Code 20706

Purpose of Disbursement
COMPUTER SERVICES

Candidate Name

Office Sought: House Senate President
Disbursement For: Primary General
Other (specify) Other (specify) ▼

State: District:

Date of Disbursement

10 / 10 / 2012

Transaction ID : SB.5

Amount of Each Disbursement this Period

151.00

001
Category/
Type

SUBTOTAL of Disbursements This Page (optional).....▶

TOTAL This Period (last page this line number only).....▶

21703.94

14044353286

**SCHEDULE B (FEC Form 3X)
ITEMIZED DISBURSEMENTS**

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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NAME OF COMMITTEE (In Full)
Congressional Leadership Fund

Full Name (Last, First, Middle Initial)

A. CMDI

Mailing Address **7704 LEESBURG PIKE**

City **FALLS CHURCH** State **VA** Zip Code **22043**

Purpose of Disbursement
DATABASE MANAGEMENT FEE

Candidate Name

Office Sought: House Senate President
State: District:

Disbursement For: Primary General
 Other (specify) ▼

Date of Disbursement

10 / 10 / 2012

Transaction ID : **SB.7**

Amount of Each Disbursement this Period

500.00

001
Category/
Type

Full Name (Last, First, Middle Initial)

B. LINDEN MEDIA LLC

Mailing Address **609 N. WEST STREET**

City **ALEXANDRIA** State **VA** Zip Code **22314**

Purpose of Disbursement
RESEARCH SERVICES

Candidate Name

Office Sought: House Senate President
State: District:

Disbursement For: Primary General
 Other (specify) ▼

Date of Disbursement

10 / 10 / 2012

Transaction ID : **SB.8**

Amount of Each Disbursement this Period

1400.00

001
Category/
Type

Full Name (Last, First, Middle Initial)

C. PIRYX, INC

Mailing Address **144 2ND ST., 1ST FLOOR**

City **SAN FRANCISCO** State **CA** Zip Code **94105**

Purpose of Disbursement
MERCHANT PROCESSING FEE

Candidate Name

Office Sought: House Senate President
State: District:

Disbursement For: Primary General
 Other (specify) ▼

Date of Disbursement

10 / 11 / 2012

Transaction ID : **SB.16**

Amount of Each Disbursement this Period

6.00

003
Category/
Type

SUBTOTAL of Disbursements This Page (optional).....▶

TOTAL This Period (last page this line number only).....▶

1906.00

14044353287

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)

Grid for line numbers 21b through 30b with checkboxes.

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NAME OF COMMITTEE (In Full) Congressional Leadership Fund

Full Name (Last, First, Middle Initial)

A. THE KOZLOW GROUP

Mailing Address 41284 GUINNESS WAY

City LEESBURG State VA Zip Code 20175

Purpose of Disbursement STRATEGY CONSULTING

Candidate Name

Office Sought: House, Senate, President; Disbursement For: Primary, General, Other (specify)

Date of Disbursement

Date selection box: 10 / 10 / 2012

Transaction ID : SB.12

Amount of Each Disbursement this Period

Amount box: 2000.00

Full Name (Last, First, Middle Initial)

B. THE OORBEEK GROUP

Mailing Address 5814 GARNETTS FARM DRIVE

City HAYMARKET State VA Zip Code 20169

Purpose of Disbursement FUNDRAISING CONSULTING

Candidate Name

Office Sought: House, Senate, President; Disbursement For: Primary, General, Other (specify)

Date of Disbursement

Date selection box: 10 / 11 / 2012

Transaction ID : SB.13

Amount of Each Disbursement this Period

Amount box: 1000.00

Full Name (Last, First, Middle Initial)

C. THE TARRANCE GROUP

Mailing Address 201 N. UNION ST, SUITE 410

City ALEXANDRIA State VA Zip Code 22314

Purpose of Disbursement POLLING

Candidate Name

Office Sought: House, Senate, President; Disbursement For: Primary, General, Other (specify)

Date of Disbursement

Date selection box: 10 / 17 / 2012

Transaction ID : SB.14

Amount of Each Disbursement this Period

Amount box: 13100.00

SUBTOTAL of Disbursements This Page (optional).....

16100.00

TOTAL This Period (last page this line number only).....

14044353288

SCHEDULE B (FEC Form 3X) ITEMIZED DISBURSEMENTS

Use separate schedule(s)
for each category of the
Detailed Summary Page

FOR LINE NUMBER:
(check only one)

<input checked="" type="checkbox"/> 21b	<input type="checkbox"/> 22	<input type="checkbox"/> 23	<input type="checkbox"/> 24	<input type="checkbox"/> 25	<input type="checkbox"/> 26
<input type="checkbox"/> 27	<input type="checkbox"/> 28a	<input type="checkbox"/> 28b	<input type="checkbox"/> 28c	<input type="checkbox"/> 29	<input type="checkbox"/> 30b

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NAME OF COMMITTEE (in Full)
Congressional Leadership Fund

Full Name (Last, First, Middle Initial)

A. TRINITY FINANCIAL REPORTING & COMPLIANCE

Mailing Address 13051 FARTHINGALE DR.

Date of Disbursement

MM	DD	YYYY
10	10	2012

City OAK HILL State VA Zip Code 20171

Transaction ID : SB.15

Purpose of Disbursement
ACCOUNTING AND COMPLIANCE

001
Category/ Type

Amount of Each Disbursement this Period

7425.00

Candidate Name

Office Sought: House Senate President
 Disbursement For: Primary General Other (specify) ▼

State: District:

Full Name (Last, First, Middle Initial)

B.

Mailing Address

Date of Disbursement

MM	DD	YYYY

City State Zip Code

Purpose of Disbursement

Category/ Type

Amount of Each Disbursement this Period

--

Candidate Name

Office Sought: House Senate President
 Disbursement For: Primary General Other (specify) ▼

State: District:

Full Name (Last, First, Middle Initial)

C.

Mailing Address

Date of Disbursement

MM	DD	YYYY

City State Zip Code

Purpose of Disbursement

Category/ Type

Amount of Each Disbursement this Period

--

Candidate Name

Office Sought: House Senate President
 Disbursement For: Primary General Other (specify) ▼

State: District:

SUBTOTAL of Disbursements This Page (optional).....▶

7425.00

TOTAL This Period (last page this line number only).....▶

53956.25

14044353289

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

NAME OF COMMITTEE (In Full)
Congressional Leadership Fund
FEC IDENTIFICATION NUMBER
C 00504530
Check if 24-hour report 48-hour report New report Amends report filed on

Full Name (Last, First, Middle Initial) of Payee
AMERICAN MEDIA & ADVOCACY GROUP
Date 10 / 11 / 2012
Mailing Address 815 SLATERS LANE
City ALEXANDRIA State VA Zip Code 22314
Amount 171591.20
Transaction ID: SB.2
Purpose of Expenditure TV/MEDIA PLACEMENT - DISSEMINATED ON 10/15, PAID 10/11. 48 HR REPORT FILED 10/17
Category/Type
Office Sought: [X] House State: IA
Senate District: 03
President
Check One: [] Support [X] Oppose
Name of Federal Candidate Supported or Opposed by Expenditure: Leonard Boswell
Calendar Year-To-Date Per Election for Office Sought 251591.20
Disbursement For: [] Primary [X] General 2012 [] Other (specify)

Full Name (Last, First, Middle Initial) of Payee
ANGLER, LLC
Date 10 / 15 / 2012
Mailing Address 1100 G STREET NW, SUITE 805
City WASHINGTON State DC Zip Code 20005
Amount 65000.00
Transaction ID: SB.3
Purpose of Expenditure WEBVIDEO
Category/Type
Office Sought: [X] House State: IA
Senate District: 03
President
Check One: [] Support [X] Oppose
Name of Federal Candidate Supported or Opposed by Expenditure: Leonard Boswell
Calendar Year-To-Date Per Election for Office Sought 251591.20
Disbursement For: [] Primary [X] General 2012 [] Other (specify)

(a) SUBTOTAL of Itemized Independent Expenditures..... 236591.20
(b) SUBTOTAL of Unitemized Independent Expenditures
(c) TOTAL Independent Expenditures.....

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or (if the reporting entity is not a political party committee) any political party committee or its agent.

Charles Meuchum [Electronically Filed] Date 10 / 24 / 2012
Signature

14044353290

SCHEDULE E (FEC Form 3X)
ITEMIZED INDEPENDENT EXPENDITURES

NAME OF COMMITTEE (In Full)
Congressional Leadership Fund
FEC IDENTIFICATION NUMBER
C C00504530
Check if 24-hour report 48-hour report New report Amends report filed on

Full Name (Last, First, Middle Initial) of Payee
SOMETHING ELSE STRATEGIES, LLC
Date 10 / 15 / 2012
Mailing Address 112 LANTERN RIDGE DRIVE
City EASLEY State SC Zip Code 29642
Amount 15000.00
Transaction ID: SB.10
Purpose of Expenditure TV/MEDIA PRODUCTION
Category/Type
Office Sought: House State: IA
Senate District: 03
President
Check One: Support Oppose
Name of Federal Candidate Supported or Opposed by Expenditure:
Leonard Boswell
Calendar Year-To-Date Per Election for Office Sought 251591.20
Disbursement For: Primary General 2012 Other (specify)

Full Name (Last, First, Middle Initial) of Payee
TARGETED VICTORY
Date 10 / 15 / 2012
Mailing Address 1033 NORTH FAIRFAX STREET, SUITE 4
City ALEXANDRIA State VA Zip Code 22314
Amount 500.00
Transaction ID: SB.11
Purpose of Expenditure DIGITAL VIDEO
Category/Type
Office Sought: House State: IL
Senate District: 13
President
Check One: Support Oppose
Name of Federal Candidate Supported or Opposed by Expenditure:
David Gill
Calendar Year-To-Date Per Election for Office Sought 500.00
Disbursement For: Primary General 2012 Other (specify)

(a) SUBTOTAL of Itemized Independent Expenditures..... 15500.00
(b) SUBTOTAL of Unitemized Independent Expenditures.....
(c) TOTAL Independent Expenditures..... 252091.20

Under penalty of perjury I certify that the independent expenditures reported herein were not made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate or authorized committee or agent of either, or (if the reporting entity is not a political party committee) any political party committee or its agent.
Charles Meachum [Electronically Filed] Date 10 / 24 / 2012
Signature

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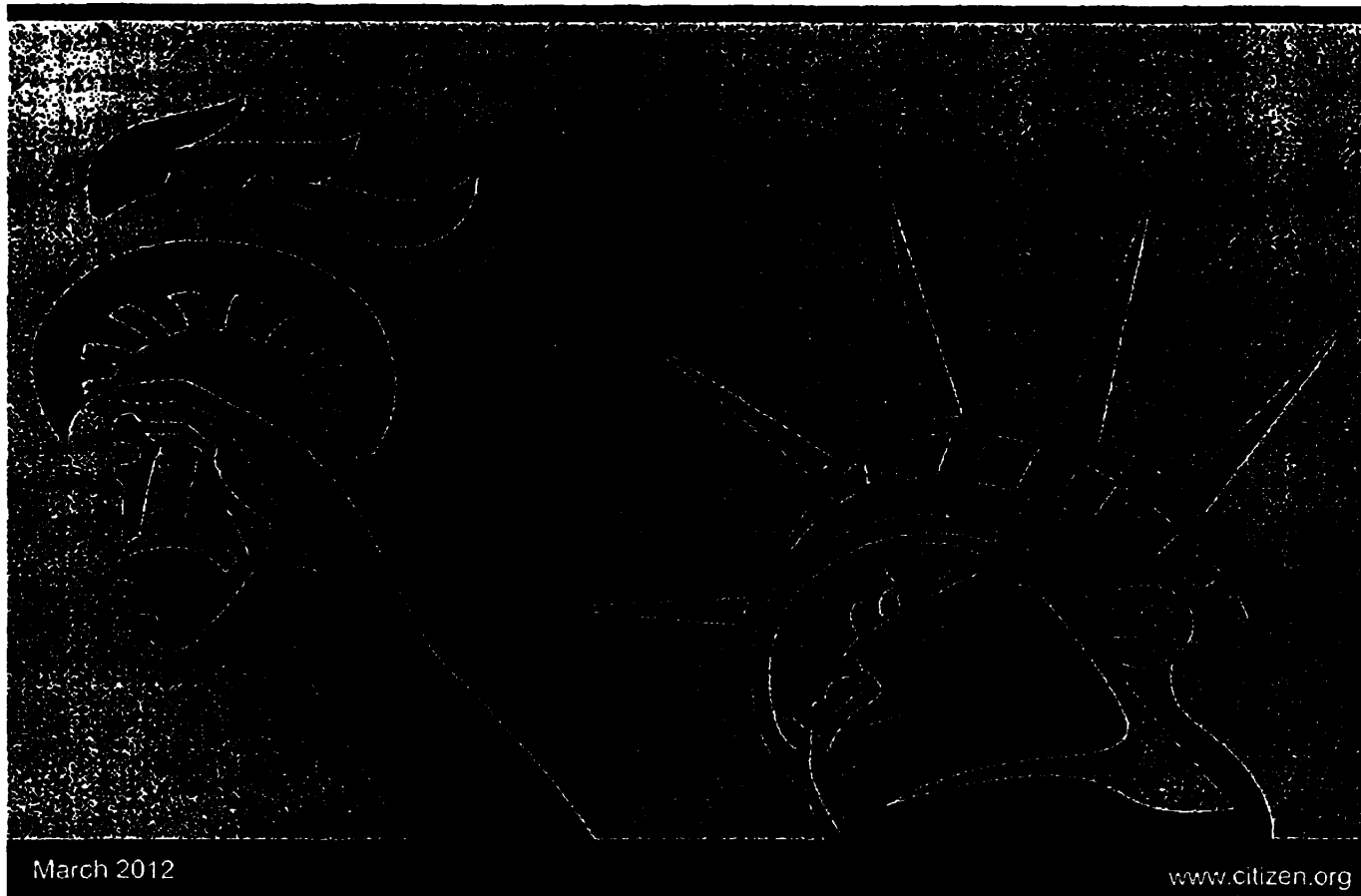
APPENDIX C:

Public Citizen, "Super Connected" (2012)

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March 2012

www.citizen.org

Super Connected

Outside Groups' Devotion to Individual Candidates and Political Parties Disproves the Supreme Court's Key Assumption in *Citizens United* That Unregulated Outside Spenders Would Be 'Independent'

(UPDATED VERSION OF OCTOBER 2012 REPORT, WITH REVISED DATA AND DISCUSSION OF THE 'SOFT MONEY' IMPLICATIONS OF *CITIZENS UNITED*)

Acknowledgments

This report was written by Taylor Lincoln, research director of Public Citizen's Congress Watch division. Congress Watch Legislative Assistant Kelly Ngo assisted with research. Congress Watch Director Lisa Gilbert edited the report. Public Citizen Litigation Group Senior Attorney Scott Nelson provided expert advice. This report draws in part on a May 2012 amicus brief to the Supreme Court that was coauthored by Nelson.

About Public Citizen

Public Citizen is a national non-profit organization with more than 300,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, worker safety, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.



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Methodology and Definitions

- This report represents a substantial update of a report published in October 2012, available at <http://www.citizen.org/documents/super-connected-candidate-super-pacs-not-independent-report.pdf>.
- Most of the data used in this report was drawn from the Center for Responsive Politics (www.opensecrets.org) or the Sunlight Foundation (<http://sunlightfoundation.com>).
- Unregulated outside groups are defined as those permitted to accept unlimited contributions. These include super PACs, which are required to report their donors, and 501(c) groups, which are not. Unregulated groups exclude conventional political action committees (PACs) and the official committees of the national political parties.
- Calculations of expenditures by outside groups consist of independent expenditures and electioneering communication expenditures reported to the Federal Election Commission. Calculations do not include communications costs, which represent expenditures by an organization to disseminate messages to its members. Calculations also do not include expenditures that may serve electioneering purposes but are not required to be reported.
- The data analyzed in this report regard groups that reported spending at least \$100,000 on the 2012 elections. Such groups accounted for 99 percent of total spending by unregulated outside groups.
- Filings on independent expenditures disclose amounts of money spent to "support" or "oppose" given candidates. For the data component of this report, these totals are summed to yield a cumulative total spent to assist candidates, either by supporting the group's favored candidate or opposing the candidate's opponent or opponents.
- All groups reported as opposing President Obama are treated as supporting Republican presidential nominee Mitt Romney. Some anti-Obama messages, especially before the Republican primaries were concluded, likely were motivated by a desire to defeat Obama, regardless of his opponent. Thus, this report may slightly overstate spending intended to aid Romney.
- Many outside groups consist of informally affiliated entities. Calculations in this analysis treat each legal entity distinctly.
- This analysis deemed groups that spent at least 99 percent of their resources aiding one candidate as "single-candidate" groups. Seven groups categorized as devoted to a single-candidate spent less than 1 percent of their money on other contests.
- Determinations of which groups operated in service of a national party are based on the groups' mission statements, analysis of their personnel and their spending practices. Groups that acted both in service of a single-candidate and a party are categorized as single-candidate entities.

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I. Introduction and Top Level Data Findings

Nearly half of the unregulated outside groups that sought to influence the 2012 elections spent their money to aid just one candidate. These single-candidate groups accounted for more than one-third of spending by unregulated groups in 2010. [See Figure 1] Many of these groups were operated by individuals with close ties to the candidate they assisted.

Ten additional groups, which accounted for nearly 30 percent of spending by unregulated entities in the 2012 elections, existed to aid either the official Democratic or Republican parties. Their personnel largely hailed from the national parties' hierarchies or the staffs of lawmakers in the congressional leadership. In most cases, these groups declared missions of helping to elect Democrats or Republicans. As such, these groups were much more closely tied to the parties than longstanding interest groups that provided exclusive support a single party.

In total, candidate-specific and party-allied groups accounted for more than 65 percent of all spending by unregulated outside groups in the 2012 elections. Such groups made up seven of the top eight unregulated outside spenders in 2012. [See Figure 2]

Figure 1: Electioneering Spending by All Unregulated Groups (2012 Election Cycle)

Description of Group	Number of Groups	% of Total Spending	Total Spending	% of Total Money Spent
Dedicated to a single candidate	112	49.3%	\$353,686,625	36.5%
Determined by Public Citizen to be allied with a national party	10	4.4%	\$280,566,533	29.0%
Subtotal: Single candidate or party allied	122	53.7%	\$634,253,158	65.5%
Aided multiple candidates and not designated as party allied	105	46.3%	\$333,582,201	34.5%
All Unregulated Outside Groups	227	100.0%	\$967,835,359	100.0%

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

Figure 2: Top 10 Spending Unregulated Groups (2012 Election Cycle)

Group	Amount Spent	Group's Legal Status	Single-candidate/ Party-allied/Other	Candidate Supported
Restore Our Future	\$142,655,218	Super PAC	Single-candidate	Mitt Romney
American Crossroads	\$104,772,098	Super PAC	Party-allied	Republicans
Priorities USA Action	\$66,182,126	Super PAC	Single-candidate	Barack Obama
Crossroads GPS	\$70,940,377	501(c)	Party-allied	Republicans
Americans for Prosperity	\$39,448,456	501(c)	Single-candidate	Mitt Romney
Majority PAC	\$37,536,489	Super PAC	Party-allied	Democrats
U.S. Chamber of Commerce	\$36,177,665	501(c)	Other	Republicans
House Majority PAC	\$30,761,234	Super PAC	Party-allied	Democrats
American Future Fund	\$25,587,431	501(c)	Other	Republicans
Club for Growth Action	\$20,382,571	Super Pac	Other	Republicans

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

These findings undercut the key premise relied upon by the Supreme Court in its 2010 decision in *Citizens United v. Federal Election Commission*, which paved the way for outside groups to use unlimited contributions from individuals, corporations or unions to influence elections.¹

The court based its *Citizens United* decision on its assumption that the new electioneering spending it permitted would be by organizations that acted independently of candidates and parties. The court concluded that independent expenditures do not threaten to engender corruption, which is the basis on which the court has traditionally permitted regulation of campaign expenditures. Thus, the court ruled, independent expenditures cannot be regulated without violating the First Amendment.

¹ *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010), <http://1.usa.gov/9Hn7y5>. [Hereinafter *Citizens United*] *Citizens United* outlawed restrictions on the ability of outside entities, including corporations and unions, to spend money from their treasuries to make independent expenditures (expenditures expressly intended to influence the outcomes of elections). A subsequent decision by the U.S. Court of Appeals for the District of Columbia determined that limitations on the size of contributions to groups engaging in independent expenditures could not be justified in the wake of *Citizens United*. See *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010), <http://1.usa.gov/sPC9tl>. The Federal Election Commission then ruled that independent expenditure groups may accept unlimited contributions from corporations and unions, as well as individuals. See Federal Election Commission, Advisory Opinion 2010-11 (July 22, 2010), <http://bit.ly/IK6LUX>. The cumulative effect of these decisions was to permit outside entities to use unlimited contributions from corporations, unions and individuals to influence the outcomes of elections. Entities that acknowledge a primary purpose of using unlimited contributions to influence elections are known as independent expenditure-only committees, or super PACs.

"Limits on independent expenditures have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption,"² the court wrote in *Citizens United*. "We now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption."³

But reality has not comported with the court's vision. Many of the outside groups that have availed themselves of permissions flowing from *Citizens United* cannot plausibly be deemed independent. In the 2012 elections, many groups' absence of independence was shown by a variety of factors besides their decisions to devote their resources to aiding a single candidate or party.

Other factors, depending on the group, included the existence of close professional relationships between the groups' principals and the candidates or parties they aided; statements by the groups indicating a mission to aid a specific candidate, party, or subset of a party; the transfer of personnel from campaigns to outside groups aiding the same campaigns; the provision of fundraising assistance by candidates, campaign officials or party leaders to outside groups serving their agendas; high-ranking party officials making themselves available to donors in exchange for large contributions to their allied outside groups; endorsements by candidates or their campaigns of outside groups aiding them; and acknowledgements by candidates or party leaders that they countenanced the establishment of unregulated groups aiding them.

The emergence of entities using unlimited contributions to aid candidates and parties with which they have close relationships threatens to gut the anticorruption policy underlying campaign finance laws, which the court claimed it did not intend to weaken.

The *Citizens United* decision left intact—and even appeared to endorse the thrust of—the court's precedents of upholding laws that limit direct contributions to candidates and the national parties. The court has long permitted such limits on the basis that unlimited direct contributions pose an unacceptable risk of causing corruption.

But in cases in which close relationships exist between the leaders of unregulated groups and the candidates or parties they serve, the unregulated groups essentially constitute extensions of official candidate and party committees. Unlimited contributions to such groups are tantamount to direct contributions, thereby evading contribution limit laws.

² *Id.*, at 908.

³ *Id.*, at 909.

Synopsis of Activities by Single-Candidate Groups

Nearly half (49.3 percent) of the unregulated outside groups operating in the 2012 elections devoted themselves entirely or virtually entirely to aiding a single candidate.⁴ Single-candidate groups accounted for more than one-third (36.5 percent) of the total dollars spent by unregulated groups. Beyond their spending decisions, many single-candidate groups were founded, funded or managed by friends, family members, or recent campaign aides of the candidate they supported.

Contributions to these groups are akin to direct contributions to the candidates they aided. Section V of this report provides profiles of several of these groups.

Synopsis of Activities by Party-Allied Groups

Ten groups that were unambiguously allied and intertwined with one of the major parties accounted for 29 percent of total spending by unregulated groups. These groups did not spend any money supporting a candidate from the "other" party.⁵ Most of these groups explicitly expressed a goal of electing Democrats or Republicans (and sometimes only Democrats or Republicans running for a certain house of Congress). Further, nearly all of these groups were led by individuals who recently held important positions in the national Democratic or Republican hierarchies or who recently worked for elected officials who hold leadership posts in the House or Senate.

Contributions to these entities closely parallel "soft money," the unlimited contributions to that national parties that Congress banned, with the Supreme Court's subsequent assent, in 2002.⁶ Section VII of this report includes profiles of these new soft money groups.

Nearly 75 Percent of Super PACs' Spending Was by Single-Candidate or Party-Allied Groups

Super PACs, which arose in the wake of the *Citizens United* decision, are permitted to accept unlimited contributions and spend unlimited sums to influence elections.⁷ Analysis of their activities is particularly important because these are the committees arising from *Citizens United* that expressly exist to influence elections. More than half (56.4 percent) of the super PACs operating in 2012 were either devoted to a single candidate or closely allied with a

⁴ Seven groups categorized here as serving a single candidate devoted up to 1 percent of their spending on an additional race or races. The rest concentrated their spending entirely on a single race.

⁵ A Republican group, YG Action Fund, reported spending \$22,100 in support of Rep. Mark Critz (D-Pa.), but this filing was almost certainly in error. The group reported spending \$239,000 for messages opposing Critz that were disseminated on the same day as the reported pro-Critz expenditure. YG Action Fund and its affiliated YG Network Inc. cumulatively reported spending \$958,505 opposing Critz. See Sunlight Foundation, *Critz, Mark D.* (viewed on Dec. 5, 2012), <http://bit.ly/TFR0hB> and Sunlight Foundation, *YG Action Fund* (viewed on Dec. 5, 2012), <http://bit.ly/YPg1Ka>.

⁶ See *McConnell v. FEC*, 540 U.S. 93, <http://1.usa.gov/WKx9nb>.

⁷ Super PACs are a type of political committee that was permitted by the *Citizens United* decision and a subsequent 2010 decision by the U.S. Court of Appeals for the District of Columbia that was based on the *Citizens United* precedent. See *Speechnow.org v. FEC* 599 F.3d 626 (D.C. Cir. 2010).

national party. These single-candidate and party-allied super PACs accounted for nearly three-quarters (74.4 percent) of all dollars spent by super PACs in 2012. [See Figure 3]

Figure 3: Electioneering Spending by Super PACs (2012 Election Cycle)

Description of Super PAC	Number of Super PACs Spending Over \$100,000	Per cent of Super PACs	Amount Spent	Per cent of Money Spent
Dedicated to a single candidate	75	52.4%	\$288,472,195	45.1%
Determined by Public Citizen to be allied with a national party	6	4.2%	\$187,581,876	29.3%
Subtotal: Single candidate or party allied	81	56.6%	\$476,054,071	74.4%
Aided multiple candidates and not designated as party allied	62	43.4%	\$163,946,537	25.6%
Total	143	100.0%	\$640,000,608	100.0%

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

Nearly Half of Non-Super PACs Were Single-Candidate or Party-Allied Groups

The share of outside groups that were devoted to single candidates or allied with a party was not as great for non-super PACs as for super PACs. This would be expected because more than 98 percent of outside spending by non-super PACs was by organizations that operate under section 501(c) of the tax code, which is reserved for social welfare groups, unions and business trade associations. Such organizations are prohibited from devoting the majority of their efforts to influencing elections.⁸ Therefore, one would assume that they would be less likely to show overt loyalty to a single candidate or party.

Nonetheless, nearly half (48.8 percent) of the non-super PACs involved in the 2012 elections either devoted themselves to aiding a single candidate or were clearly allied with one of the major parties. Non-super PACs that were devoted to a single-candidate or were party-allied accounted for 48.3 percent of all election spending by non-super PACs. [See Figure 4]

⁸ See, e.g., Internal Revenue Service, Tax Exempt Organizations (last reviewed Aug. 8, 2012) (viewed on Dec. 17, 2012), <http://1.usa.gov/T4jpb>. Although not the subject of this report, there is an abundance of evidence that many 501(c) entities have involved themselves in election spending to a degree that violates the terms of their tax exempt status.

**Figure 4: Electioneering Spending by Unregulated Groups Besides Super PACs
(2012 Election Cycle)**

Description of Group	Number of Non-Super PACs Spending Over \$100,000	Percent of Non-Super PACs	Amount Spent	Percent of Money Spent
Dedicated to a single candidate	37	44.0%	\$65,214,430	19.9%
Determined by Public Citizen to be allied with a national party	4	4.8%	\$92,984,657	28.4%
Subtotal: Single candidate or party allied	41	48.8%	\$158,199,087	48.3%
Aided multiple candidates and not designated as party allied	43	51.2%	\$169,635,664	51.7%
Total	84	100.0%	\$327,834,751	100.0%

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

II. The Supreme Court Continues to Endorse Laws Limiting the Size of Contributions to Candidates

Since 1976, the Supreme Court has held that placing limits on campaign contributions is constitutionally acceptable on the basis that unregulated contributions threaten to cause corruption and undermine the integrity of our democratic system.

"To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined," the court wrote in *Buckley v. Valeo* (1976), which upheld contribution limits that Congress imposed in the wake of the Watergate scandal.⁹ "Although the scope of such pernicious practices [from large contributions] can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one."¹⁰

The *Citizens United* court appeared to endorse the thrust of the court's 1976 conclusion. "If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern," the court wrote in *Citizens United*.¹¹ "We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences."¹²

Thus, the *Citizens United* court did not conclude that the threat of corruption was an invalid justification for restricting the size of contributions in general. It simply found that independent expenditures, specifically, do not pose a sufficient risk of engendering corruption to warrant regulating them.

⁹ *Buckley v. Valeo*, 424 U.S. 1, at 26-27 (1976).

¹⁰ *Id.*

¹¹ *Citizens United*, *supra* note 1, at 911.

¹² *Id.*

III. The Supreme Court's Logic in Lifting Regulations Covering 'Independent Expenditures' Relied on an Assumption That Such Expenditures Would Truly be Independent

Statements concerning "independent expenditures," whether by the Supreme Court or others, can be ambiguous because the phrase is both a legal term¹³ and a common sense expression based on the words' meanings in English. Although the legal definition is intended to ensure that actual practices bear some resemblance to the common sense definition, there are limitations in the ability of laws to bring about desired results. There is a possibility (as was shown in the 2012 elections) for expenditures that are legally categorized as "independent" to be other than independent in practice.

The disparity in these interpretations leaves open a slight possibility that the court in *Citizens United* was referring only to the legal definition in its determination that independent expenditures do not pose a risk of causing corruption. Under this reading, the court would have found spending in 2012 by entities that clearly were not independent of candidates or parties to be benign so long as the spending met the legal criteria for "independent expenditures."

But the weight of evidence strongly suggests that the court did not take this view. Instead, the court almost certainly believed that the new independent expenditures it permitted in *Citizens United* would truly be independent, not just as a matter of law.

The *Citizens United* decision relied on language in the court's 1976 *Buckley* decision (which struck down restrictions on the amounts that independent expenditure groups could spend, but not on the size of contributions they could receive) to characterize the nature of independent expenditures.¹⁴ Quoting from *Buckley*, the *Citizens United* court declared that in independent expenditures, "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given

¹³ An independent expenditure is legally defined as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate; and that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, its agents, or a political party committee or its agents."¹³ See 2 U.S.C. § 431(17). Legally defined independent expenditures may not be made in "coordination" with the candidate or political party they concern. The Federal Election Commission summarizes the legal definition of a coordinated expenditure as one "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent or the candidate, or a political party committee or its agents." See Federal Election Commission, *Coordinated Communications and Independent Expenditures* (June 2007; updated February 2011), <http://1.usa.gov/mz0j2m>, summarizing 11 CFR 109.21, <http://1.usa.gov/Wi6hy6>.

¹⁴ *Buckley v. Valeo*, 424 U.S. 1, at 26-27 (1976).

as a *quid pro quo* for improper commitments from the candidate.”¹⁵ This phrasing indicates that the *Citizens United* court did not expect candidates to have influence over independent expenditures or for the expenditures to be administered by individuals with close relationships to the candidates. Otherwise, the court’s belief that the value of the expenditures would be undermined would not apply would not make sense.

An additional sentence in the *Buckley* decision reinforces this conclusion. The *Buckley* decision includes an understanding that independent expenditures are made “*totally independently* of the candidate and his campaign” [emphasis added] such that they “may well provide little assistance to the candidate’s campaign, and indeed may prove counterproductive.”¹⁶ These words reflect an ironclad understanding that candidates or their allies do not influence independent expenditures. Although the *Citizens United* court did not quote this passage, its reliance on *Buckley* to characterize the nature of independent expenditures suggests that it is fair to assume that it embedded the earlier court’s expectation of “total” independence into its calculus.

Beyond the language used to describe independent expenditures, the court must have expected the new spending it permitted to be truly independent for its decision to make logical sense. If the new spending it permitted were only “independent” as a matter of legalisms, its conclusion that such spending would not pose a risk of fomenting *quid pro quo* corruption would not be justified. The court’s conclusion relies on the existence of actual independence.

It is possible that most independent expenditures at the time of *Buckley*—and even in the years leading up to *Citizens United*—truly were independent.

Prior to *Citizens United*, most independent expenditures could only be made by individuals or by regulated political action committees, which are prohibited from accepting contributions of more than \$5,000 year and may not accept any contributions from corporations or unions. Thus, a political action committee that was set up with the intent of aiding a single candidate or party would have been subject to contribution limits similar to those covering the campaigns or parties themselves. This would have been impractical. Under the old rules, such a committee’s ability to raise substantial sums would have been frustrated by the necessity of luring massive numbers of relatively small contributions without being permitted to portray itself as being associated with the candidate.

¹⁵ *Citizens United*, *supra* note 1, quoting from *Buckley v. Valeo*, 424 U. S. 1, at 47 (1976).

¹⁶ *Buckley v. Valeo*, 424 U. S. 1, at 47 See also Brief Of Amici Curiae Former Federal Election Commission Officials and Former State and Local Election And Campaign Finance Officials in Opposition to Petition for a Writ of Certiorari, at 25-26, *American Tradition Partnership Inc., et al. v. Bullock*, in the Supreme Court of the United States, at 5-6 (May 2012), <http://bit.ly/QETuta>. [Hereinafter *Amicus Brief*]

Most independent expenditure groups prior to *Citizens United* likely were PACs affiliated with ideological, business or labor entities. They likely chose which candidates to aid based on their policy objectives, not because of personal connections. As such, they would have been far less likely to devote themselves solely to helping a single candidate or to serving a party's agenda.

This conclusion is buttressed by an examination of the activities of the relatively few independent expenditure groups that have continued to operate as regulated political action committees, subject to contribution limits. Of 37 regulated PACs that spent more than \$100,000 on independent expenditures in the 2012 elections, only 7 devoted themselves to a single candidate.¹⁷ This 18.9 percent ratio for regulated PACs is dwarfed by the 49.3 percent of unregulated groups that were devoted to a single candidate. Of regulated PACs that worked only on congressional races, only 3 out of 16 (18.6 percent) were devoted to a single candidate, in contrast to 52.8 percent of unregulated groups.¹⁸ [See Figure 5] This disparity stands to reason. Groups that derive their funds from a broader base are more likely to spend their resources on a slate of candidates who comport with their objectives rather than focusing their efforts on a single candidate.

Figure 5: Single Versus Multi-Candidate Focus of Regulated PACs (2012 Election Cycle)

Dedication to Single or Multiple Candidates	Regulated PACs (Total)		Unregulated PACs (Total)	
	Number of PACs	Percentage of Total	Number of PACs	Percentage of Total
Dedicated to a single candidate*	3	18.6%	4	49.3%
Dedicated to Multiple Candidates	13	81.4%	16	50.7%
Total	16		16	

Source: Public Citizen Analysis of data provided by the Center for Responsive Politics (www.opensecrets.org)

* One PAC spent less than 1 percent of its money on a second contest. In keeping with the methodology employed in this report, it is categorized as a single-candidate PAC.

¹⁷ Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org), (viewed on Jan. 2, 2013).

¹⁸ *Id.*

The comparison of behaviors by unregulated groups and regulated PACs in 2012 suggests that the ability to accept unlimited contributions that emerged as a result of *Citizens United* created new incentives to evade rules against coordination. In essence, the decision had the effect of invalidating assumptions that were based on past independent expenditure practices.

Inveterate defenders of the *Citizens United* decision who accept that spending in 2012 conflicted with the court's vision might attempt to shift blame to inadequate rules to police coordination. James Bopp, a campaign finance lawyer who advised the plaintiff in the *Citizens United* case, suggested such an argument during a debate in November 2012. "If [independence] is your complaint, it has nothing to do with super PACs, it has to do with the coordinated spending regulations that have applied for decades, so talk about those," Bopp said.¹⁹

Indeed, the 2012 elections exposed numerous areas in which coordination rules are far too porous. The Federal Election Commission's decision to permit candidates to raise money for super PACs, referred to in Section VI of this report, is a glaring example.

But better coordination rules cannot reasonably be expected to ensure that outside groups will truly act independently. The field of campaign finance has long been a breeding ground for methods to comply with the letter of laws while trampling on their intent. A topic as subtle as coordination would likely prove no match for creative campaign finance lawyers.

¹⁹ *Campaign Finance and the Citizens United Decision*, American University, Washington College of Law, starting at 22:30 (Nov. 14, 2012), <http://bit.ly/TKOwgV> (video) and <http://bit.ly/ZOSBCW> (announcement). It is doubtful that Bopp would support coordination rules aimed at ensuring actual independence. In June 2012, Bopp said he was "thrilled" about a Federal Election Commission decision that permitted candidates to raise money for super PACs as long as they refrained from asking for more than \$5,000. The limitation on solicitations was "meaningless," Bopp said, because "candidates will be able to endorse [outside groups] and ask donors to contribute to them." See Brody Muirns and Katie Glueck, *FEC Lets Candidates Solicit Funds for Outside Groups*, THE WALL STREET JOURNAL (June 30, 2011), <http://on.wsj.com/leLpS3>. Any super PAC and candidate acting on the permissions Bopp celebrated could not reasonably be deemed independent of one another.

IV. The Phenomenon of Unregulated Groups Serving Single Candidates Disproves the Supreme Court's Assumption of Independence and Undermines Campaign Contributions Limits

Legally, outside groups differ from official campaign committees because outside groups are not permitted to coordinate their activities with candidates.²⁰ But the 2012 elections showed that such rules do not necessarily mean much in the real world. Even if they did not cross legal lines of coordination, nearly half of all ostensibly outside groups active in the 2012 elections spent their resources to aid just one candidate, and many of these groups were operated by people with close ties to the candidate.

These facts lead to a conclusion that many unregulated outside groups active in the 2012 election cycle were essentially extensions of candidates' official campaign committees. Contributions to these groups were tantamount to contributions to the candidates they aided.

Spending Practices Point to Ties Between Groups and Candidates

The percentage of single-candidate groups in the 2012 cycle might have been somewhat inflated because 2012 was a presidential cycle. A group that solely sought to influence the presidential election (especially at the general election stage of the campaign) could be expected to devote its resources to assisting just one candidate. But dedication to single candidates also was common among those groups that were involved solely in congressional contests. More than half (52.8 percent) of groups that worked only on congressional contests made expenditures in just one race. [See Figure 6]

Figure 6: Single v. Multi-Candidate Focus of Groups According to Types of Races Groups They Sought to Influence (2012 Election Cycle)

Type of Races Groups Sought to Influence	Number of Groups with Single Candidate Focus	Number of Groups with Multi-Candidate Focus
Worked Solely on Congressional Races (108 groups total)	57 groups (52.8% of solely congressional groups)	51 groups (47.2% of solely congressional groups)
Worked Solely on Presidential Race (56 groups total)	55 groups (98.1% of solely presidential groups)	1 group (1.8% of solely presidential groups)
Worked on Both Congressional and Presidential Races (63 groups total)	0 groups (0% of congressional and presidential groups)	63 groups (100% of congressional and presidential groups)
Total	112 groups (49.3% of all groups)	115 groups (50.7% of all groups)

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

²⁰ See Section II of this report for elaboration.

The Backgrounds of Many Groups' Principals Reinforce the Conclusion That They Did Not Operate Independently

A group that devoted all of its resources to aiding a single candidate could conceivably have truly acted independently. It is plausible that some groups that spent on behalf of only one candidate sprang up without the candidate's prior knowledge, had no previous connection to the candidate's campaign and had no interaction with the candidate or the candidate's staff during the election season. (Conversely, many groups that aided more than one candidate likely could not pass a common sense test of independence, although they are not covered in this report.²¹) Still, a group's practice of aiding just one candidate should raise suspicions that it was not truly independent.

Ample additional evidence confirms that many single-candidate groups that were active in the 2012 elections were not plausibly independent, as most people would define the word. All of the major presidential candidates, for example, were assisted by a quasi-official super PACs that were devoted exclusively to furthering their candidacies. Most of the marquee super PACs for the presidential candidates were operated by the candidates' political allies, who were typically former staffers. Some presidential campaigns, including those of President Obama and Republican presidential nominee Mitt Romney, endorsed and raised money for the super PACs supporting them. Many single-candidate groups that operated solely in congressional races also had demonstrably close relationships with their candidate. For instance, many were run by former campaign aides of the candidate they assisted.

Spending by Unregulated Groups Serving Single Candidates Undermines Laws Limiting Campaign Contributions

It stands to reason that contributions to groups that are devoted to a single candidate (and especially those managed by people with close relationships to the candidate) are virtually equivalent to contributions made to directly to the candidate. And because some donors in 2012 made massive contributions to single-candidate groups (in one case \$30 million from

²¹ For instance, Republican congressional candidate Shmuley Boteach (R-N.J.) referred to Patriot Prosperity PAC as "my super PAC" and praised casino magnate Sheldon Adelson and his wife as "heroes of our community." The Adelsons gave \$500,000 to the committee. Boteach said he had no involvement with the super PAC, as it was "set up by the professionals who run my campaign." Although Patriot Prosperity PAC spent \$918,789 assisting Boteach and Boteach acknowledged that the committee was established by his campaign employees, it is not categorized in this analysis as a candidate-specific super PAC because it also spent \$478,745 aiding a separate candidate. See Web site of Center for Responsive Politics (viewed on Nov. 27, 2012), <http://bit.ly/UGT1Kk> and Michael Isikoff, *GOP Rabbi Calls Adelsons 'Heroes to Our Community' After Getting \$500,000 for Super PAC*, NBC POLITICS (Aug. 30, 2012), <http://nbcnews.to/PAbii8>.

a single family),²² their contributions closely paralleled those that the Supreme Court has long recognized as posing a risk of engendering *quid pro quo* corruption.

U.S. Court of Appeals Judge Richard Posner, widely regarded as a conservative jurist, appears to share this view. It “is difficult to see what practical difference there is between super PAC donations and direct campaign donations, from a corruption standpoint,” Posner wrote in April 2012. “A super PAC is a valuable weapon for a campaign... ; the donors to it are known; and it is unclear why they should expect less *quid pro quo* from their favored candidate if he’s successful than a direct donor to the candidate’s campaign would be.”²³

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²² Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

²³ Richard Posner, *Unlimited Campaign Spending—A Good Thing?* THE BECKER-POSNER BLOG (April 8, 2012), <http://bit.ly/S1c8xU>, as quoted in *Amicus Brief*, *supra* note 16, at 25-26.

V. Profiles of Groups Devoted to Individual Candidates

This section provides brief profiles of groups that were devoted to individual candidates. These groups are broken into four categories. Discussed first are super PACs that were devoted to the campaigns of President Obama and Republican presidential nominee Mitt Romney. Ensuing discussions concern groups devoted to single congressional candidates. They include those founded, funded or operated by individuals with personal or political ties to the candidate they supported; those financed by major donors to the political parties; and those financed by the candidates' friends and family members.

These categories are imprecise, as some groups led by individuals with long-standing ties to a candidate may, for instance, also have received contributions from major party donors.

Groups Devoted to Presidential Candidates

According to reports filed with the Federal Election Commission, 56 outside groups devoted their spending entirely to aiding a single presidential candidate. While it is possible that many of these groups could meet a reasonable test of independence, several high profile super PACs clearly could not because they were formed and managed by allies or former campaign aides of the candidate they assisted.

The super PACs most closely associated with President Obama and presidential candidates Mitt Romney,²⁴ Newt Gingrich,²⁵ Rick Santorum,²⁶ Rick Perry,²⁷ and Jon Huntsman,²⁸ spent \$240.1 million in the 2012 elections.²⁹ This section discusses the two that spent the most: those aiding Obama and Romney.

Priorities USA Action: President Obama

Priorities USA Action spent \$66.2 million in the 2012 election cycle, entirely for messages opposing Republican presidential nominee Mitt Romney.³⁰ The group was founded by Bill Burton and Sean Sweeney. Burton served as press secretary for Obama's 2008 campaign

²⁴ Nicholas Confessore, *Lines Blur Between Candidates and PACs with Unlimited Cash*, THE NEW YORK TIMES (Aug. 27, 2011), <http://nyti.ms/Tyffzn>.

²⁵ Jeff Zeleny, *Staying Competitive: Gingrich Aide Joins 'Super PAC'*, THE NEW YORK TIMES (Dec. 21, 2011), <http://bit.ly/QV7Unf>.

²⁶ Nicholas Confessore and Jim Rutenberg, *PACs' Aid Allows Romney's Rivals to Extend Race*, THE NEW YORK TIMES (Jan. 13, 2012), <http://nyti.ms/zNj2g3>.

²⁷ Richard A. O'Connell Jr., *As Polls Slip, Perry Gets First Bounty of 'Super PAC' Ads*, THE NEW YORK TIMES (Nov. 2, 2011), <http://nyti.ms/vkeAd4>.

²⁸ Jim Rutenberg and Nicholas Confessore, *Major Ad Blitz for Huntsman in New Hampshire, by Group Backed by His Father*, THE NEW YORK TIMES (Nov. 15, 2011), <http://nyti.ms/w364NU>.

²⁹ Public Citizen analysis of data provided by The Center for Responsive Politics (viewed on Dec. 30, 2012).

³⁰ The Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/HKM4y7>.

and as deputy press secretary in the Obama White House.³¹ Sweeney was chief of staff to Rahm Emanuel while Emanuel served as the White House chief of staff under Obama.³²

The Obama campaign signaled the president's support for Priorities USA's efforts in an e-mail sent to supporters on Feb. 6, 2012, hours after Obama blasted super PACs during a *Today Show* interview.³³

"The campaign has decided to do what we can, consistent with the law, to support Priorities USA in its effort to counter the weight of the GOP super PAC[s]," Obama campaign manager Jim Messina said in the e-mail. "Senior campaign officials as well as some White House and Cabinet officials will attend and speak at Priorities USA fundraising events."³⁴

That evening, in a conference call with top Democratic donors, Obama campaign manager Jim Messina expressed support for the Priorities USA's efforts.³⁵ Priorities USA saw its receipts soar from \$58,000 in January to \$2 million in February.³⁶

In September 2012, Emanuel stepped down as Obama's national campaign co-chairman to raise money for Priorities USA.³⁷ "We're not going to bring a butter knife to a gun fight," Obama campaign spokeswoman Jen Psaki said of the move.³⁸

During the course of the campaign, top Obama aide David Plouffe appeared at Priorities USA events.³⁹

Speaking at a fundraiser for his campaign in September 2012, Obama tiptoed up to the line of soliciting money for Priorities USA, although in a jesting tone. He lamented that his opponents "have super PACs that are writing \$10 million checks and have the capacity to just bury us under the kind of advertising that we've never seen before ... If somebody here

³¹ PAC Profile: *Priorities USA Action*, THE CENTER FOR PUBLIC INTEGRITY (Jan. 30, 2012; updated Jan. 17, 2012), <http://bit.ly/Q8W5P2>.

³² *Id.*

³³ *Obama Super PAC Decision: President Blesses Fundraising for Priorities USA Action*, POLITICO (Feb. 6, 2012), <http://politi.co/wKvVRM>.

³⁴ Jim Messina, *We Will Not Play by Two Sets of Rules*, BarackObama.com (blog) (Feb. 6, 2012),

<http://bit.ly/yOWH1f> as quoted in *Amicus Brief*, *supra* note 16.

³⁵ *Democratic Operatives Seeking Million-Dollar Checks for Super PACs*, THE CENTER FOR PUBLIC INTEGRITY (Feb. 8, 2012), <http://bit.ly/XX1icc>.

³⁶ PAC Profile: *Priorities USA Action*, THE CENTER FOR PUBLIC INTEGRITY (Jan. 30, 2012; updated Nov. 14, 2012), <http://bit.ly/Q8W5P2>.

³⁷ Jack Gillum, *Rahm Emanuel Leaving Obama Campaign to Raise Money for Priorities USA Action*, HUFFINGTON POST (Sept. 5, 2012), <http://huff.to/Q7HnrB>.

³⁸ *Id.*

³⁹ Paul Blumenthal, *Barack Obama's Super PAC Comments at Jay-Z Fundraiser Sidle Up to Red Line*, HUFFINGTON POST (Sept. 19, 2012), <http://huff.to/BtV98k>.

has a \$10 million check—(laughter)—I can't solicit it from you, but feel free to use it wisely."⁴⁰

Top donors to Priorities USA were hedge fund managers James Simons (\$5 million) and Chicago media entrepreneur Fred Eychaner (\$4 million).⁴¹

Restore Our Future: Mitt Romney

Restore Our Future spent \$142.7 million, solely to pay for messages supporting Romney or opposing his rivals. The group was co-founded by Carl Forti, who served as political director of Romney's 2008 presidential campaign.⁴² Forti also served as the political director of American Crossroads and as advocacy director for Crossroads GPS during the 2012 elections.⁴³ The Crossroads groups spent \$113.5 million in messages to aid Romney.⁴⁴

Restore Our Future's treasurer was Charles Spies, who was chief financial officer and counsel for Romney's 2008 presidential campaign. Spies' wife, Lisa, ran "PAC fundraising and Jewish outreach for the [2012] Romney campaign," the Center for Public Integrity reported.⁴⁵

The group was clear in its mission of supporting Romney. "While there are multiple other groups doing important work to assist Republicans up and down the ticket, ROF is the only group dedicated solely to electing Mitt Romney, and targeting every dollar that we raise towards supporting him," Spies said in May 2012.⁴⁶

A fundraiser for the Restore Our Future was Steve Roche, who served as the top fundraiser both for the 2008 Romney campaign and through August of 2011 for the 2012 Romney campaign. Other personnel included Larry McCarthy, who developed ads for Romney's 2008 campaign.⁴⁷

⁴⁰ President Obama, *Remarks at the Waldorf Astoria*, White House Transcript (Sept. 18, 2012), <http://1.usa.gov/PSVvn0>.

⁴¹ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

⁴² Andy Kroll, *Mitt Romney's \$12 Million Mystery Man*, MOTHER JONES (January-February 2012) <http://bit.ly/zLZNic>.

⁴³ *Id.*

⁴⁴ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/QWBCOH>.

⁴⁵ Peter H. Stone, *Loophole Lets Big Political Donors Wear Multiple Fundraising Hats*, THE CENTER FOR PUBLIC INTEGRITY (Aug. 9, 2011), <http://bit.ly/NLQOTj>.

⁴⁶ Mike Allen and Jim VandeHei, *GOP Groups Plan Record \$1 Billion Blitz*, POLITICO (May 30, 2012), <http://bit.ly/LedsqA>.

⁴⁷ PAC Profile, *Restore Our Future*, THE CENTER FOR PUBLIC INTEGRITY (Jan. 30, 2012; revised Nov. 14, 2012), <http://bit.ly/VxczRh> and Nicholas Confessore, *At Convention, Lines Blur for Party and 'Super PACs'*, THE NEW YORK TIMES (Aug. 30, 2012), <http://nyti.ms/PU1h1F>.

Romney attended several Restore Our Future fundraisers.⁴⁸ In at least one instance, Romney characterized a contribution to Restore Our Future as being "to me."⁴⁹

In a January 2012 debate in South Carolina, Romney referred to Restore Our Future as his own committee: "I haven't spoken to any of the people involved in my super PAC in months," Romney said.⁵⁰

Restore Our Future and the Romney campaign used the same company, Tiger Point Consulting, for direct mail work.⁵¹ Alexander Gage, the founder of Tiger Point Consulting, conceded that his firm's performance of service for the two purportedly independent entities looked "ridiculous."⁵² Gage said his firm had constructed a fire wall between employees working on the two accounts to avoid violating coordination laws.⁵³

Gage's wife, Katie Packer Gage, was a senior strategist for Romney's 2008 campaign.⁵⁴ Katie Packer Gage also is the co-founder of WWP Strategies, a consulting firm that operates from the same offices as Tiger Point Consulting and received \$335,000 from the Romney campaign through February 2012.⁵⁵

Restore Our Future received \$30 million from casino magnate Sheldon Adelson and his wife and \$9 million from Texas developer Bob Perry.⁵⁶

Groups Run by Friends or Political Allies of Congressional Candidates

Connecticut's Future PAC: Christopher Murphy (D-Ct.)

Connecticut's Future PAC was formed in July 2012 to assist Rep. Christopher Murphy (D-Ct.) in his race against Republican Linda McMahon to represent Connecticut in the U.S. Senate.⁵⁷ The group eventually spent \$495,734 for messages supporting Murphy, who ended up winning the election.⁵⁸

⁴⁸ *Id.*

⁴⁹ *Romney \$1 Million Mystery Corporate Donation* (YouTube video, uploaded Aug. 25, 2011), <http://bit.ly/UmqvWC> as quoted in *Amicus Brief*, *supra* note 16, at 20.

⁵⁰ *Fox News Channel & Wall Street Journal Debate in South Carolina*, FOX NEWS (Jan. 17, 2012), <http://bit.ly/zmi70V>.

⁵¹ Mike McIntire and Michael Luo, *Fine Line Between 'Super PACs' and Campaigns*, THE NEW YORK TIMES (Feb. 25, 2012), <http://nyti.ms/XiNbRz>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2012), www.sunlightfoundation.com. (Itemized reports of Perry's contributions add up to \$10 million but the most recent contribution record indicates that Perry's total contributions at that time equaled \$9 million.)

⁵⁷ Susan Haigh, *Pro-Murphy Super PAC Created in Conn. Senate Race*, ASSOCIATED PRESS (July 16, 2012), <http://bo.st/1079hrV>.

⁵⁸ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/13zKNr2>.

The chairman of Connecticut's Future PAC was Chris VanDeHoef, a state lobbyist who was a groomsman in Murphy's wedding.⁵⁹ Other principals in the group included Kevin Graff, who had previously served as chief of staff to the Democratic caucus in the Connecticut Senate, as Joseph Taborsak, a Democratic representative in the Connecticut General Assembly.⁶⁰

The Committee to Elect an Effective Valley Congressman: Howard Berman (D-Calif.)

The Committee to Elect an Effective Valley Congressman, a super PAC, spent \$1.3 million to aid Berman against Sherman.⁶¹ The super PAC was created by Berman's friend Marc Nathanson, who contributed \$100,000 to it.⁶² Nathanson also contributed \$5,000 to Berman's campaign committee.⁶³

"Howard and I have been friends for 30 years," Nathanson said. "It's a friendship beyond what I call political friendships—it's a personal relationship. When it was clear he needed help, I figured out a way to do that."⁶⁴

The super PAC and Berman's campaign committee used the same consultant, Jerry Seedborg.⁶⁵ The *Los Angeles Times* reported that Seedborg has a long association with Berman's brother and campaign overseer, Michael, and with Carl D'Agostino, Michael Berman's business partner.⁶⁶

Freedom Fund for America's Future: Steve Welch (R-Pa.)

Freedom Fund for America's Future reported spending \$175,145 in opposition to Tom Smith in Pennsylvania's Republican Senate primary.⁶⁷ Its efforts were apparently aimed at aiding Steve Welch, who enjoyed the endorsement of Pennsylvania Gov. Top Corbett (R).⁶⁸ The super PAC failed in its effort to derail Smith, but did succeed in masking the source of most of its contributions.

⁵⁹ Neil Vigdor, *Pac-Man*, CT POLITICS (Oct. 15, 2012), <http://bit.ly/13zL9ho>.

⁶⁰ Susan Haigh *Pro-Murphy Super PAC Created in Conn. Senate Race*, ASSOCIATED PRESS (July 16, 2012), <http://bo.st/1079hrV> and Graff Public Solutions LLC, *About Us* (viewed on Jan. 15, 2013), <http://bit.ly/11xjKNM>.

⁶¹ Web site of the Center for Responsive Politics (viewed on Jan. 3, 2013), <http://bit.ly/TtLiOT>.

⁶² Dan Eggen, *Friends and Family Plan: Super PACs Often Personal Campaign Fundraising Affairs*, THE WASHINGTON POST (June 10, 2012) and Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

⁶³ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

⁶⁴ Dan Eggen, *Friends and Family Plan: Super PACs Often Personal Campaign Fundraising Affairs*, THE WASHINGTON POST (June 10, 2012).

⁶⁵ Jean Merl, *Sherman Campaign Seeks Review of Hire by Rival Berman's 'Super PAC'*, LOS ANGELES TIMES (May 7, 2012), <http://lat.ms/QqdtMt>.

⁶⁶ *Id.*

⁶⁷ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/12DgFz>.

⁶⁸ *Gov. Corbett Endorses Pa. Sen. Candidate Welch*, *The Morning Call* (Jan. 21, 2012), <http://bit.ly/V7jdMT>.

At the time of the primary election, the super PAC had only been required to disclose \$5,000 in contributions because of widely spaced reporting deadlines.⁶⁹ When the committee finally disclosed the bulk of its contributions, it reported that 92 percent of its money came from Fight for the Dream, another super PAC. But, up to that point, Fight for the Dream had disclosed little information except that it operated out of a UPS mailbox registered to a man named Wayne Woodman. Woodman was the former finance co-chairman of Steve Welch, one of the main contenders in the GOP primary.⁷⁰ Woodman also contributed \$2,500 to Welch's campaign committee.⁷¹

Fight for the Dream was required to disclose the sources of its contributions in a report that was due in July 2012. But that report either was not filed or, a representative of the group suggested, failed to appear on the Federal Election Commission's Web site due to an error.⁷² After Center for Responsive Politics' blogger Dan Glaun inquired to the group, its report was posted to the FEC's Web site. But the newly posted report merely revealed that most of Fight for the Dream's money came from another group, called Restore the Dream, which shared a mailbox with Fight for the Dream. Restore the Dream is a 501(c)(4) organization and keeps its donors secret, thereby stifling any ability for the public to learn the root source of most of Freedom Funds' money.⁷³

Asked if the 501(c)-to-super PAC-to-super PAC transfer scheme was intended to evade disclosure, Fight for the Dream's lawyer told CRP's Glaun: "This was set up within federal election laws ... I would disagree that there's anything to question about transfers between super PACs. In fact, the Democrats are coordinating between their super PACs."⁷⁴

Two Freedom Fund officials said the super PAC would continue to engage in political races after the Pennsylvania primary. But it made no further expenditures in the 2012 elections.⁷⁵

Congressional Elections PAC and Citizens 4 Ethics in Government: Lou Ann Zelenik (R-Tenn.)

Congressional Elections PAC devoted all of its spending (\$127,300) to opposing Rep. Diane Black (R-Tenn.) in her primary against Lou Ann Zelenik, whom Black had defeated by fewer

⁶⁹ Dan Glaun, *Stealthy Super PACs Influenced Primaries Without Disclosing Donors*, OPEN SECRETS BLOG (July 2, 2012), <http://bit.ly/NWiDfg>.

⁷⁰ Dan Glaun, *Mystery Super PAC and Nonprofit Network Spent Big in PA Senate Race*, OPEN SECRETS BLOG (July 18, 2012), <http://bit.ly/PiSiCH> and Sean Sullivan, *Tom Smith Sporting Double-Digit Lead in Own Poll*, THE HOTLINE (April 18, 2012), <http://bit.ly/IOPmEE>.

⁷¹ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

⁷² Dan Glaun, *Mystery Super PAC and Nonprofit Network Spent Big in PA Senate Race*, OPEN SECRETS BLOG (July 18, 2012), <http://bit.ly/PiSiCH>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Web site of the Center for Responsive Politics (viewed on Nov. 27, 2012), <http://bit.ly/I2DgFz>.

than 400 votes in 2010.⁷⁶ The group received \$51,000 from Andrew Miller, who had served as finance chair of Zelenik's campaign earlier in the year. Miller also had previously worked with Zelenik on the Tennessee Freedom Coalition, an issue-advocacy group.⁷⁷ The group also received \$130,000 from the Campaign for Primary Accountability. The Campaign for Primary Accountability, in turn, received \$60,000 from Miller. Miller also gave the maximum \$2,500 to Zelenik's campaign committee.⁷⁸

A separate group, Citizens 4 Ethics in Government, devoted all of its primary season spending (\$196,815) opposing Black. Citizens 4 Ethics in Government received \$180,100 from Miller during the primary season.⁷⁹ Black won the August primary by about a two-to-one margin over Zelenik.⁸⁰

(Note: Citizens 4 Ethics in government is not categorized as a single-candidate group in this report's quantitative analysis because it spent \$10,000 to influence a separate contest late in the general election campaign. However, its efforts during the primary support the thesis of this report that many single-candidate groups essentially acted as unregulated campaign committees for the candidate in question.)

Conservatives Acting Together: Michael Williams (R-Texas)

Conservatives Acting Together reported spending \$172,720 to support Michael Williams in the Republican primary for Texas's 25th congressional district seat but had not disclosed the sources of its money when the primary election was held.⁸¹

More than a month after the election, the super PAC revealed that two-thirds of its money came from one individual, Richard Collins, a Dallas businessman and former finance chairman for Williams' campaign.⁸² Collins also contributed \$5,000 to Williams' campaign committee.⁸³

⁷⁶ Lucas L. Johnson II, *Black, Zelenik Battle for 6th District Again*, ASSOCIATED PRESS (July 29, 2012) and Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/Qn16Uy> (link to Citizens for Ethics in Government) and <http://bit.ly/SZ36RY> (link to Congressional Elections PAC).

⁷⁷ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

⁷⁸ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

⁷⁹ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2012), www.sunlightfoundation.com.

⁸⁰ Diane Black, *Bob Corker Win*, TENNESSEAN (Aug. 2, 2012).

⁸¹ Dan Glaun, *Stealthy Super PACs Influenced Primaries Without Disclosing Donors*, OPEN SECRETS BLOG (July 2, 2012), <http://bit.ly/NWiDfg> and Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

⁸² Dan Glaun, *Sunlight for Stealth PACs: Late-Disclosing Groups Report Donors*, OPEN SECRETS BLOG (July 17, 2012), <http://bit.ly/MAC1B6>.

⁸³ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

Indiana Values: Richard Lugar (R-Ind.)

Indiana Values reported spending \$459,606 to aid Sen. Richard Lugar (R-Ind.) in his unsuccessful effort to repel a primary challenge from Richard Mourdock.⁸⁴ Longtime Lugar aides Chip Andreae and Andrew Klingenstein helped found and operate Indiana Values, according to news reports.⁸⁵ Additionally, Andreae gave \$500 to Lugar's campaign committee.⁸⁶ Klingenstein gave \$25,395 to Indiana Values.⁸⁷

The largest contributions reported by Indiana Values (totaling \$137,000) were from Indiana Values Inc.,⁸⁸ which the Center for Responsive Politics concluded was likely a non-disclosing 501(c)(4) organization.⁸⁹ Indiana Values' address is on K Street in Washington, D.C.⁹⁰

Groups Funded by Party Mega-Donors That Aided Single Congressional Candidates*Conservative Renewal and Texas Conservatives Fund: David Dewhurst (R-Texas)*

Conservative Renewal and Texas Conservatives Fund, both super PACs, reported spending \$6.8 million combined to further the prospects of Republican Texas Lt. Gov. David Dewhurst, who unsuccessfully sought his party's nomination for the U.S. Senate.⁹¹ Dewhurst's former chief of staff, Rob Johnson, served as the executive director of the Texas Conservatives Fund, which spent \$5.9 million.⁹²

The Texas Conservative Fund received \$1.1 million from Harold Simmons, sometimes described as a nuclear waste management entrepreneur,⁹³ and \$500,000 from Texas

⁸⁴ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/RAbgfX>.

⁸⁵ Luke Rosiak, *Voters Vs. Cash: Races Could Be Turned by Out-Of-State Money Ad Surges Give Warped Reflection of True Support*, WASHINGTON TIMES (Aug. 9, 2012) and Kate Ackley, *Lugar Leaves Behind 'Kitchen Cabinet' on K Street Serving the Longtime Senator Has Made Careers for Many Lobbyists Who Call Experience*, ROLL CALL (May 9, 2012).

⁸⁶ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

⁸⁷ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

⁸⁸ *Id.*

⁸⁹ *New FEC Filings Show Super PAC Strength Can Be Relative, and Pro-Lugar Super PAC Takes Shadow Money*, OPENSECRETS BLOG (July 17, 2012).

⁹⁰ *Id.*

⁹¹ Web site of the Center for Responsive Politics (viewed on Jan. 3, 2013), <http://bit.ly/WwylzB> (link to Texas Conservatives Fund) and <http://bit.ly/TtMoWX> (link to Conservative Renewal).

⁹² David Tonyan, *Dewhurst No. 1 in Single-Candidate Super PAC Donations*, TEXAS TRIBUNE (Oct. 25, 2012), <http://bit.ly/XpszWp>.

⁹³ Robert T. Garrett, *Third-Party Groups Ramp Up Spending in U.S. Senate Race*, DALLAS MORNING NEWS (May 20, 2012), <http://dallasne.ws/K2afv5>.

developer Bob Perry.⁹⁴ Conservative Renewal received \$500,000 from Simmons and \$250,000 from casino mogul Sheldon Adelson.⁹⁵

Simmons and his wife gave \$26.9 million to Republican super PACs in the 2012 election cycle; Perry gave \$23.5 million; and Adelson and his wife gave \$92.8 million. (Figures reflect reported contributions only.⁹⁶ (These figures do not include possible contributions to 501(c) groups that engaged in electioneering activities.) Perry and Simmons both gave \$5,000 to Dewhurst's campaign committee.⁹⁷ Dewhurst advanced to a run-off election, but lost his bid for the nomination to Ted Cruz.

Hoosiers for Jobs: Richard Lugar (R-Ind.)

Hoosiers for Jobs, a super PAC based in Sacramento, Calif.,⁹⁸ spent \$175,185 to aid Lugar in his primary against Mourdock. It received \$50,000 from Roy Pfautch and \$25,000 from Sam Fox. Including his contribution to Hoosiers for Jobs, Pfautch gave more than \$300,000 to GOP causes in the 2012 election cycle.⁹⁹

Fox and his wife also gave \$100,000 to Indiana Values, the super PAC founded by Lugar associates to aid him.¹⁰⁰ Fox was a fundraising "bundler" for President George W. Bush in 2000 and 2004 and helped fund the Swiftboat Veterans for Truth attacks on Democratic presidential nominee John Kerry in 2004.¹⁰¹ Fox contributed at least \$364,000 to Republican causes in the 2012 election cycle, including his gifts to the pro-Lugar super PACs.¹⁰² Both Pfautch and Fox were maximum donors to Lugar's campaign committee.¹⁰³

Independence Va.: George Allen (R-Va.)

Independence Va., a super PAC, spent \$4.9 million attacking former Virginia Gov. Tim Kaine (D) in the Virginia U.S. Senate contest in which Kaine narrowly defeated former Virginia Gov. and Sen. George Allen (R).¹⁰⁴

⁹⁴ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com

⁹⁵ *Id.*

⁹⁶ *2012 Top Donors to Outside Spending Groups*, the Center for Responsive Politics (viewed on Nov. 28, 2012), <http://bit.ly/SfZVVo>.

⁹⁷ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

⁹⁸ Brian Francisco, *Senate Campaigns Decry, Defend PACs Filings Show Depth of Non-Hoosier Money*, FORT WAYNE JOURNAL-GAZETTE (April 19, 2012).

⁹⁹ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

¹⁰⁰ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹⁰¹ *New FEC Filings Show Super-PAC Strength Can be Relative, and Pro-Lugar Super PAC Takes Shadow Money*, OPENSECRETS BLOG (July 17, 2012), <http://bit.ly/Ozxdsv>.

¹⁰² The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

¹⁰³ *Id.*

¹⁰⁴ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/QVjdgl>.

Top contributors to the super PAC were Adelson (\$4 million) and Perry (\$1 million).¹⁰⁵ Independence Va. was founded by Paul Bennecke, former political director of the Republican Governors Association.¹⁰⁶

USA Super PAC: Richard Mourdock (R-Ind.)

USA Super PAC spent \$190,085 to aid Mourdock against Lugar. It was formed just over a month before the Indiana primary election by James Bopp, an Indiana lawyer who advised the plaintiff in the *Citizens United* case. Reporting timelines did not require the group to disclose the sources of any of its money before the primary election, which Mourdock won.¹⁰⁷

Eventual filings revealed that the group received \$100,000 from prominent GOP donor Richard Uihlein, \$50,000 from Steven Chazen and \$35,000 from Foster Friess.¹⁰⁸ Uihlein and his wife gave \$1.8 million to Republican causes in the 2012 cycle;¹⁰⁹ Chazen gave more than \$500,000;¹¹⁰ and Friess gave \$2.5 million, including \$1.8 million to Red White and Blue Fund, which supported Republican presidential candidate Rick Santorum.¹¹¹

Maine Freedom: Charles Summers (R-Maine)

An observer of ads by super PAC Maine Freedom in the 2012 election cycle would likely have assumed that its backers were committed to furthering the electoral prospects of Cynthia Dill, the Democratic nominee to represent Maine in the U.S. Senate. The super PAC's initial messages praised Dill. It eventually spent \$359,000, evenly split between messages that either supported Dill or opposed independent candidate Angus King, a former Maine governor and eventual winner of the three-way race.¹¹²

But the makeup of the group's donors and personnel strongly suggests that the actual objective of Maine Freedom was to boost the chances of Republican nominee Charles Summers by shifting votes from King to Dill.

¹⁰⁵ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹⁰⁶ Wesley Hester, *Super PAC to Help GOP's Allen in Senate Bid in Virginia*, RICHMOND TIMES DISPATCH (March 13, 2012).

¹⁰⁷ Dan Glaun, *Stealthy Super PACs Influenced Primaries Without Disclosing Donors*, OPEN SECRETS BLOG (July 2, 2012), <http://bit.ly/NWiDfg> and Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹⁰⁸ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹⁰⁹ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

¹¹⁰ *Id.*

¹¹¹ *Id.* and Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹¹² Web site of the Center for Responsive Politics (viewed on Oct. 27, 2012), <http://bit.ly/QVtQzV>.

The group's treasurer, Michael Adams, is general counsel of the Republican Governors Association and a member of the Republican National Lawyers Association. Its assistant treasurer, Erin Berry, is also a former lawyer for the RGA and previously worked for the Republican State Leadership Committee, according to her LinkedIn profile, the Center for Public Integrity reported.¹¹³

RGA spokesman Mike Schrimpf denied that the RGA had involvement with the group. "We are not funding it, helping with strategy, anything," Schrimpf wrote in an e-mail to a reporter. "The only connection is the RGA's counsel, Mike Adams."¹¹⁴

The super PAC received \$100,000 each from four donors, including telecommunications mogul John Malone, White Rock Distilleries CEO Paul Coulombe and an entity called the G Coulombe Trust.¹¹⁵ Malone gave \$183,009 in the 2012 election cycle to Republican causes.¹¹⁶ Paul Coulombe gave \$2,500 to Summers and \$10,000 to the Maine Republican Party.¹¹⁷

Treasure Coast Jobs Coalition: Allen West (R-Fla.)

Treasure Coast Jobs Coalition spent \$2.4 million to pay for messages attacking Democrat Patrick Murphy in Florida's 18th district congressional race, in which Murphy narrowly defeated Rep. Allen West (R-Fla.)

Treasure Coast received \$1 million from Richard Roberts, who recently sold his family's pharmaceutical business, Mutual Pharmaceutical Co., to a Japanese company for \$800 million.¹¹⁸ Roberts separately gave \$2,500 to West's campaign committee.¹¹⁹

Roberts also gave \$750,000 to Restore Our Future, the pro-Romney super PAC, and \$250,000 to American Crossroads, a super PAC that spearheaded efforts among pro-Republican groups in 2012 (discussed in the next section).¹²⁰ Treasure Coast also received \$1 million from Adelson and his wife.¹²¹

¹¹³ Rachel Marcus, *GOP Not Giving Up on Maine Senate Race*, THE CENTER FOR PUBLIC INTEGRITY (Aug. 27, 2012), <http://bit.ly/ReAiiQ>.

¹¹⁴ *Id.*

¹¹⁵ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹¹⁶ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

¹¹⁷ *Id.*

¹¹⁸ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com and George Bennett, *Pharmaceutical Exec Gives \$1 Million to Pro-West Super PAC*, PALM BEACH POST (Oct. 16, 2012), <http://bit.ly/P1gaWy>.

¹¹⁹ The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indivs/index.php.

¹²⁰ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹²¹ *Id.*

Family-Funded Groups Devoted to a Single Congressional Candidate

American Sunrise: Patrick Murphy (D-Fla.)

American Sunrise spent \$118,578 for messages aiding Murphy in his effort to unseat West in Florida's 18th district congressional race.¹²² The super PAC reported contributions of \$350,000, \$250,000 of which came from the candidate's father, Thomas Murphy.¹²³ Aside from its payments for advertisements, which are reported to the Federal Election Commission as independent expenditures, the group reported \$231,467 in other operating expenditures, much of which were for consulting services.¹²⁴

America Shining: Jay Chen (D-Calif.)

America Shining is a "Bi-partisan civic organization focused on reinvigorating America," the group's Web site said during the 2012 elections. "We sponsor and support policies and candidates for federal office."¹²⁵

In practice, the group supported just one candidate in any significant measure: Democrat Jay Chen, who unsuccessfully sought to defeat Republican incumbent Rep. Ed Royce in California's 39th congressional district race. (America Shining also devoted less than 1 percent of its budget to two other U.S. House contests.)¹²⁶

One America Shining advertisement attracted press coverage for its depiction of "a detached monster hand grabbing the neck of a woman who lets out a blood-curdling scream."¹²⁷ The ad ended by showing "a ghostly looking portrait of Royce floating over the Capitol dome."¹²⁸ Chen said he had no knowledge of the commercial until he saw it on YouTube.¹²⁹

For months, voters had no idea who was behind the ads. But on Oct. 15, 2012, the super PAC disclosed that all of its contributions (\$565,000) had come from a single donor, Shaw Chen, the candidate's brother.¹³⁰ Eventually, the group reported receiving \$765,000 from

¹²² Web site of the Center for Responsive Politics (viewed on Jan. 3, 2013), <http://bit.ly/OVR74D>.

¹²³ Keven Cirilli, *Allen West Punches Back over Attack Ad*, POLITICO (Aug. 10, 2012), <http://politi.co/RiH0ry>.

¹²⁴ 2012 Committee Information, American Sunrise, Federal Election Commission (viewed on Jan. 3, 2013).

¹²⁵ Facebook page of America Shining, <http://www.facebook.com/AmericaShining/info> (viewed in October 2012).

¹²⁶ Web site of the Center for Responsive Politics (viewed on Jan. 3, 2013), <http://bit.ly/S1SnWe>.

¹²⁷ Steve Scauzillo, *Super PAC Calls Rep. Ed Royce 'Monster from Washington' in Ad for Challenger Jay Chen*, SAN GABRIEL VALLEY NEWS (Oct. 10, 2012), <http://bit.ly/RI9C5a>.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Steve Scauzillo, *Ad That Calls Rep. Ed Royce A Monster Paid for by Challenger Jay Chen's Brother*, INLAND VALLEY DAILY BULLETIN (Oct. 17, 2012), <http://bit.ly/RbB83a>.

Shaw Chen and \$350,000 from Nain Lai Chen, the candidate's mother.¹³¹ Shaw and Nain Lai Chen each separately contributed \$5,000 to Jay Chen's campaign committee.¹³²

American Foundations: George Holding (R-N.C.)

American Foundations spent \$535,082 supporting the successful effort of George Holding in the Republican primary for North Carolina's 13th congressional seat.¹³³

American Foundations might more accurately be described as a family enterprise than a super PAC. "The group was funded almost entirely by members of Holding's wealthy banking family, including \$100,000 each from an aunt and uncle and \$250,000 from a group of cousins," *The Washington Post* reported.¹³⁴

Holding, who initiated the campaign finance corruption case against former Democratic presidential candidate John Edwards, won the primary and subsequent general election.¹³⁵

Progress for Washington: Laura Ruderman (D-Wash.)

In July 2012, residents of Washington's 1st congressional district were flooded with mailings from anonymous super PAC Progress for Washington assailing congressional candidate Suzan DelBene (D).

Controversy over the mailings quickly grew. Sen. Patty Murray (D-Wash.), for instance, called on the super PAC to cease its attacks. "The shadowy super PAC attacks in the 1st District congressional race represent an unfortunate, ugly, apparently Democrat vs. Democrat assault, and I hope they stop," Murray said in a statement.¹³⁶

Laura Ruderman, one of DelBene's challengers in the Democratic primary, professed having no knowledge of the super PAC's origins.¹³⁷ Federal Election Commission filings soon revealed that the sole source of Progress for Washington's money was Margaret Rothschild, Ruderman's mother. Filings also revealed that vendors in charge of producing

¹³¹ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹³² The Center for Responsive Politics, Donor Lookup, www.opensecrets.org/indiivs/index.php.

¹³³ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/RyT32u>.

¹³⁴ Dan Eggen, *Friends and Family Plan: Super PACs Often Personal Campaign Fundraising Affairs*, THE WASHINGTON POST (June 10, 2012), <http://wapo.st/LSp1EI> and Laura Oleniacz, *Republican Holding Takes 13th District Congressional Seat*, THE HERALD-SUN (Nov. 7, 2012).

¹³⁵ Dan Eggen, *Friends and Family Plan: Super PACs Often Personal Campaign Fundraising Affairs*, THE WASHINGTON POST (June 10, 2012), <http://wapo.st/LSp1EI>.

¹³⁶ *Murray to Anonymous PAC: Stop the Smears*, SEATTLE POST-INTELLIGENCER (July 15, 2012), <http://bit.ly/SsMwbs>.

¹³⁷ Joel Connelly, *Ruderman and Mom: High Road and Low Road*, SEATTLE POST-INTELLIGENCER (July 16, 2012), <http://bit.ly/TdxRTf>.

the mailing had past political ties to Ruderman.¹³⁸ The super PAC was dubbed the "mama PAC" in the press and Ruderman soon denounced its activities.¹³⁹

"I am calling on Progress for Washington to immediately take down the television ad that began airing today," Ruderman said. "I would encourage voters to visit my website and see the positive messages about my positions on issues that our campaign is talking about."¹⁴⁰

Ruderman's mother contributed \$355,000 to the super PAC, which devoted all of its resources to Ruderman's race.¹⁴¹ Ruderman finished third in the August primary, which DelBene won.¹⁴²

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¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Jonathan Martin, *Ruderman Denounces Attack Ad Paid by Her Mom*, SEATTLE TIMES (July 18, 2012).

¹⁴¹ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

¹⁴² *Suzan DelBene Wins Big in WA-01, Will Face John Koster in November*, NORTHWEST PROGRESSIVE INSTITUTE ADVOCATE (Aug. 7, 2012), <http://bit.ly/ONxaOH>.

VI. Activities of Unregulated Party-Allied Groups Mark the Return of 'Soft Money'

Most of the unregulated outside groups that spent money to influence the 2012 elections invested their money exclusively, or nearly exclusively, in support of Democratic or Republican candidates. This, in itself, does not mean that all of these groups were captives of the national parties, given that the partisan outlines of our politics tend to push all but the most determinedly bipartisan political actors in the direction of one party or another.

But several groups that were active in the 2012 elections—including some of the biggest spenders—essentially were of, for, and by one of the two major parties. As such, these groups' spending can fairly be characterized as a new form of "soft money." Soft money was the term used to describe unregulated contributions—predominantly from corporations or unions—to the national parties in the 1990s and early 2000s. Congress banned soft money contributions to the parties in 2002 and the Supreme Court upheld the ban in 2003.¹⁴³ The prohibition remains in place.

This report singles out 10 groups that cannot be deemed anything other than party instruments. [See Figure 7]

Figure 7: Party-Connected Electioneering Groups (2012 Election Cycle)

Group	Group's Legal Status	Amount Spent	Party Supported*
Crossroads GPS	501(c)	\$70,940,377	Republican
House Majority PAC	Super PAC	\$30,761,234	Democratic
Congressional Leadership Fund	Super PAC	\$9,450,236	Democratic
YG Action Fund	Super PAC	\$4,722,335	Republican
American Bridge 21st Century	Super PAC	\$339,484	Democratic

Source: Public Citizen analysis of data provided by the Center for Responsive Politics (www.opensecrets.org).

* For the purposes of this report, Patriot Majority's companion organization, a super PAC, is categorized as a single-candidate group because it spent solely on the presidential race.

Much reporting has suggested that the network of electioneering groups that are intertwined with the national parties is far more extensive than the list presented here, and

¹⁴³ *McConnell v. FEC*, 540 U.S. 93. (2003).

that may be the case.¹⁴⁴ This study applies the soft money label only to the most blatant and indisputable cases of groups that acted in service of a national party's agenda.

Most of the groups included here declared an explicit mission of helping elect candidates from a single party. A leader of one super PAC, for instance, said her group was "a great complement" to the Democratic Congressional Campaign Committee and would become "a permanent part of the Democratic infrastructure."¹⁴⁵

The groups' loyalties to their parties also are illustrated by their leaders' backgrounds. The groups were primarily led by individuals who recently served as staffers for House or Senate leadership figures or who previously occupied prominent positions in one of the national political parties.

Former staffers who served as principals for the groups include former top aides to Senate Majority Leader Harry Reid (D-Nev.), Senate Minority Leader Mitch McConnell (R-Ky.) and House Majority Leader Eric Cantor (R-Va.). Former party officials include two former chairmen of the Republican National Committee, and former executive directors of the National Republican Senatorial Committee and the Democratic Senatorial Campaign Committee. Other principals in the groups include a former chairman of the National Republican Congressional Committee and a former chairman of the Republican Governors Association.

'Soft Money' Era Illustrated the Corrupting Effects of Unregulated Contributions to the Parties

In 1995, the Federal Election Commission ruled that the national parties could use money not subject to contribution and source limits (that is, soft money) to pay for advocacy advertisements that referred to candidates but stopped short of advocating for the victory or defeat of a candidate.¹⁴⁶ The FEC's ruling ushered in an era of electioneering messages that dodged being regulated under election laws because they did not include certain "magic" words, such as "vote for." These messages were sometimes referred to as sham issue ads because they made a pretense of attempting to influence their audiences' views on issues rather than candidates. The parties paid for the ads with massive amounts of soft money.

¹⁴⁴ See, e.g., Kenneth P. Vogel and Tarini Parti, *Democratic Super PACs Get Jump on 2014, 2016*, POLITICO (Nov. 16, 2012), <http://bit.ly/TuOYQd>; Kenneth P. Vogel, *Crossroads: The ATM of the Right*, POLITICO, April 18, 2012, <http://politi.co/lkZzqy>; Mike Allen, *Sheldon Adelson: Inside the Mind of the Mega-donor*, POLITICO (Sept. 23, 2012), <http://politi.co/OkI9FE>; Karen Tumulty, *Karl Rove and His Super PAC Vow to Press On*, THE WASHINGTON POST (Nov. 10, 2012), <http://wapo.st/W0lfgp>; Mike Allen and Jim VandeHei, *GOP Groups Plan Record \$1 Billion Blitz*, POLITICO (May 30, 2012), <http://bit.ly/LedsqA>.

¹⁴⁵ *50 Politics to Watch: Political Operatives*, POLITICO (July 2012), <http://politi.co/NkXZla>.

¹⁴⁶ *McConnell v. FEC*, 540 U.S. 93, 123 (2003), citing FEC Advisory Opinion 1995-25 (Aug. 24, 1995), <http://bit.ly/WuIMGz>.

Combined soft money fundraising by the Democratic and Republican parties rose from \$88.1 million in 1992 to \$243.6 million in 1996, and to \$456.9 million in 2000. In 2002, receipts continued to rise, to \$457.6 million, even though it was just a mid-term cycle.¹⁴⁷

There was little dispute that soft money was being used to dodge restrictions in campaign finance laws. Lawmakers and donors alike saw soft money contributions as proxies for contributions directly to the parties.

A six-volume 1998 report by the Senate Committee on Governmental Affairs reached a bipartisan consensus that “the ‘soft money loophole’ had led to a ‘meltdown’ of the campaign finance system that had been intended ‘to keep corporate, union and large individual contributions from influencing the electoral process,’” the Supreme Court later recounted.¹⁴⁸

Sen. Susan Collins (R-Maine) said that hearings held by the Senate “provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble.”¹⁴⁹

In 2002, Congress passed the Bipartisan Campaign Reform Act (BCRA), commonly known as the McCain-Feingold law. BCRA prohibited the national parties from soliciting or spending soft money. In 2003, the U.S. Supreme Court upheld the soft money ban.¹⁵⁰

The *Citizens United* Decision Undermined the Ban on Soft Money Contributions to Parties

In *Citizens United*, the court acknowledged that the record in the legal challenge to BCRA “establishes that certain donations to political parties, called ‘soft money,’ were made to gain access to elected officials.”¹⁵¹ But, here, the court made a key distinction: “This case, however, is about independent expenditures, not soft money.”¹⁵²

Although the questions at hand in *Citizens United* may not have concerned soft money, the decision in the case had profound soft-money implications. The contributions received by many party-affiliated groups that have arisen from *Citizens United* have at a minimum closely paralleled to soft money. By a definition implicitly put forth by the Supreme Court in its

¹⁴⁷ The Center for Responsive Politics, *Soft Money Backgrounder* (viewed on Jan. 3, 2013), <http://bit.ly/crlh4k>.

¹⁴⁸ *McConnell v. FEC*, 540 U.S. 93, 129 (2003), citing FEC Advisory Opinion 1995-25.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, at 123 (2003).

¹⁵¹ *Citizens United*, *supra* note 1, at 910. The description in the *Citizen United* decision understated the findings in the judicial record on the corrupting power of soft money. The *McConnell* decision is replete with evidence that soft money contributions shaped policy, in addition to facilitating access to lawmakers. *See, e.g., McConnell v. FEC*, 540 U.S. 93, at 147-154 (2003).

¹⁵² *Id.*, at 910-911.

2003 decision that upheld the soft money ban, many contributions in 2012 literally constituted soft money.

"Candidates often directed potential donors to party committees *and tax-exempt organizations* that could legally accept soft money," the Supreme Court recounted in its 2003 *McConnell* decision.¹⁵³ [Emphasis added] Unlimited contributions to tax-exempt organizations that engage in electioneering epitomize the activities that *Citizens United* ended up permitting.

There are differences between the new groups' activities and the old soft money regime. For instance, the new groups may not legally coordinate with the parties. But, by all appearances, the new soft money groups have largely managed to replicate the parties. In this way, the unregulated groups essentially are becoming the parties. The new groups are led by individuals with roots in the parties' leadership structures, and many of the groups worked closely among themselves during the 2012 election cycle.

Republican groups gloated during the 2012 campaign about their success in coordinating their spending—with chief funder Sheldon Adelson policing their discipline. "If word got back to [Adelson] that a group wasn't cooperating, he'd cut them off," *Politico* reported a top official at one of the Republican groups saying. "It's to maximize the dollars. You don't want repetition. You don't people doubling up. He doesn't want to feel like his money is wasted."¹⁵⁴ Many of the most prominent Democratic groups, meanwhile, aligned themselves under an umbrella "joint fundraising committee."¹⁵⁵

The groups also appear to be reconstituting the national parties' programs of selling access for large soft money contributions. During the old soft money days "the six national party committees actually furnish[ed] their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access," the Supreme Court wrote in 2003.¹⁵⁶ Fast forward to 2012. During the Democratic convention, the joint fundraising committee consisting of Democratic super PACs published a menu of rewards for would-be donors, with \$100,000 donors receiving "an intimate gathering of Senior Democratic policy leaders from Capitol Hill and Democratic institutions."¹⁵⁷

Republican election lawyer Robert Kelnar summarized the outside groups' access-selling policies to the *New York Times*: "Super PACs on both sides of the aisle are worn

¹⁵³ *McConnell v. FEC*, 540 U.S. 93, 125 (2003).

¹⁵⁴ Mike Allen, *Inside the Mind of the Mega-Donor*, *POLITICO* (Sept. 23, 2012), <http://politi.co/0kj9FE>.

¹⁵⁵ See, e.g., *Super O Rama, Unity Convention 2012, Official Calendar of Events* (promoting events on Sept. 4, 2012-Sept. 6, 2012). Published by *POLITICO*, <http://bit.ly/MZPwgG>.

¹⁵⁶ *McConnell v. FEC*, 540 U.S. 93, 51 (2003).

¹⁵⁷ *Super O Rama, Unity Convention 2012, Official Calendar of Events*. (promoting events on Sept. 4, 2012-Sept. 6, 2012). Published by *POLITICO*, <http://bit.ly/MZPwgG>.

aggressively exercising the latitude that they already had under existing law but had not yet fully exploited," Kelner said. "If there's been any shift, I would say it is more with respect to providing policy briefings either to members or to major donors."¹⁵⁸

The ban on groups coordinating with candidates and party leaders proved ineffective in 2012. "The intermingling of outside groups and politicians has become so routine that even a meeting in the Capitol led by a party's top outside operative barely raises an eyebrow. The rules governing their interactions are in their infancy, so it's all but pointless for either side to cry foul," *Politico* wrote in August.¹⁵⁹

The Federal Election Commission helped erode the wall between super PACs and elected officials in 2011, when it ruled that candidates could attend super PAC fundraisers and raise money for super PACs as long as they did not personally request contributions in excess of \$5,000 (the maximum donation to a conventional PAC) or ask for contributions from sources that may not give money to conventional PACs, such as unions or contributions.¹⁶⁰

Campaign finance lawyer James Bopp, who aided the plaintiff in the *Citizens United* case, deemed the restrictions imposed by the FEC "meaningless" because "candidates will be able to endorse [outside groups] and ask donors to contribute to them."¹⁶¹

In sum, the party-allied groups' connections and objectives render them almost indistinct from the national party operations, except that the groups are not bound by the contribution limits of the campaign finance system. As such, contributions to them pose much the same threat of causing corruption, thereby undermining Congress's action to ban soft money and the Supreme Court's decision to uphold that ban.

¹⁵⁸ Nicholas Confessore, *At Convention, Lines Blur for Party and 'Super PACs,'* THE NEW YORK TIMES (Aug. 30, 2012), <http://nyti.ms/PU1hlE>.

¹⁵⁹ Jake Sherman, John Bresnahan and Kenneth P. Vogel, *A Super PAC-Politician Firewall? Not Quite,* POLITICO (Aug. 23, 2012), <http://politi.co/PxgaKq>.

¹⁶⁰ Brody Mullins and Katie Glueck, *FEC Lets Candidates Solicit Funds for Outside Groups,* THE WALL STREET JOURNAL (June 30, 2011), <http://blogs.wsj.com/washwire/2011/06/30/fec-lets-candidates-solicit-funds-for-outside-groups/>.

¹⁶¹ *Id.*

VII. Profiles of 'Soft Money' Groups

This section provide profiles of groups operating in the 2012 election cycle that existed for clear purpose of aiding the national parties or elected leaders within the parties.¹⁶²

Democratic Soft Money Groups

Majority PAC, Patriot Majority, American Bridge 21st Century

Majority PAC (a super PAC), Patriot Majority (consisting of a 501 (c)(4) entity and a super PAC) and American Bridge (a super PAC) were three interconnected groups that devoted themselves entirely to electing Democrats in the 2012 election cycle. They revealed their loyalties to the Democratic party in overt statements and in their staff members' connections to Senate Majority Leader Harry Reid (D-Nev.)

Majority PAC was founded by Susan McCue, a former chief of staff for Reid.¹⁶³ Other leaders of Majority PAC included Rebecca Lambe, described by *Politico* as a longtime strategist for Reid, and Craig Varoga, a prominent Democratic strategist with ties to Reid. The Center for Public Integrity reported that Jim Jordan, manager for a portion of the 2004 presidential campaign of Sen. John Kerry (D-Mass.) and a former executive director of the DSCC, served as a strategist for the group.¹⁶⁴ Harold Ickes, a deputy chief of staff in the Clinton White House and president of super PAC Priorities USA Action (which championed President Obama's reelection), was an advisor to Majority PAC.¹⁶⁵

Majority PAC advertised on its Web site that it was "fighting to protect the Democratic majority in the U.S. Senate in 2012."¹⁶⁶ The group promised to run "a transparent, low-overhead, take-no-prisoners Independent Expenditure campaign" to "aggressively contest critical open seats, exploit opportunities to take over Republican seats and expand our firewall."¹⁶⁷

Democratic leaders raised money for Majority PAC. Early in the spring of 2012, for instance, Reid and Sen. Charles Schumer (D-N.Y.) "made a pitch to billionaire hedge fund

¹⁶² The choice of groups included in this section should not be taken as a suggestion that other groups did not have close ties to one of the national parties or even work primarily in service of one of them. The groups selected simply represent the most clear-cut cases of those that fundamentally exist to further a party's efforts.

¹⁶³ Manu Raju, *Senate Dems Launch 'Super PAC,'* POLITICO (Feb. 22, 2011), <http://politi.co/gX3XIB>.

¹⁶⁴ *Profile: Majority PAC,* THE CENTER FOR PUBLIC INTEGRITY (Feb. 16, 2012), <http://bit.ly/TWB7AN>.

¹⁶⁵ *Id.*

¹⁶⁶ *Majority PAC, Home: Our Mission* (viewed on Nov. 20, 2012), <http://bit.ly/RRTTIO>.

¹⁶⁷ *Id.*

manager James Simons, who quickly turned around and cut a check on March 29 to Majority PAC for \$1 million," *Politico* reported.¹⁶⁸

During the summer of 2008, Reid, Schumer and Senate Majority Whip Richard Durbin (D-Ill.) attended Majority PAC fundraisers in New York, Chicago, Phoenix, Los Angeles, Washington and Dallas, *Politico* reported.¹⁶⁹

Sen. Al Franken (D-Minn.) and Sen. John Kerry (D-Mass.) each sent out e-mails to financial supporters urging them to back Majority PAC. They restricted their requests to asking for \$5,000, the maximum annual contribution to a regulated PAC, according to Majority PAC's executive director.¹⁷⁰

Reid and Durbin essentially acknowledged that Majority PAC was serving as an unofficial party committee. "The whole situation is too bad," Reid said in May 2012. *Citizens United* "is a terrible decision. But we can't disarm unilaterally, so we're going to do whatever we can to be competitive."¹⁷¹

Durbin spoke in similar terms. "What are you going to do ... when the other side has a nuclear bomb and you're fighting with rifles?" Durbin asked. "What the president has said is, 'I have no choice,' and the Democrats in the Senate have reached the same conclusion if we don't have a super PAC fund. We are just going to be steamrolled in some of these states."¹⁷²

Majority PAC reported spending \$37.5 million to influence elections in 2012. With the exception of \$282,500 dedicated to the presidential election, all of its work went toward aiding Democrats in U.S. Senate contests.¹⁷³

Patriot Majority, which consisted of both a super PAC and 501(c) entity, was less overt than Majority PAC about its partisan underpinnings. The super PAC's Web site says it was founded to "work independently to elect Senate and congressional candidates in targeted races who support these patriotic policies."¹⁷⁴ The groups' 501(c)(4) arm, which accounted for the bulk of expenditures by the Patriot Majority entities, portrays itself as an issue-advocacy group aiming to advance such goals as protecting voter rights, investing in

¹⁶⁸ John Bresnahan, Manu Raju and Jake Sherman, *Democrats Rush into Arms of Super PACs*, POLITICO (May 16, 2012), <http://politi.co/L4kpc9>.

¹⁶⁹ *Id.*

¹⁷⁰ Peter H. Stone, *Democrats and Republicans Alike Are Exploiting New Fundraising Loophole*, CENTER FOR PUBLIC INTEGRITY (July 27, 2011), <http://bit.ly/YRQCzp>.

¹⁷¹ John Bresnahan, Manu Raju and Jake Sherman, *Democrats Rush into Arms of Super PACs*, POLITICO (May 16, 2012), <http://politi.co/L4kpc9>.

¹⁷² *Id.*

¹⁷³ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/UTS2s7>.

¹⁷⁴ Patriot Majority PAC, *About page* (viewed on Nov. 20, 2012), <http://bit.ly/cRzNN7>.

education and improving the infrastructure of the United States.¹⁷⁵ The 501(c)(4) also claims to advocate "comprehensive campaign finance reform that increases transparency," although it did not disclose its donors in 2012.¹⁷⁶

But the groups' intentions were clear despite their vague statements of purpose. The president of the Patriot Majority groups is Varoga, a leader of Majority PAC.¹⁷⁷ The Web site for Varoga's consulting firm credits Patriot Majority with running "the successful independent-expenditure campaign to re-elect Senate Majority Leader Harry Reid" in 2010.¹⁷⁸ Varoga's Web site also lists myriad other Democratic candidates he has assisted.¹⁷⁹

Majority PAC and Patriot Majority were often reported as being affiliated,¹⁸⁰ and they clearly worked together. For instance, in July 2012, Majority PAC and Patriot Majority issued a press release touting a coordinated advertising campaign aiding Democratic senatorial candidates in North Dakota and Nevada.¹⁸¹

Patriot Majority's 501(c)(4) arm spent \$7.5 million in the 2012 election cycle for messages supporting Democrats or opposing Republicans.¹⁸² Its super PAC spent \$404,975, all in opposition to Republican presidential nominee Mitt Romney.¹⁸³

American Bridge, the logo of which resembles the red, white and blue swoop of the Obama campaign insignia, describes itself as "a progressive research and communications organization committed to holding Republicans accountable for their words and actions and helping you ascertain when Republican candidates are pretending to be something they're not."¹⁸⁴

American Bridge lists Majority PAC founder McGue as a director, along with Chairman Kathleen Kennedy Townsend (a former Democratic Maryland Lt. Governor and eldest daughter of Robert F. Kennedy) and David Brock (a Republican operative turned

¹⁷⁵ Web site of Patriot Majority [(501)(c)(4) entity], *Patriot Majority Action Plan* (viewed on Nov. 20, 2012), <http://bit.ly/OYpzcW>.

¹⁷⁶ *Id.* and Russ Choma, *Liberal Group with Ties to Unions Ends Donor Disclosure*, OPEN SECRETS BLOG (Aug. 23, 2012), <http://bit.ly/OYMLqI>.

¹⁷⁷ Manu Raju, *Senate Dems Launch 'Super PAC,'* POLITICO (Feb. 22, 2011), <http://politi.co/gX3XIB>

¹⁷⁸ Varoga & Associates, *About Us* (viewed on Jan. 3, 2013), <http://bit.ly/URLowN>.

¹⁷⁹ *Id.*

¹⁸⁰ *See, e.g.,* Russ Choma, *Liberal Group with Ties to Unions Ends Donor Disclosure*, OPEN SECRETS BLOG (Aug. 23, 2012), <http://bit.ly/OYMLqI>.

¹⁸¹ Press Release, Majority PAC, *Majority PAC and Patriot Majority Launch New TV Ads: North Dakota, Nevada Ads Part of Sustained Nationwide Campaign to Fight Back Against Right Wing Attacks* (July 10, 2012), <http://bit.ly/RXpqcB>.

¹⁸² Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/UTS978>.

¹⁸³ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/TagHn6>.

¹⁸⁴ American Bridge, *Who We Are* (viewed on Nov. 20, 2012), <http://bit.ly/UVBBpZ>.

Democratic advocate who founded the group Media Matters).¹⁸⁵ American Bridge spent \$339,484, all to oppose Republicans. Two-thirds of its spending served to oppose Republican presidential nominee Mitt Romney.

House Majority PAC

House Majority PAC describes itself "an independent-expenditure only committee ... that is designed to hold Republicans accountable and help win back the House Majority for Democrats. House Majority PAC is committed to building a long-term organization that can take on the Republican outside groups in the battle for the House Majority."¹⁸⁶

In 2012, the super PAC spent \$30.8 million, exclusively to either oppose Republicans or support Democrats, almost entirely in House races.¹⁸⁷

House Majority PAC was run by Ali Lapp, described by *Politico* as a "top aide at the Democratic Congressional Campaign Committee (DCCC) under then-Chairman Rahm Emanuel in 2006, when Democrats regained the majority."¹⁸⁸

"I do see House Majority PAC as a great complement to the DCCC," Lapp said. "We have set up House Majority PAC to become a permanent part of the Democratic infrastructure. It is not going away anytime soon."¹⁸⁹

The Sunlight Foundation reported that House Majority PAC distributed invitations for an Oct. 23, 2012, fundraiser dubbed a "Special Reception with Nancy Pelosi and Steve Israel."¹⁹⁰ Pelosi is the House Minority Leader. Israel is the chairman of the Democratic Congressional Campaign Committee. Ali Lapp's husband, John, is a "top adviser" to Israel, *Politico* reported.¹⁹¹

Separately, House Minority Leader Nancy Pelosi (D-Calif.) participated in events for House Majority PAC in New York, California and Texas, *Politico* reported.¹⁹²

During the Democratic convention, a joint fundraising committee calling itself "Unity Convention 2012," which described itself as a Joint Fundraising Committee established by

¹⁸⁵ Press Release, American Bridge 21st Century, *American Bridge 21st Century Names McCue to Board* (April 21, 2011), <http://bit.ly/SciNms>.

¹⁸⁶ House Majority PAC, *About Us* (viewed on Nov. 20, 2012), <http://bit.ly/MdPrE7>.

¹⁸⁷ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/SPcB30>.

¹⁸⁸ *50 Politics to Watch, Political Operatives*, *POLITICO* (July 12, 2012), <http://politi.co/NkXZJa>.

¹⁸⁹ *Id.*

¹⁹⁰ *Special Reception with Nancy Pelosi and Steve Israel for House Majority PAC*, Political Party Time Project, Sunlight Foundation (Oct. 23, 2012) (date reflects expected date of fundraising event, as disclosed on invitation), <http://bit.ly/VleZ1C>.

¹⁹¹ *50 Politics to Watch: Political Operatives*, *POLITICO* (July 2012), <http://politi.co/NkXZJa>.

¹⁹² John Bresnahan, Manu Raju and Jake Sherman, *Democrats Rush into Arms of Super PACs*, *POLITICO* (May 16, 2012), <http://politi.co/L4kpc9>.

House Majority PAC, Majority PAC, and Priorities USA. held a fundraising event it dubbed "Super O Rama."¹⁹³

The invitation for the event sought contributions ranging from \$25,000 to \$100,000, with various rewards for each. For instance, \$100,000 contributors were promised six tickets to a "Brunch with Democratic Leaders," which the solicitation described as "an intimate gathering of Senior Democratic policy leaders from Capitol Hill and Democratic institutions."¹⁹⁴

"Contributions to Unity Convention 2012 are unlimited and do not count against an individual or group's federal limit," the invitation said.¹⁹⁵

Republican Soft Money Groups

The Crossroads Groups

The seed for what became American Crossroads was planted in a 2008 *Wall Street Journal* op-ed by Karl Rove, the chief strategist for George W. Bush's presidential campaigns. The op-ed lamented what Rove perceived as a shortage of Republican outside groups to counter Democratic-leaning labor and advocacy groups. "GOP fund-raisers and allies must create cost-effective independent expenditure groups for House and Senate races, or Republicans will sink under the weight of negative ads, mail, calls and canvassing," Rove wrote.¹⁹⁶

American Crossroads creators were Rove and Ed Gillespie, a longtime Republican operative and lobbyist who served as chairman of the Republican National Committee from 2003 to 2005¹⁹⁷ and as a White House strategist during the second term of George W. Bush's presidency.¹⁹⁸

In 2010, following the *Citizens United* decision, representatives of 18 conservative groups met at Rove's Washington, D.C., house to discuss a budget for American Crossroads, which became a super PAC.¹⁹⁹ Shortly after American Crossroads was formed, its leaders created an offshoot, Crossroads GPS, which operates under Section 501(c)(4) of the tax code and, thus, may keep its donors secret. The Crossroads groups reported spending a combined

¹⁹³ *Super O Rama, Unity Convention 2012, Official Calendar of Events*. Published by POLITICO, <http://bit.ly/MZPweG>.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Karl Rove, *How the GOP Should Prepare for a Comeback*, THE WALL STREET JOURNAL (Dec. 11, 2008), <http://on.wsj.com/VHQC5P>. See also, Karen Tumulty, *Karl Rove and His Super PAC Vow to Press On*, THE WASHINGTON POST (Nov. 10, 2012), <http://wapo.st/W0lfgp>.

¹⁹⁷ *RNC Chairman: Democrats Increasingly 'Liberal, Elitist, Angry'*, CNN (Dec. 4, 2003), <http://bit.ly/ScKiNl>.

¹⁹⁸ Michael A. Fletcher, *As Rove Departs, President Again Turns to Gillespie*, THE WASHINGTON POST (Aug. 16, 2007), <http://wapo.st/UgrblW>.

¹⁹⁹ *Id.*

\$38.2 million to influence the 2010 elections.²⁰⁰ In 2012, they reported spending \$175.7 million combined, about 60 percent of which was by the super PAC.²⁰¹ All of the groups' spending in both elections was to aid Republicans.

The groups' president is Steven Law, a former executive director of the National Republican Senatorial Committee.²⁰² Law also previously served as a campaign manager and chief of staff for Senate Minority Leader Mitch McConnell (R-Ky.)²⁰³ The chairman of the board of American Crossroads is Mike Duncan, a former chairman, treasurer and general counsel of the Republican National Committee.²⁰⁴

American Crossroads' political director during the 2012 election cycle was Carl Forti. In 2006, Forti managed the \$82 million independent expenditure campaign of the National Republican Congressional Committee.²⁰⁵ He also served as political director for Mitt Romney's 2008 presidential campaign, and as vice president of Freedom's Watch, a group that spent \$17.5 million to aid Republicans in the 2008 elections.²⁰⁶ During the 2012 election cycle, Forti co-founded Restore Our Future,²⁰⁷ the Romney super PAC.

Jo Ann Davidson, a director of American Crossroads, is a former co-chair of the Republican National Committee.²⁰⁸ Haley Barbour, a former governor of Mississippi and recent chairman of the Republican Governors Association, was reportedly a fundraiser for American Crossroads²⁰⁹ as was former Florida Gov. Jeb Bush (R).²¹⁰

Jonathan Collegio, who previously served as press secretary for the National Republican Congressional Committee, acted as communications director for both groups.²¹¹

²⁰⁰ Public Citizen, *Stealth PACs Project* (2010), <http://bit.ly/a67DvY>.

²⁰¹ Web site of the Center for Responsive Politics (viewed on Nov. 20, 2012), <http://bit.ly/OWBCOH>.

²⁰² American Crossroads, *Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/RemaZ5> and *Crossroads GPS Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/PESxOh>.

²⁰³ Karen Tumulty, *Karl Rove and His Super PAC Vow to Press On*, THE WASHINGTON POST (Nov. 10, 2012), <http://wapo.st/W0lfeP>.

²⁰⁴ American Crossroads, *Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/RemaZ5>.

²⁰⁵ Andy Kroll, *Mitt Romney's \$12 Million Mystery Man: Meet Carl Forti, The Super-PAC Whiz Helping the GOP Front-Runner and Conservative Groups Rake in Piles of Dark Money*, MOTHER JONES (January-February 2012), <http://bit.ly/zLZNic>.

²⁰⁶ Web site of the Center for Responsive Politics (viewed on Nov. 20, 2012), <http://bit.ly/TepBTB>.

²⁰⁷ Andy Kroll, *Mitt Romney's \$12 Million Mystery Man: Meet Carl Forti, The Super-PAC Whiz Helping the GOP Front-Runner and Conservative Groups Rake in Piles of Dark Money*, MOTHER JONES (January-February 2012), <http://bit.ly/zLZNic>.

²⁰⁸ American Crossroads, *Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/RemaZ5>.

²⁰⁹ *PAC Profile: American Crossroads*, THE CENTER FOR PUBLIC INTEGRITY (updated Nov. 14, 2012), <http://bit.ly/RlOP2R>.

²¹⁰ Sheelah Kolhatkar, *Exclusive: Inside Karl Rove's Billionaire Fundraiser*, BUSINESS WEEK (Aug. 31, 2012), <http://buswk.cn/OAXDff>.

²¹¹ American Crossroads, *Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/RemaZ5> and *Crossroads GPS, Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/PESxOh>.

Rob Collins was a director of Crossroads GPS during the 2012 election cycle. Collins is a former president of the American Action Network (another pro-Republican outside spending group, discussed later), a former chief of staff to House Majority Leader Eric Cantor (R-Va.) and a former staffer for both the Republican National Committee and National Republican Senatorial Committee.²¹² American Crossroads reportedly shared offices with the American Action Network at one time, although official filings of the groups disclose separate addresses.²¹³

Befitting its name, American Crossroads was often reported as being at the nexus of an effort by Republican outside groups to coordinate their messages. For instance, *Politico* reported that Forti “helps lead a monthly meeting known as the Weaver Terrace Group, where officials from a variety of conservative groups, like the American Action Network, gather at the Crossroads offices to plan their political spending.”²¹⁴ The Weaver Terrace Group was named after Rove’s house, where American Crossroads was born.²¹⁵

YG (Young Guns) Groups

A trio of groups including the initials YG (after Young Guns) was created in 2011 to “build off the Young Guns movement”²¹⁶ of House Majority Leader Eric Cantor (R-Va.), House Majority Whip Kevin McCarthy (R-Calif.) and House Budget Committee Chairman (and eventual vice presidential nominee) Paul Ryan (R-Wis.)

The groups were the YG Action Fund, a super PAC that promised to “play offense using a muscular communications and advocacy apparatus to positively define Republicans,”²¹⁷ the YG Action Network, a 501(c)(4) group purporting to be “dedicated to supporting conservative center-right policies”²¹⁸ and the YG Polity Center, which was to “commission studies and run educational programs.”²¹⁹

Cantor, McCarthy and Ryan adopted the “Young Guns” label after they were billed as such on the cover of the *Weekly Standard* in September 2007.²²⁰ The trio supported other “Young Guns” in the 2008 elections, according to a timeline published on the YG Action Fund Web site.²²¹ Subsequently, “the National Republican Congressional Committee

²¹² Crossroads GPS, *Leadership Team* (viewed on Nov. 20, 2012), <http://bit.ly/PESxOh>.

²¹³ Michael Crowley, *The New GOP Money Stampede*, TIME (Sept. 16, 2010), <http://ti.me/Pok9bb>.

²¹⁴ Nicholas Confessore, *Ex-Romney Aide Steers Vast Machine of G.O.P. Money*, THE NEW YORK TIMES (July 21, 2012), <http://nyti.ms/QOKwVR>.

²¹⁵ Karen Tumulty, *Karl Rove and His Super PAC Vow to Press On*, THE WASHINGTON POST (Nov. 10, 2012), <http://wapo.st/W0lfgp>.

²¹⁶ YG Action, *About YG (Timeline)* (viewed on Nov. 20, 2012), <http://bit.ly/SPgFOI>.

²¹⁷ YG Action, *About YG* (viewed on Nov. 20, 2012), <http://bit.ly/QWCPVM>.

²¹⁸ YG Network, *About YG* (viewed on Nov. 20, 2012), <http://bit.ly/T2aKsm>.

²¹⁹ YG Action, *About YG (Timeline)* (viewed on Nov. 20, 2012), <http://bit.ly/SPgFOI>.

²²⁰ *Id.*

²²¹ *Id.*

adopted the Young Guns program as the candidate recruitment and training program," according to YG Action's account.²²² In 2010, the three congressmen published a book titled *Young Guns: A New Generation of Conservative Leaders*.²²³

YG Action spent \$4.7 million aiding Republican House candidates in 2012.²²⁴ The YG Network, the purported lobbying group, spent \$2.9 million on the elections, almost entirely in support of Republicans House candidates.²²⁵ The Web site of the YG Policy Center, the groups' charitable arm, provides a link to "research materials." But the only material presented is a survey concerning Americans' view on government health care reform. YG Policy Center also took credit for the survey in a press release, which said the survey's results demonstrated Americans' disapproval with the Affordable Healthcare Act, the health care reform law championed by President Obama.²²⁶

The groups are led by John Murray and Brad Dayspring, both former deputy chiefs of staff for Cantor.²²⁷ YG Network Vice President Nick Bouknight previously served as deputy chief of staff to McCarthy.²²⁸

Murray acknowledged that he frequently talks to Cantor in service of his responsibilities for the YG groups. "I see Eric as a function of me raising money, and in the course of conversation, does he ask me about my thoughts on communications things? Sure," Murray told *Politico* in August 2012. "I've talked to Eric because I have a relationship with him through YG Action Fund and fundraising just like the rest of the folks who do what I do for a living."²²⁹ Dayspring also continued to advise Cantor on communications strategy while working for the YG groups, *Politico* reported.²³⁰

Cantor himself "made phone calls and attended several events to raise money on behalf of the YG Action Fund," *Politico* reported.²³¹

YG Action reported \$5.9 million in contributions. Of that \$5 million came from casino mogul Sheldon Adelson and his wife, Miriam. The affiliated YG Network, which does not disclose donors, ran an initiative called "Woman Up" during the 2012 campaign to "research,

²²² *Id.*

²²³ *Id.*

²²⁴ Web site of the Center for Responsive Politics (viewed on Nov. 20, 2012), <http://bit.ly/ScMWTk>.

²²⁵ Web site of the Center for Responsive Politics (viewed on Nov. 20, 2012), <http://bit.ly/10pavw8>.

²²⁶ YG Policy Center, *Research Materials*, <http://bit.ly/AENQGS>.

²²⁷ YG Action, *About YG* (Timeline) (viewed on Nov. 20, 2012), <http://bit.ly/SPgFQI>.

²²⁸ *Id.*

²²⁹ Jake Sherman, John Bresnahan and Kenneth P. Vogel, *A Super PAC-Politician Firewall? Not Quite*, *POLITICO* (Aug. 23, 2012), <http://politi.co/PxgaKq>.

²³⁰ *Id.*

²³¹ John Bresnahan, Manu Raju and Jake Sherman, *Democrats Rush into Arms of Super PACs*, *POLITICO* (May 16, 2012), <http://politi.co/L4kpc9>.

communicate and prioritize the issues most important to women.”²³² During the 2012 Republican convention, Woman Up operated a pavilion named in honor of Miriam Adelson.²³³

American Action Network and Congressional Leadership Fund

These two groups, which share office space and personnel, are run by individuals with backgrounds in the upper echelons of the Republican Party leadership structure.

The American Action Network, a 501(c)(4) organization, reported to the Federal Election Commission that it made \$11.7 million in independent expenditures to influence the 2012 elections.²³⁴ The group’s efforts were entirely devoted to furthering the prospects of Republican candidates or hurting Democrats’ chances.²³⁵

The group was founded in 2010 by former Sen. Norm Coleman (R-Minn.) and Fred Malek, a former official in the Nixon administration and longtime GOP fundraiser.²³⁶ Brian Walsh, former political director for the National Republican Congressional Committee, is the group’s president.²³⁷ Walsh succeeded Rob Collins, a former top aide to Cantor, who moved to Crossroads GPS.

The American Action Network was conceived in 2010 as a successor to the National Council for a New America. The National Council was a project spearheaded by Republican “to help redefine the tarnished [GOP] party brand after the 2008 elections,” *The Wall Street Journal* reported.²³⁸

American Action Network’s directors include former Rep. and National Republican Congressional Committee Chairman Tom Reynolds (R-N.Y.)²³⁹; Boyden Gray, former counsel to President George H.W. Bush and a longtime Republican fundraiser; former Sen. George Allen (R-Va.); and former Rep. and longtime lobbyist Vin Weber (R-Minn.)²⁴⁰

The American Action Network reported to the Federal Election Commission 2010 that it spent \$4 million on independent expenditures (which expressly advocate for the election or defeat of a candidate) and \$15.4 million on electioneering communications (which cover

²³² YG Network “Woman Up!” Pavilion to be Named in Honor of Miriam Adelson, M.D., YG Network (blog) (Aug. 24, 2012), <http://bit.ly/NP07Hh>.

²³³ *Id.*

²³⁴ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/UH4DZP>.

²³⁵ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/OtaYwK>.

²³⁶ American Action Network / American Action Forum, FACT CHECK.ORG (Sept. 18, 2011), <http://bit.ly/Lzvjcl>.

²³⁷ American Action Network, *President* (viewed on Nov. 20, 2012), <http://bit.ly/T2frSt>.

²³⁸ Susan Davis, *Republican Leaders Forming New Political Group*, THE WALL STREET JOURNAL (Jan. 29, 2010), <http://on.wsj.com/9oQISM>.

²³⁹ American Action Network, *About* (viewed on Nov. 20, 2012), <http://bit.ly/nCGk73> and Celeste Katz, *Reynolds Out*, NEW YORK DAILY NEWS (March 19, 2008), <http://nydn.us/8eg64T>.

²⁴⁰ American Action Network, *About* (viewed on Nov. 20, 2012), <http://bit.ly/nCGk73>.

messages broadcast in the run-up to elections that refer to a candidate but do not include express advocacy).²⁴¹ The combined total of \$19.8 million represented the vast majority of the \$25.7 million in overall spending for 2010 that the group reported to the IRS.²⁴² This creates a strong impression that the group violated rules prohibiting a 501(c) group from devoting the majority of its efforts to influencing elections.

But the American Action Network reported to the IRS that it made only \$5.5 million in "political expenditures" in 2010.²⁴³ The IRS defines political expenditures as those financing "all functions that influence or attempt to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office ..."²⁴⁴ For the group's representation of its political expenditures in its filing with the IRS to be accurate, only \$1.5 million of the \$15.4 million it spent on advertisements mentioning candidates in the run-up to the 2010 elections could have been intended to influence the outcomes of elections.

The Congressional Leadership Fund, a super PAC, bills itself as "an independent expenditure fund focused solely and exclusively on maintaining the Republican majority in the House of Representatives."²⁴⁵ It spent \$9.5 million in the 2012 election cycle, entirely for messages opposing Democratic House candidate.²⁴⁶

News reports often characterize the fund as being linked to Speaker of the House John Boehner (R-Ohio).²⁴⁷ The super PAC's Web site reports that its inaugural event featured House Republican luminaries including Boehner, Cantor, McCarthy and National Republican Congressional Committee Chairman Pete Sessions (R-Texas). More than 80 Republican House members also attended the event, according to the super PAC's account.²⁴⁸

Boehner attended at least one Congressional Leadership Fund fundraiser, according to *Politico*.²⁴⁹ Barry Jackson, chief of staff to Boehner, appeared at an event with Pete Mechum, chief fundraiser for the group.²⁵⁰

²⁴¹ Kim Barker, *How Nonprofits Spend Millions on Elections and Call it Public Welfare*, PROPUBLICA (Aug. 24, 2012), <http://bit.ly/PoFNid>.

²⁴² American Action Network Form 990 (2010).

²⁴³ *Id.*

²⁴⁴ Internal Revenue Service, *Instructions for Schedule C (Form 990 or 990-EZ) (2010)*, <http://1.usa.gov/USDEv8>.

²⁴⁵ Congressional Leadership Fund, *About* (viewed on Nov. 20, 2012), <http://bit.ly/lh58X1>.

²⁴⁶ Web site of the Center for Responsive Politics (viewed on Dec. 30, 2012), <http://bit.ly/TOKCzB>.

²⁴⁷ See, e.g., David M. Drucker, *Congressional Leadership Fund Reports \$8.7M on Hand*, ROLL CALL (Oct. 25, 2012), <http://bit.ly/WuVIRd>.

²⁴⁸ Congressional Leadership Fund, *About* (viewed on Nov. 20, 2012), <http://bit.ly/lh58X1>.

²⁴⁹ John Bresnahan, Manu Raju and Jake Sherman, *Democrats Rush into Arms of Super PACs*, POLITICO (May 16, 2012), <http://politi.co/L4kpc9>.

The Congressional Leadership Fund reported receiving a \$2.5 million contribution from oil giant Chevron in October 2012.²⁵¹ That was the largest reported contribution from a publicly traded corporation to a super PAC.²⁵² The contribution also violated a federal law prohibiting government contractors from contributing money to federal political committee, Public Citizen charged in a complaint filed with the Federal Election Commission in January 2012.²⁵³

The Congressional Leadership Fund is chaired by Coleman, who serves the same function for the American Action Network. Malek, Reynolds, and Weber serve on the boards of the Congressional Leadership Fund and American Action Network. Brian Walsh, former political director for the NRCC, serves as president of both groups.²⁵⁴

"The Congressional Leadership Fund is an opportunity for center-right voices throughout America to support our House Republican majority," Malek said in a statement announcing the group's formation in 2011.²⁵⁵

Terry Holt, a former spokesman for Boehner (R-Ohio), served as a spokesman for the Congressional Leadership Fund. "The idea here is to leverage the political and fundraising support that there is for the Republican majority in the House and to get the resources it's going to take to defend against the other outside special interests that are intent on wresting control from the Republican majority and putting the House back in the hands of Nancy Pelosi," Holt told the *Huffington Post*.²⁵⁶

²⁵⁰ *Id.*

²⁵¹ Public Citizen analysis of Federal Election Commission data downloaded from the Sunlight Foundation (Jan. 3, 2013), www.sunlightfoundation.com.

²⁵² Dan Eggen, *Chevron Donates \$2.5 Million to GOP Super PAC*, THE WASHINGTON POST (blog) (Oct. 26, 2012), <http://wapo.st/P8Szmm>

²⁵³ Public Citizen v. Chevron USA Inc. and Congressional Leadership Fund, Complaint filed with the Federal Election Commission (March 2013), <http://bit.ly/14NazlY>.

²⁵⁴ Congressional Leadership Fund, *About* (viewed on Nov. 20, 2012), <http://bit.ly/1h58X1> and American Action Network, *About* (viewed on Nov. 20, 2012), <http://bit.ly/nCGk73>.

²⁵⁵ Paul Blumenthal, *House Republican Super PAC Ready to Raise Unlimited Funds to Retain GOP Majority*, THE HUFFINGTON POST (Dec. 13, 2012), <http://huff.to/qwoeFS>.

²⁵⁶ *Id.*

VIII. Conclusion: *Citizens United* Has Failed on Its Own Terms

The *Citizens United* decision relied on the assumption that the new expenditures it permitted would be independent. The facts in this report demonstrate that much of the spending in 2012 that flowed from the decision was by groups that plainly were not independent of the candidates or parties they aided.

The manifest absence of independence leaves little room to avoid concluding that the *Citizens United* decision has failed on its own terms.

One possible defense of the decision in light of the events of the 2012 elections would be to argue that the justices who signed it believed that any expenditure that passed legal muster as an "independent expenditure" must not threaten to cause corruption. Therefore, if the outside spending in 2012 complied with the law (meaning it did not run afoul with coordination laws), it must not have threatened to cause corruption even if much of the spending violated the intent of anti-coordination laws.

But such a rationalization would invalidate the court's logic in concluding that spending by independent entities is not potentially corrupting. That logic relied on the assumption that outside groups' spending would be "independent" as the word is defined in reality, not just in law.

Another possible way to exonerate the decision would be to place the blame for the absence of independence on overly permissive rules governing coordination.

Indeed, the 2012 elections showed coordination rules to be far too porous. But it is doubtful that tighter rules could guarantee truly independent behavior by outside spending groups. Coordination finance lawyers have long shown themselves to be masters at devising methods to comply with the letter of laws while trampling on their intent. It is doubtful they would be stymied by laws governing behavior as subtle as coordination.

There are plenty of reasons to dispute the court's core assumption that truly independent expenditures financed with large contributions (or funded from the treasuries of established businesses) do not pose a risk of causing corruption.

But one does not need to prove the danger of truly independent activities to conclude that the theory put forth in the *Citizens United* decision is fatally flawed. The inability to ensure that outside groups will truly act independently renders the *Citizens United* experiment unsalvageable.

Appendix

Independent Expenditures by Single Candidate Super PACs

Group	Group's Legal Status	Amount Spent	Candidate Supported
Restore Our Future	Super PAC	\$12,655,243	Mitt Romney
Priorities USA Action	Super PAC	\$66,182,126	Barack Obama
Americans for Prosperity	501(c)	\$39,038,256	Mitt Romney
Winning Our Future	Super PAC	\$17,007,762	Newt Gingrich
Red, White & Blue	Super PAC	\$7,528,534	Rick Santorum
Texas Conservatives Fund	Super PAC	\$5,872,431	David Dewhurst
Independence 501 PAC	Super PAC	\$4,921,400	George Allen
Republican Jewish Coalition	501(c)	\$4,595,671	Mitt Romney*
Make Us Great Again	Super PAC	\$3,956,499	Rick Warren
Our Destiny PAC	Super PAC	\$2,804,234	Jon Huntsman
American Energy Alliance	501(c)	\$2,629,000	Mitt Romney
Treasure Coast Jobs Coalition	Super PAC	\$2,436,141	Allen West
New Hampshire Jobs & Prosperity Center	501(c)	\$2,000,000	Mitt Romney
Restore America's Voice PAC	Super PAC	\$1,797,419	Mitt Romney
Republican State Leadership Alliance	Super PAC	\$1,788,000	Mitt Romney
People for the American Way	527	\$1,737,566	Barack Obama*
When It Comes to America	Super PAC	\$1,700,000	Mitt Romney
Ending Spending 501	Super PAC	\$1,718,090	Richard Mourdock
PAI 4043	Super PAC	\$1,700,000	Eric Keating
Super PAC for America	Super PAC	\$1,508,678	Mitt Romney
RISE PAC	501(c)	\$1,488,000	Mitt Romney
Americans Elect	501(c)	\$1,428,495	Angus King
Center for American Progress	Super PAC	\$1,400,000	Barack Obama
America 360 Cmte	Super PAC	\$1,250,727	Scott Brown (Mass)
Local Voices	Super PAC	\$1,150,000	Barack Obama
Rethink PAC	Super PAC	\$1,158,830	Elizabeth Warren
America Shines	Super PAC	\$1,090,000	Tax Cuts
Special Operations OPSIC Education Fund	501(c)	\$982,000	Mitt Romney
Texans for America's Future	Super PAC	\$955,802	Barack Obama
Republican Union PAC	Super PAC	\$950,000	Mitt Romney
Conservative Renewal	Super PAC	\$605,500	David Dewhurst
Michigan League of Conservation Voters	501(c)	\$860,237	Gary McDowell
Black Men Vote	Super PAC	\$822,761	Barack Obama
Hispanic Leadership Fund	501(c)	\$838,419	Mitt Romney
Veterans for a Strong America	501(c)	\$762,122	Mitt Romney
Friends of the Majority	Super PAC	\$745,755	Ben Quayle
Republican State Leadership Fund	Other/Unknown	\$692,076	Barack Obama
SecureAmericaNow.org	501(c)	\$670,660	Mitt Romney

Public Citizen

Super Connected

Group	Group's Legal Status	Amount Spent	Candidate Supported
Fund for Freedom	Super PAC	\$670,600	Undaunted
American Chemistry Council	501(c)	\$648,600	Tommy Thompson
Pro-Freedom Initiative	Super PAC	\$645,410	R. Durant
Campaign for American Values	Super PAC	\$582,362	Mitt Romney
Family Freedom Coalition	501(c)	\$542,650	Mitt Romney
American Foundations Cmte.	Super PAC	\$535,082	George Holding
Crossroads Generation	Super PAC	\$518,588	Mitt Romney
Republican Super PAC	Super PAC	\$512,095	Art Robinson
Alabama Society of Justice & Liberty	501(c)	\$509,906	Mitt Romney
California for Integrity in Government	Super PAC	\$502,817	Brad Sherman*
Reform & Liberty PAC	Super PAC	\$500,600	Chris Robinson
Connecticut's Future PAC	Super PAC	\$495,734	Chris Murphy
Hispanic Leadership Foundation	Super PAC	\$495,480	Mitt Romney
Fight for the Dream	Super PAC	\$483,800	Tom Smith
Indiana Values Super PAC	Super PAC	\$459,600	Richard Lugar
SEIU Local 1199 United Healthcare Workers	501(c)	\$451,061	Barack Obama
Republican Senate Campaign Committee	Other/Unknown	\$440,000	Mitt Romney
Santa Rita Super PAC	Super PAC	\$427,375	Ron Paul
Save the Future	Super PAC	\$420,000	Barack Obama
Concerned Women for American Leg. Act.	501(c)	\$405,350	Mia Love
Protect the Harvest	Other/Unknown	\$395,532	Steve King
Protect Our Schools Fund	Super PAC	\$367,974	John Tierney
Mayors Against Illegal Guns Action Fund	501(c)	\$351,183	Barack Obama
Defenders of Wildlife Action Committee	Super PAC	\$348,482	Marlene Winberg
Progress for Washington	Super PAC	\$341,107	Laura Ruderman
The Catholic Assn.	501(c)	\$335,000	Mitt Romney
Saving Florida's Future	Super PAC	\$306,818	Bill Nelson
NRDC Action Fund	501(c)	\$286,740	Barack Obama
Believe in Indiana	Other/Unknown	\$284,976	Joe Donnelly
New Directions for America	Super PAC	\$282,137	Dan Robert
Citizens for Community Values Action	Other/Unknown	\$274,367	Mitt Romney
New Jersey Education Assn. (NJEA)	501(c)	\$268,387	John Adler
American Jobs PAC	Super PAC	\$259,691	Newt Gingrich
Strong Economy for Massachusetts	Super PAC	\$255,125	Richard Tisei
Let Freedom Ring	501(c)	\$224,086	Mitt Romney
Strong America Now	Super PAC	\$220,145	Newt Gingrich
Marylanders for Marriage Equality	501(c)	\$220,000	Barack Obama
Louisiana Prosperity	Super PAC	\$214,407	Charles Boustany

Group	Group's Legal Status	Amount Spent	Candidate Supported
Central Valley Independent PAC	Super PAC	\$210,929	Brian Whelan
McAfee PAC	Other/Unknown	\$204,479	Mitt Romney
Americans for Rick Perry	Super PAC	\$202,865	Rick Perry
Pat Tillman PAC	Other/Unknown	\$190,898	Timmy Baldwin
USA Super PAC	Super PAC	\$190,085	Richard Mourdock
Peoples Majority	Super PAC	\$183,155	Perry/Hindley
Painters & Allied Trades Union	501(c)	\$182,758	Barack Obama
Booster for Jobs	Super PAC	\$175,135	Richard Mourdock
Freedom Fund for America's Future	Super PAC	\$175,145	Oppose Tom Smith
Constitutional Action Program PAC	Super PAC	\$172,720	Michael Williams
Revolution PAC	Super PAC	\$172,141	Ron Paul
Winning Together	Super PAC	\$170,000	Nancy Singletary
American Postal Workers Union	Other/Unknown	\$167,398	Barack Obama*
Environment America	Other	\$160,860	Mitt Romney
1911 United	Super PAC	\$157,323	Barack Obama
Painters & Allied Trades Union	Super PAC	\$139,353	Maria Elitoff
Leaders for Families	Super PAC	\$135,468	Rick Santorum
Constitutional Action Program PAC	Super PAC	\$134,777	Rick Santorum
Montana League of Rural Voters	501(c)	\$133,555	John Tester
United for Jobs	Other	\$128,748	Rick Santorum
Character Counts PAC	Super PAC	\$131,890	Oppose T. Radel
Constitutional Action Program PAC	Super PAC	\$127,390	Oppose T. Radel
Natural Guardian LLC	Other/Unknown	\$122,767	Mitt Romney
Constitutional Action Program PAC	Super PAC	\$120,000	Timmy Baldwin
Real Street Conservatives PAC	Super PAC	\$120,000	Craig James
America for Jobs	Super PAC	\$119,178	Patrick Murphy
America vs. Obama	Super PAC	\$118,449	Mitt Romney
United Action PAC	Super PAC	\$117,800	Mitt Romney
Our Community Votes	501(c)	\$105,795	Robert Menendez
America for Jobs	Super PAC	\$105,000	Ben Ray Lujan
FedUp PAC	Super PAC	\$102,544	Mitt Romney*
Critical Choices for America PAC	Super PAC	\$100,480	Mitt Romney
Cmte. for an Effective & Trusted Cngrsman	Super PAC	\$100,000	Henry Waxman

Source: The Center for Responsive Politics (www.opensecrets.org). Figures as of Dec. 30, 2012.

* Group spent less than 1 percent of its resources on race(s) involving other candidates.



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OFFICE OF THE SECRETARY

MUR # 6726

March 11, 2013

Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

SENSITIVE

RE: Addendum to MUR 6726 – Request for investigation of Chevron and the Congressional Leadership Fund for violation of 2 USC 441c, the prohibition against campaign contributions by Federal government contractors

Based on the address indicated in the FEC's database, our complaint filed on March 5, 2013, stated that Chevron Products Company, which is listed at that address, was the donor of Chevron's \$2.5 million contribution to the Congressional Leadership Fund. Chevron Products Company is a name under which Chevron USA, Inc., which has a great many Federal contracts, does business, and is not a separate company.

Chevron has responded in the media on March 5, 2013, that it does not believe it violated the law against Federal contractors making campaign contributions because it contributed through a corporation (Chevron Corporation) different from Chevron USA, Inc., which has most of the government contracts. Even if that is the case, it appears based on data from SpendingUSA.gov that Chevron Corporation itself had government contracts in 2012, and a contribution would be illegal if any of those contracts was either in force or being negotiated when the contribution was made.

In light of Chevron's public statements, we request that the FEC investigate which Chevron entity made the contribution and, regardless of whether it was Chevron Corporation or Chevron USA, determine whether the contributor had outstanding federal contracts (or negotiations for them) at the time of the contribution.

The original complaint filed by Public Citizen, Friends of the Earth, Greenpeace and Oil Change International provided a list of Federal contracts received by Chevron USA, Inc. A list of Federal contracts received by Chevron Corporation is hereby attached.

Sincerely,

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen

1404435347

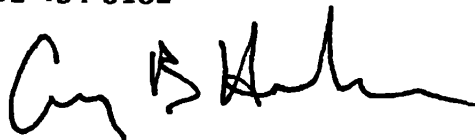
VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and beliefs, true.

Sworn pursuant to 18 U.S.C. 1001.

For Complainant:

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen
215 Pennsylvania Avenue SE
Washington, D.C. 20003
202-454-5182



DISTRICT of COLUMBIA

Sworn and subscribed before me
This 11 day of March, 2013

Mary F. Vincent
Notary Public

MARY F. VINCENT
Notary Public, District of Columbia
My Commission Expires March 31, 2013

14044353348





Search

Prime Award Advanced Search Sub-award Advanced Search
NOTE: You must click here for very important D&B Information.

Prime Award Spending Data

View Sub-award Data

Filters: Search Term: Chevron Corporation Clear All

Map Timeline Advanced Search

By Type of Spending

Table with 2 columns: Type of Spending, Count. Includes Contracts (117) and Loans (1).

More/Fewer By Type of Spending

By Agency

Table with 2 columns: Agency, Count. Includes Department of Defense (102), Veterans Affairs (5), etc.

More/Fewer By Agency

By Extent Completed

Table with 2 columns: Extent Completed, Count. Includes Full and Open Compet. (84), etc.

More/Fewer By Extent Completed

By Recipient

Table with 2 columns: Recipient, Count. Includes Chevron Corporation (85), Parman Energy Corp. (11), etc.

More/Fewer By Recipient

By Product/Service Code

Table with 2 columns: Product/Service Code, Count. Includes Lease-Rent of Fuel S. (31), Oil & Grease-Cut, Lub. (27), etc.

More/Fewer By Product/Service Code

By Principal NAICS Description

Table with 2 columns: Principal NAICS Description, Count. Includes Petroleum Refineries (32), Other Warehousing An. (31), etc.

More/Fewer By Principal NAICS Description

By Fiscal Year

Table with 2 columns: Fiscal Year, Count. Includes 2011 (30).

14044353349

Last View

- List of territories: Rhode Island, Delaware, Maryland, District of Columbia, American Samoa, Guam, Micronesia, Marshall Islands, Northern Mariana Islands, Palau, Puerto Rico, U.S. Minor Outlying Islands, U.S. Virgin Islands.

\$0.0 to \$40.3M

Sort by: Dollars Obligated Transactions/page: 25 Export Summary View

1 2 3 4 5 Next Last

Total Dollars: \$95,770,960

Transactions: 1 to 25 of 118

Transaction # 1 (Delivery Order)

IDVPIID/PIID/MOD: SP060007D0510 / B001 / 0

Recipient: CHEVRON CORPORATION (7925) 6001 BOLLINGER CANYON RD, SAN RAMON, California
Program Source: Not reported
Department/Agency: Department of Defense
Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE
Description: TURBINE FUEL, AVIATION (JP8)

Signed Date: 08-30-2007
Obligation Amount: \$37,552,215

Transaction # 2 (Definitive Contract)

PIID/MOD: SP080095C5541 / P00083

Recipient: CHEVRON CORPORATION 6001 BOLLINGER CANYON RD, SAN RAMON, California
Reason for Modification: EXERCISE AN OPTION
Program Source: Not reported
Department/Agency: Department of Defense
Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
Description: CONTRACTOR OWNED CONTRACTOR OPERATED (COCO) STORAG ... (More)

Signed Date: 08-23-2010
Obligation Amount: \$16,360,034

Transaction # 3 (Definitive Contract)

PIID/MOD: SP080095C5541 / P00065

Recipient: CHEVRON CORPORATION 6001 BOLLINGER CANYON RD, SAN RAMON, California
Reason for Modification: FUNDING ONLY ACTION
Program Source: Not reported
Department/Agency: Department of Defense
Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS

Signed Date: 08-24-2007
Obligation Amount: \$13,088,027

Description: COCO STORAGE
 Transaction # 4 (Delivery Order)
 IDVPHD/PIID/MOD: SP06008D0753 / B001 / 0
 Recipient: CHEVRON CORPORATION (7925)
 6465 DRESSAGE CROSSING, CUMMING, Georgia
 Program Source: Not reported
 Department/Agency: Department of Defense
 Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE
 Description: LUBES
 Signed Date: 02-08-2008
 Obligation Amount: \$5,780,950

2009 18
 2012 13
 2010 12
 2007 11
 More/Fewer By Fiscal Year

Transaction # 5 (Delivery Order)
 IDVPHD/PIID/MOD: SP060011D0753 / B001 / 0
 Recipient: CHEVRON CORPORATION
 6101 BOLLINGER CANYON RD BR1, SAN RAMON, California
 Program Source: 97-4930
 Department/Agency: Department of Defense
 Product/Service: 9150: OIL & GREASE-CUT,LUBR & HYDRAULIC
 Description: CONTRACT AWARD FOR LOG AND LTL LUBES.
 Signed Date: 03-31-2011
 Obligation Amount: \$4,842,240

Transaction # 6 (Delivery Order)
 IDVPHD/PIID/MOD: SP060011D0757 / B001 / 0
 Recipient: CHEVRON CORPORATION
 6101 BOLLINGER CANYON RD BR1, SAN RAMON, California
 Program Source: 97-4930
 Department/Agency: Department of Defense
 Product/Service: 9150: OIL & GREASE-CUT,LUBR & HYDRAULIC
 Description: LUBRICATING OILS.
 Signed Date: 06-17-2011
 Obligation Amount: \$4,375,211

Transaction # 7 (Delivery Order)
 IDVPHD/PIID/MOD: SP060010D0757 / B001 / 0
 Recipient: CHEVRON CORPORATION
 6101 BOLLINGER CANYON RD BR1, SAN RAMON, California
 Program Source: Not reported
 Department/Agency: Department of Defense
 Product/Service: 9150: OIL & GREASE-GUT,LUBR & HYDRAULIC
 Description: LUBRICATING OILS
 Signed Date: 03-25-2010
 Obligation Amount: \$4,170,720

Transaction # 8 (Definitive Contract)
 PIID/MOD: SP060095C5541 / P00054
 Recipient: CHEVRON CORPORATION
 6001 BOLLINGER CANYON RD, SAN RAMON, California
 Reason for Modification: FUNDING ONLY ACTION
 Program Source: Not reported
 Department/Agency: Department of Defense
 Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
 Description:
 Signed Date: 03-23-2006
 Obligation Amount: \$3,272,007

Transaction # 9 (Definitive Contract)
 PIID/MOD: SP060095C5541 / P00056
 Recipient: CHEVRON CORPORATION
 6001 BOLLINGER CANYON RD, SAN RAMON, California
 Reason for Modification: FUNDING ONLY ACTION
 Program Source: Not reported
 Department/Agency: Department of Defense
 Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
 Description:
 Signed Date: 07-26-2006
 Obligation Amount: \$3,272,007

Transaction # 10 (Definitive Contract)
 PIID/MOD: SP060095C5541 / 0
 Recipient: CHEVRON CORPORATION
 6001 BOLLINGER CANYON RD, SAN RAMON, California
 Program Source: Not reported
 Department/Agency: Department of Defense
 Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
 Description:
 Signed Date: 08-02-2004
 Obligation Amount: \$2,811,000

Transaction # 11 (Definitive Contract)
 PIID/MOD: SP060095C5541 / P00050
 Recipient: CHEVRON CORPORATION
 6001 BOLLINGER CANYON RD, SAN RAMON, California
 Reason for Modification: FUNDING ONLY ACTION
 Program Source: Not reported
 Department/Agency: Department of Defense
 Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
 Description:
 Signed Date: 08-15-2005
 Obligation Amount: \$1,961,876

1404433350

Description:

Transaction # 12 (Definitive Contract)

PIID/MOD: N0903300C5139 / 0

Recipient: CHEVRON TRANSPORT CORPORATION
 11 CHURCH STREET, HAMILTON, Unknown
 Signed Date: 06-06-2000
 Program Source: Not reported
 Department/Agency: Department of Defense
 Obligation Amount: \$815,000
 Product/Service: V124: MARINE CHARTER FOR THINGS
 Description:

Transaction # 13 (Definitive Contract)

PIID/MOD: N4740800C7146 / 0

Recipient: CHEVRON CORPORATION
 575 MARKET ST, SAN FRANCISCO, California
 Signed Date: 06-23-2000
 Program Source: Not reported
 Department/Agency: Department of Defense
 Obligation Amount: \$694,819
 Product/Service: R499: OTHER PROFESSIONAL SERVICES
 Description:

Transaction # 14 (Delivery Order)

IDVPIID/PIID/MOD: N4740800D8126 / 0006 / 0

Recipient: CHEVRON CORPORATION
 575 MARKET ST, SAN FRANCISCO, California
 Signed Date: 09-26-2001
 Program Source: Not reported
 Department/Agency: Department of Defense
 Obligation Amount: \$623,274
 Product/Service: R499: OTHER PROFESSIONAL SERVICES
 Description:

Transaction # 15 (Definitive Contract)

PIID/MOD: SP060001C5100 / P00004

Recipient: CHEVRON CORPORATION
 575 MARKET ST, SAN FRANCISCO, California
 Signed Date: 02-05-2004
 Reason for Modification: FUNDING ONLY ACTION
 Program Source: Not reported
 Obligation Amount: \$383,064
 Department/Agency: Department of Defense
 Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
 Description:

Transaction # 16 (Definitive Contract)

PIID/MOD: SP060001C5100 / P00002

Recipient: CHEVRON CORPORATION
 575 MARKET ST, SAN FRANCISCO, California
 Signed Date: 01-13-2003
 Reason for Modification: FUNDING ONLY ACTION
 Program Source: Not reported
 Obligation Amount: \$383,064
 Department/Agency: Department of Defense
 Product/Service: X173: LEASE-RENT OF FUEL STORAGE BLDGS
 Description:

Transaction # 17 (Delivery Order)

IDVPIID/PIID/MOD: N4740800D8126 / 0005 / 0

Recipient: CHEVRON CORPORATION
 575 MARKET ST, SAN FRANCISCO, California
 Signed Date: 08-23-2001
 Program Source: Not reported
 Department/Agency: Department of Defense
 Obligation Amount: \$174,132
 Product/Service: R499: OTHER PROFESSIONAL SERVICES
 Description:

Transaction # 18 (Delivery Order)

IDVPIID/PIID/MOD: N4740800D8126 / HH20 / P00001

Recipient: CHEVRON CORPORATION
 575 MARKET ST, SAN FRANCISCO, California
 Signed Date: 08-25-2000
 Program Source: Not reported
 Department/Agency: Department of Defense
 Obligation Amount: \$180,505
 Product/Service: R499: OTHER PROFESSIONAL SERVICES
 Description:

Transaction # 19 (Delivery Order)

IDVPIID/PIID/MOD: SP060007D0510 / B001 / 4

Recipient: CHEVRON CORPORATION (7925)
 6001 BOLLINGER CANYON RD, SAN RAMON, California
 Signed Date: 07-16-2008
 Reason for Modification: OTHER ADMINISTRATIVE ACTION
 Program Source: Not reported
 Obligation Amount: \$143,348
 Department/Agency: Department of Defense
 Product/Service: 9130: LIQUID PROPELLANTS -PETROLEUM BASE
 Description:

1404435351

Description: JP8

Transaction # 20 (Delivery Order)

IDVPIID/PIID/MOD: N4740800D8126 / 0002 / 0

Recipient:	CHEVRON CORPORATION 575 MARKET ST, SAN FRANCISCO, California	Signed Date:	12-28-2000
Program Source:	Not reported	Obligation Amount:	\$124,563
Department/Agency:	Department of Defense		
Product/Service:	R499: OTHER PROFESSIONAL SERVICES		
Description:			

Transaction # 21 (Definitive Contract)

PIID/MOD: SP060095C5541 / P00043

Recipient:	CHEVRON CORPORATION 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	08-02-2004
Reason for Modification:	FUNDING ONLY ACTION	Obligation Amount:	\$101,343
Program Source:	Not reported		
Department/Agency:	Department of Defense		
Product/Service:	X173: LEASE-RENT OF FUEL STORAGE BLDGS		
Description:	... (More)		

Transaction # 22 (Delivery Order)

IDVPIID/PIID/MOD: SP060011D0757 / B081 / P3

Recipient:	CHEVRON CORPORATION 6101 BOLLINGER CANYON RD BR1, SAN RAMON, California	Signed Date:	03-15-2012
Reason for Modification:	OTHER ADMINISTRATIVE ACTION	Obligation Amount:	\$100,985
Program Source:	97-4930		
Department/Agency:	Department of Defense		
Product/Service:	9150: OILS AND GREASES: CUTTING, LUBRICATING, AND HYDRAULIC		
Description:	THIS MODIFICATION INCREASES CLINS ON THE SUBJECT C ... (More)		

Transaction # 23 (Definitive Contract)

PIID/MOD: SP060095C5541 / P00078

Recipient:	CHEVRON CORPORATION 6001 BOLLINGER CANYON RD, SAN RAMON, California	Signed Date:	12-04-2009
Reason for Modification:	FUNDING ONLY ACTION	Obligation Amount:	\$100,000
Program Source:	Not reported		
Department/Agency:	Department of Defense		
Product/Service:	X173: LEASE-RENT OF FUEL STORAGE BLDGS		
Description:	COCO STORAGE SERVICES - SUPPORT FUNDING FOR A 300 ... (More)		

Transaction # 24 (Delivery Order)

IDVPIID/PIID/MOD: F3365799D0028 / 0048 / 0

Recipient:	NORTHROP GRUMMAN CORPORATION 8900 WASHINGTON BLVD, PICO RIVERA, California	Signed Date:	06-04-2010
Program Source:	Not reported	Obligation Amount:	\$86,575
Department/Agency:	Department of Defense		
Product/Service:	1560: AIRFRAME STRUCTURAL COMPONENTS		
Description:	ADDITIONAL 2GAD CHEVRON IML KITS ACQ PLANNING/PROP ... (More)		

Transaction # 25 (Delivery Order)

IDVPIID/PIID/MOD: N4740800D8126 / 0004 / 0

Recipient:	CHEVRON CORPORATION 575 MARKET ST, SAN FRANCISCO, California	Signed Date:	08-22-2001
Program Source:	Not reported	Obligation Amount:	\$84,979
Department/Agency:	Department of Defense		
Product/Service:	R499: OTHER PROFESSIONAL SERVICES		
Description:			

All prime awardee data as reported by agencies. The agency prime awardee data includes agency submissions as of 03/05/2013 and the contracts prime awardee data includes procurement data downloaded from FPDS as of 03/05/2013. Please note that availability of OOB contracts prime awardee data is delayed by 90 days to protect operations tempo. All sub-awardee data is based on prime awardee submissions from FARS, for sub-contracts as of 03/05/2013 and for sub-grants as of 03/05/2013. For more information about the data, data sources, and data timeliness, please see Learn.

The quality procurement data is maintained by the federal agencies by annual verification and validation of their data in FPDS. For more information on how the quality is maintained and what the government is doing in ensuring the quality please see (PDF).

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May 1, 2013

BY HAND DELIVERY

Jeff S. Jordan
 Supervisory Attorney
 Complaints Examination &
 Legal Administration
 Federal Election Commission
 999 E Street, NW
 Washington, DC 20004

2013 MAY -1 PM 2:49
 CELA
 FEDERAL ELECTION
 COMMISSION

Re: MUR 6726 (Chevron Corporation, Chevron U.S.A. Inc.)

Dear Mr. Jordan:

We write on behalf of our clients, Chevron Corporation and Chevron U.S.A. Inc., in response to the noncomplaint filed by Public Citizen, Friends of the Earth, Oil Change International, and Greenpeace USA. The complaint alleges that Chevron Corporation and/or Chevron U.S.A. Inc. violated section 441c of the Federal Election Campaign Act of 1971 ("FECA") by making a contribution to the Congressional Leadership Fund as a federal contractor.

The complaint lacks factual and legal support to meet the minimum thresholds necessary to allege a violation of the law. Chevron Corporation was not a federal contractor at the time it made a contribution to the Congressional Leadership Fund. Even if it had been, it could not constitutionally have been prohibited from contributing to a Super PAC. For these reasons, the Commission should find there is no reason to believe that a violation of the law has occurred and should dismiss the complaint with no further action.

SUMMARY OF ARGUMENT

In October of 2012, Chevron Corporation made a \$2,500,000 contribution to the Congressional Leadership Fund. The Congressional Leadership Fund is an independent expenditure-only federal political committee registered with the Federal Election Commission ("FEC") (Committee ID No. C00504530), a type of entity often referred to as a "Super PAC." In light of the United States Supreme Court's decision in *Citizens United v. FEC*, the United States Court of Appeals for the District of Columbia Circuit's decision in *SpeechNow v. FEC*, and the FEC Advisory Opinions in *Commonsense Ten* and *Club for Growth*, it is well settled that a corporation may make a contribution to a Super PAC without limitation as to amount.

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Chevron Corporation is a Delaware corporation publicly traded on the New York Stock Exchange. As a general matter, Chevron Corporation does not sell any goods or services to anyone. Instead, it owns shares in, allocates capital to, reviews financial and performance goals for, monitors the performance of, and provides general policy guidelines to numerous global subsidiaries and affiliates, which are separate holding or operating companies, under the direction and control of their own management, engaged in all aspects of worldwide energy operations. As a consequence, Chevron Corporation's primary assets consist of the stock of other companies, and its income is primarily derived from the dividends of those companies.

Chevron Corporation holds 100% of the stock of Chevron Investments Inc. Chevron Investments Inc. in turn owns the stock of other companies, including Texaco Inc. Texaco Inc., in turn, owns the stock of other companies, including Chevron U.S.A. Holdings Inc. Chevron U.S.A. Holdings Inc., in turn, owns 100% of the shares of Chevron U.S.A. Inc.

Chevron U.S.A. Inc. is actively engaged in virtually all branches of the petroleum industry as well as mineral, geothermal, and other activities, and derives a relatively insignificant amount of its revenue from contracts it either directly has with the federal government, or that one of its subsidiaries, or a subsidiary of a subsidiary, may have from time to time with the federal government. Chevron Corporation derives dividend revenues from subsidiary companies other than Chevron U.S.A. Inc. in excess of the sum it contributed to the Congressional Leadership Fund. In addition, Chevron Corporation's revenues generated by its subsidiary entities in 2012 from private sector sources (i.e., sources other than federal contracts) dwarfed the amount contributed to the Congressional Leadership Fund.

As detailed below, while the USASpending.gov website is the sole basis for the complainants' allegation that Chevron Corporation was a federal contractor, that database does not always provide an accurate record of the specific corporate entity with which the federal government has entered into an agreement. For example, if the operator of a mini-mart and gas station that has been licensed to sell gas under the name "Chevron Mini-Mart" sells products to the federal government, the USASpending.gov database may record that as a contract between "Chevron Corporation" and the federal government, even though the agreement in fact is not with Chevron Corporation or any of its subsidiary entities.

Nor are the "contracts" listed on the USASpending.gov database limited to what would generally be considered contracts. For example, if a business enters into a contract with the federal government for the delivery of a product over time, such as lubrication fluids, and the government places three delivery orders under that agreement, the database may record there being four contracts: the original agreement and the three requests for delivery.

Based upon a review of the information provided with the complaint and amended complaint, information on the USASpending.gov website, and an independent search of Chevron Corporation's records, Chevron Corporation has found no evidence that it had any contractual

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agreement with the federal government in October of 2012 when it contributed to the Congressional Leadership Fund, nor that it was seeking to become a federal contractor.

Lastly, even if Chevron Corporation had been or was seeking to become a federal contractor at the time it contributed to the Congressional Leadership Fund, the United States Supreme Court's decision in *Citizens United* and subsequent decisional law makes clear that the courts have narrowed the legitimate state interest here to one of preventing *quid pro quo*-type corruption, or the appearance thereof, and concluded that such corruption is not present in the context of independent expenditures. The facts here highlight the attenuated nature of any claim of *quid pro quo* corruption. Few would argue that a Democratic President's administration would award government contracts in return for a contractor contributing to a Super PAC that supports House Republicans. The Commission should avoid this constitutional concern by interpreting section 441c's prohibition on federal contractors making contributions to various entities—such as a “committee” or other “person”—to exclude contributions to Super PACs.

For all of these reasons, no violation of law occurred here, and we respectfully request that the agency dismiss this matter without further action.

ARGUMENT**I. No Violation of Law Occurred Because Chevron Corporation Was Not a Federal Contractor at the Time it Contributed to the Congressional Leadership Fund**

Chevron Corporation was the corporate entity that made the contribution to the Congressional Leadership Fund that is the subject of the complaint. Because Chevron Corporation was not a federal contractor when it made the contribution, there was no violation.

A. The Prohibition on Federal Contractor Contributions is Limited in Scope**1. The Statute and Regulations Limit the Prohibition in Scope and Time**

Section 441c of FECA prohibits, among other things, any person “who enters into any contract” with the federal government that is to be paid with appropriated funds from “directly or indirectly” making “any contribution . . . to any political party, committee, or candidate for public office or to any person for any political purpose or use.”¹ The only person subject to section 441c is a “federal contractor,” defined as a non-federal party who enters into a contract with the federal government for the “rendition of personal services,” to “[f]urnish[] any material,

¹ 2 U.S.C. § 441c(a)(1); *see also* 11 C.F.R. § 115.2.

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supplies or equipment,” or to “[s]ell any land or buildings” if appropriated funds are used to pay for performance of the contract.²

The prohibition of section 441c is also limited in time, and only applies between the “earlier of the commencement of negotiations or when requests for proposals [“RFP”] are sent out,” and “the later of” either the “completion of performance” or the “termination of negotiations.”³ It does not apply to a person just because the person has in the past been, or may in the future be, a party to a contract with the federal government. Consequently, even a person who regularly contracts with the federal government would not be covered by section 441c if that person were to make a contribution after the completion of a contract or before the commencement of negotiations or an RFP for a new contract.

By its terms, section 441c also does not apply to many categories of individuals and entities, notwithstanding the control they may have over, the potential benefit they may derive from, or their interest in pursuing federal contracts. Persons expressly exempted from the prohibition of section 441c by the statute or Commission regulations include: (1) third party beneficiaries of a federal contract;⁴ (2) the separate segregated fund of a federal contractor;⁵ (3) shareholders of a federal contractor;⁶ (4) officers and employees of a federal contractor;⁷ and (5) partners, if the federal contractor is a partnership.⁸ These persons could derive much, if not all, of their income or revenue from an entity that is a federal contractor, but by statute and regulation, they are not *themselves* federal contractors subject to section 441c’s contribution prohibition.

² See 2 U.S.C. §441c(a); *id.* § 431(11) (defining “person”); 11 C.F.R. § 115.1(a) (defining “federal contractor”).

³ 2 U.S.C. § 441c; 11 C.F.R. § 115.1(b) (modifying the statutory provision by adding the clause “when the requests for proposals are sent out” as a trigger condition for the beginning of the period of section 441c applicability).

⁴ 11 C.F.R. § 115.1(d) (“The third party beneficiary of a Federal contract is not subject to the prohibitions of this part.”).

⁵ 2 U.S.C. § 441c(b); 11 C.F.R. § 115.3.

⁶ 11 C.F.R. § 115.6.

⁷ *Id.*; *id.* § 115.4(c).

⁸ *Id.* §115.4(b).

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2. The FEC's Application of the Federal Contractor Ban

Although there are few instances where section 441c has been applied to specific facts, the FEC generally holds that it is the entity that contracts with the federal government that is barred, and not a parent entity that is a separate and distinct legal entity from the federal contractor subsidiary if it had sufficient funds from a source other than the federal contractor subsidiary to make the contribution in question. This distinction between a parent entity that could give and a subsidiary that could not has also been followed when a federal contractor is owned and controlled by an LLC⁹ or an Indian tribe, even when the tribe's federal contracting entity could have been organized as, but was "not a corporation and thus [was] not formally separate from the Nation."¹⁰

B. The Complaint Lacks Sufficient Factual Support to Allege that the Contribution Was Made by a Federal Contractor

The complaint lacks a foundation in fact. The original complaint alleges that Chevron U.S.A. Inc. made a contribution to the Congressional Leadership Fund in October 2012 in violation of section 441c. Recognizing that the original premise of the complaint that Chevron U.S.A. Inc. was the contributing entity may have been wrong, the complainants filed an addendum to the complaint on March 11, 2013, included data from the USASpending.gov website, and stated that "it appears based on data from [USASpending.gov] that Chevron Corporation itself had government contracts in 2012," noting that "a contribution would be illegal if any of these contracts was either in force or being negotiated when the contribution was made." As will be shown below, these allegations do not have a sufficient basis in fact to support a finding that there is a reason to believe a violation of section 441c has occurred.

⁹ See, e.g., FEC, Advisory Op. No. 1998-11, at 5 (Sept. 3, 1998) ("Patriot Holdings") (stating that "the prohibitions of 2 U.S.C. § 441c do not apply" to an LLC parent of two federal contractor subsidiaries because the LLC was a "separate and distinct legal entity from its Federal contractor subsidiaries"); see also MUR 6403 ("Alaskans Standing Together"), First General Counsel's Report, at 15 (stating that "[i]n the case of a parent company contributor, if it can demonstrate that it is, in fact, a separate and distinct legal entity from its government contracting subsidiaries, and that it had sufficient funds to make the contribution from non-subsidiary income, then the prohibition on contributions by government contractors would not extend to the parent company.").

¹⁰ See FEC, Advisory Op. No. 1999-32 (Jan. 28, 2000) ("Tohono O'odham Nation").

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1. The Contribution to the Congressional Leadership Fund Was Made By Chevron Corporation, Not Chevron U.S.A. Inc.

The making of an impermissible contribution is an absolute prerequisite to establishing a violation of section 441c. The sole basis for the complainants' allegation is a contribution to the Congressional Leadership Fund in October 2012. Chevron Corporation was the donor, not Chevron U.S.A. Inc. Consequently, although Chevron U.S.A. Inc. or its subsidiaries may have at times engaged in contracts with the federal government, it cannot have violated section 441c because it made no contribution.

In October 2012, Chevron Corporation executives decided to contribute to the Congressional Leadership Fund.¹¹ The Policy, Government and Public Affairs ("PGPA") Corporate Department of Chevron Corporation instructed Finance Shared Services to prepare a check on behalf of Chevron Corporation to the Congressional Leadership Fund.¹² Finance Shared Services did so and charged that payment to Chevron Corporation.¹³

Chevron Corporation, and not Chevron U.S.A. Inc., made the contribution and the complainants' allegation as to Chevron U.S.A. Inc. therefore lacks the support necessary to justify further review by the Commission. The complaint as to Chevron Corporation must also be dismissed, for the reasons described below.

2. The Complainants Failed to Show that Chevron Corporation Was a Federal Contractor at the Time of the Contribution

Section 441c only applies to those who are federal contractors under the law at the time of the contribution. The complaint fails to provide facts demonstrating that Chevron Corporation was a federal contractor at the time of its contribution in October 2012.

The sole basis the complainants provide for the assertion that Chevron Corporation may have been a federal contractor is a printout of the USASpending.gov database. Yet the database upon which the complainants rely provides at times confusing and inaccurate information regarding federal contracts.

While querying the USASpending.gov database for "Chevron Corporation" results in multiple entries, a closer review shows that: (a) many of the entries in the database involve

¹¹ Declaration of Kari H. Endries, ¶ 8.

¹² *Id.*

¹³ Declaration of Thomas G. Hoffman, ¶ 3 & Ex. A.

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companies other than Chevron Corporation; (b) of the remaining entries, most are agreements—such as purchase orders or delivery orders—to implement sixteen underlying contracts; (c) many of these sixteen underlying contracts are dated well beyond the temporal limits of the law, with some over a decade old, and none are still active; and (d) many of the contracts do not list the true vendor.¹⁴ Chevron has located nine of the underlying contracts, of which five name a Chevron subsidiary rather than Chevron Corporation as the contracting party.¹⁵ The other four erroneously name Chevron Corporation, when the goods or services were actually supplied by a subsidiary of Chevron Corporation under contracts which were fully performed prior to the October 2012 contribution.¹⁶

The final seven are older and could not be located, but the database contains enough information about the company, product, service, or other information that it can be reasonably ascertained that, if these contracts listed Chevron Corporation, it would have been by mistake because the goods and services described in the database are provided by Chevron Corporation subsidiaries, and not by Chevron Corporation itself.¹⁷ Moreover, the database contains enough information about the period of performance under these seven contracts that it can be reasonably ascertained that performance had been completed prior to October 2012.¹⁸

a) Unrelated companies account for numerous entries

Searching the database for “Chevron Corporation” results in numerous entries associated with companies other than Chevron Corporation. A recent search resulted in over fifty-one such entries.¹⁹ For example, one of the entries that appears when querying the database for “Chevron Corporation” is a contract with Parman Energy Corporation, not Chevron Corporation.²⁰ Parman Energy is a reseller of various Chevron products such as lubricants and fuel oils, but is not a subsidiary of Chevron Corporation.²¹

¹⁴ Declaration of Kari H. Endries, ¶¶ 11, 17.

¹⁵ *Id.* at ¶¶ 16, 18-22.

¹⁶ *Id.* at ¶¶ 16, 23-24.

¹⁷ *Id.* at ¶¶ 16, 25-31.

¹⁸ *Id.* at ¶ 17.

¹⁹ *Id.* at ¶¶ 11, 13-14.

²⁰ *Id.* at ¶ 13 & Ex. A.

²¹ *Id.*

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A number of the entries appear solely because the word "Chevron" is listed somewhere in the entry description. For example, two supposedly responsive results include entries associated with a loan from the Small Business Administration to "TSV Corp dba Vick's Chevron Food Mart" and a contract with "Aramark Uniform and Career Apparel Incorporated."²² It appears that the former was listed because "Chevron" appears in the doing-business-as name of TSV Corp; the latter apparently involves a contract for the supply of military badges and insignia, including "Corporal Chevrons – Navy with Black TRIM."²³ Such entries artificially inflate the number of entries apparently associated with a contract with a Chevron entity. These entries do not relate to a contract with a Chevron entity, let alone Chevron Corporation, and obviously cannot support a violation of section 441c.

b) The database is inflated with purchase and delivery orders

The database is also misleading because once entries in which a company other than Chevron Corporation was listed as the vendor have been eliminated, almost all of the remaining entries (73 out of the remaining 89) are no more than execution documents (such as purchase orders, delivery orders, or modifications to the terms of the agreement) for the 16 underlying contracts.²⁴ The inclusion of such documents also artificially inflates the number of entries that purport to list a contract between the federal government and Chevron Corporation.

c) The database lists contracts dating back to 2000, well beyond the temporal limits of the law

As noted, the database includes entries for expired contracts dating back to 2000.²⁵ Because the database provides limited information and includes entries for contracts that are over a decade old, it proved difficult and resource intensive to attempt to locate the underlying contracts, and some of the older contracts could not be located. Further, some of the entries describe transactions for which no formal contract was likely ever entered (e.g., a \$13 fuel purchase made on a government-issued purchase card in 2007).²⁶ Nonetheless, we have attempted to identify every entry listed in the database to provide the Commission with a full record that demonstrates that no further action is warranted.

²² *Id.* at ¶ 14 & Ex. B.

²³ *Id.*

²⁴ *Id.* at ¶ 15.

²⁵ *Id.*

²⁶ *See, e.g., id.* at ¶ 27.

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d) Many of the entries do not list the true vendor

Even more troubling than the fact that a search for “Chevron Corporation” results in entries in which the listed recipient is a company other than Chevron Corporation, or that many of the entries list contract execution documents rather than the contracts themselves, is the fact that many of the database entries list the *wrong vendor*.

Out of all the items listed in the database as responsive to “Chevron Corporation,” there are only sixteen entries that represent an underlying agreement—as opposed to an executing document such as a delivery order—in which Chevron Corporation is listed as the recipient.²⁷ Due to the passage of time and the limited information provided in the database, we have not been able to locate some of the oldest contracts dating back to between 2000 and 2008. We have, however, located many of the underlying contracts and every one either correctly identified a Chevron Corporation subsidiary as the party, but incorrectly listed Chevron Corporation in the database, or erroneously listed Chevron Corporation in place of the subsidiary performing under the contract in contract documentation.²⁸ The following discussion summarizes these sixteen entries.

Five of the contracts that were located were agreements in which the party was expressly listed as one of Chevron Corporation’s subsidiaries: Chevron U.S.A. Inc.; Chevron Products Company (a division of Chevron U.S.A. Inc.); Chevron U.S.A. Products Company (the former name of Chevron Products Company); or Chevron Global Aviation (formerly a division of Chevron U.S.A. Inc., but which has since been dissolved).²⁹

One of these five contracts was a contract with Chevron Products Company to provide lubricants to the Department of Defense (“DoD”).³⁰ We also located documentation for three subsequent DoD lubricants contracts, which were the subject of extended efforts by Chevron Products Company employees to correct the erroneous use of “Chevron Corporation” in contract documentation.³¹ This error was ultimately corrected with the issuance of a contract in effect beginning April 1, 2012, in which the contracting entity was again properly listed as Chevron Products Company.³²

²⁷ *Id.* at ¶ 15.

²⁸ *Id.* at ¶ 15-16.

²⁹ *Id.* at ¶¶ 18-22.

³⁰ *Id.* at ¶ 22.

³¹ *Id.* at ¶ 23 & Exs. C, D, E.

³² *Id.*

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The last of the nine contracts that were located was not a traditional contract but rather an "Order for Supplies or Services" in the amount of \$4,040 issued by a government agency for geophysical data used by Union Oil Company of California, a subsidiary of Unocal Corporation,³³ in preparing a bid to submit to the agency.³⁴ This "Order for Supplies or Services" did not contain a signature line for the contractor to sign and no one from Chevron Corporation or any other Chevron affiliate signed the "Order."³⁵ Although the Bureau issued its request for the data using the name of Chevron Corporation, rather than Union Oil Company, it sought information from Unocal Corporation's subsidiary, Union Oil Company, performance was completed by providing the requested data on February 14, 2012, and the government ultimately was not invoiced for the data.³⁶

Of the seven underlying contracts we were not able to locate, the limited information available in the database is inconsistent with Chevron Corporation having been the true contracting party. The following provides summarized discussion of the remaining underlying contracts that date to 2008 or earlier:

- Two "contracts" appear to have been fuel purchases with a government purchase card for which no formal contract was likely entered.³⁷ In light of the nature of the transactions, the transactions were likely with a division of Chevron U.S.A. Inc., or with an independently-owned Chevron-branded gasoline station.³⁸
- One contract appears to have been related to two purchase orders for fuel oil by the U.S. Coast Guard in May 2008 in El Salvador.³⁹ While this contract could not be located, two invoices for fuel sold to the U.S. Coast Guard in May 2008 in El Salvador were located.⁴⁰ Both invoices are in the name of Chevron Caribbean Inc., which is not a division of Chevron Corporation.⁴¹

³³ Unocal Corporation is a subsidiary of Chevron Corporation.

³⁴ Declaration of Kari H. Endries, ¶ 24.

³⁵ *Id.*

³⁶ *Id.* & Ex. F.

³⁷ *Id.* at ¶¶ 25, 27.

³⁸ *Id.*

³⁹ *Id.* at ¶ 26.

⁴⁰ *Id.* & Ex. G.

⁴¹ *Id.*

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- For two additional contracts, the contract abstracts posted in the USASpending.gov database include information indicating that the vendor was not actually Chevron Corporation but was instead Chevron U.S.A. Inc. (the abstract for one shows a division of Chevron U.S.A. Inc., and the abstract for the other lists a DUNS number that corresponds to Chevron U.S.A. Inc.).⁴²
- The final two contracts are dated from 2000 and 2001 and appear to have been for professional services.⁴³ Based on a reading of the contract abstracts posted to the USASpending.gov website, these may have been for engineering services provided to the Navy.⁴⁴ Such services could have been provided by multiple upstream or downstream subsidiaries, but would not have been provided by Chevron Corporation.⁴⁵

e) Chevron Corporation's search did not reveal any federal contracts or contract negotiations at the time of the October 2012 contribution

Chevron Corporation is not in the business of federal contracting and consequently does not have a division, unit, or person responsible for federal contracting.⁴⁶ The organizational structure of all the Chevron entities and their subsidiaries includes over 1,600 separate subsidiaries; Chevron U.S.A. Inc. itself has over 360 subsidiaries.⁴⁷ There is no single database across all Chevron entities in which all contracts for all these entities are stored.⁴⁸

Chevron Corporation personnel, with the assistance of employees of Chevron U.S.A. Inc., conducted an internal review undertaken over the course of six weeks in an effort to identify any contract Chevron Corporation may have had or sought with the federal government during the relevant time period.⁴⁹ These individuals contacted numerous contract administrators and individuals in multiple business units across multiple Chevron entities in an attempt to locate or

⁴² *Id.* at ¶¶ 28-29.

⁴³ *Id.* at ¶¶ 30-31.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at ¶ 5.

⁴⁷ *Id.* at ¶ 6.

⁴⁸ *Id.*

⁴⁹ *Id.* at ¶ 10. Because Chevron U.S.A. Inc. was not the donor, a similar search was not undertaken as to that entity.

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otherwise identify any such contracts including the contracts identified in the USASpending.gov database.⁵⁰

Based upon the internal review, Chevron Corporation and Chevron U.S.A. Inc. were able to associate the vast majority of the entries in the database with a more limited number of underlying contracts. A number of the underlying contracts were located. They demonstrate that Chevron Corporation was either not the party listed on the contract documentation or that such listing was erroneous and did not reflect the real arrangement between the parties. Further, even if the Commission were to give undue weight to data entry or scrivener's errors, there is no reason to believe that any of the contracts listing Chevron Corporation as the vendor were still active in October 2012, when Chevron Corporation made a contribution to the Congressional Leadership Fund.

Nor did the internal review reveal any evidence that Chevron Corporation was in the process of negotiating, or responding to a request for proposal for, or undertaking performance pursuant to, a contract with the federal government in October 2012.⁵¹ The results of the internal review are not surprising. Although Chevron Corporation has subsidiary entities that may enter into an agreement with the federal government that involves the sale of some good or service, Chevron Corporation is not, and was not in October 2012, in the business of federal contracting.

f) Chevron Corporation received sufficient funds from subsidiaries other than Chevron U.S.A. Inc. to have made the contribution to the Congressional Leadership Fund

Chevron Corporation owns 100% of the stock in Chevron Investments Inc., which itself owns stock in subsidiary entities, which themselves have subsidiaries.⁵² Chevron Corporation derived revenue in 2012 from subsidiaries other than Chevron U.S.A. Inc. substantially greater than the sum it contributed to the Congressional Leadership Fund.⁵³ Based upon a review of the USASpending.gov database, Chevron Corporation believes these non-Chevron U.S.A. Inc. subsidiaries are not themselves federal contractors.⁵⁴ Thus, Chevron Corporation, a separate and distinct legal entity from Chevron U.S.A. Inc., derived sufficient funds from subsidiaries other than Chevron U.S.A. Inc. to have made the contribution to the Congressional Leadership Fund.⁵⁵

⁵⁰ *Id.*

⁵¹ *Id.* at ¶ 17.

⁵² *Id.* at ¶ 6.

⁵³ *Id.* at ¶ 9.

⁵⁴ *Id.*

⁵⁵ *See, e.g., supra* notes 9-10.

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II. A Federal Contractor Cannot Constitutionally Be Prohibited From Contributing to a Super PAC

Even if Chevron Corporation had been a federal contractor for purposes of section 441c, or if Chevron U.S.A. Inc. had made the contribution to the Congressional Leadership Fund, the First Amendment protects their right to make a contribution to a Super PAC. The only legitimate state interest for the type of prohibition found in section 441c is the prevention of *quid pro quo* corruption or the appearance thereof. Since *Buckley v. Valeo*, independent political speech has had heightened constitutional protection precisely because it lacks this risk of *quid pro quo* corruption.

Section 441c can be read in a manner consistent with the First Amendment only if the statutory reference to "contribution to any . . . committee . . . or to any person" is read to exclude contributions to independent expenditure-only committees.

A. The Sole Legitimate State Interest in Restricting Political Speech is Preventing *Quid Pro Quo* Corruption

The First Amendment directs that "Congress shall make no law . . . abridging the freedom of speech."⁵⁶ The First Amendment protects speech to allow for an "open marketplace" of ideas,⁵⁷ and political speech is at the core of this protection.⁵⁸ The Supreme Court has made clear that when a corporation engages in political speech, it receives the full measure of constitutional protection, just the same as any other person.⁵⁹

In *Citizens United*, the Supreme Court explained that the government has a sufficiently important interest in preventing *quid pro quo* corruption to support restrictions on direct contributions to candidates.⁶⁰ The Court held that other governmental interests once deemed a possible basis for limiting political spending, such as the "antidistortion interest" and "shareholder-protection interest," were no longer valid, however.⁶¹

⁵⁶ U.S. Const. amend. I.

⁵⁷ *Citizens United*, 130 S. Ct. 876, 906 (2010) (quoting *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208 (2008)).

⁵⁸ *See id.* at 898 (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971))).

⁵⁹ *See id.* at 900 (citations omitted).

⁶⁰ *Id.* at 901-13.

⁶¹ *See id.* at 906, 911.

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B. Independent Expenditures Do Not Present a Risk of *Quid Pro Quo* Corruption

For nearly forty years, the Supreme Court has held that independent expenditures, by definition, lack the “prearrangement and coordination” that is characteristic of direct contributions, and consequently, the government’s otherwise valid interest in preventing *quid pro quo* corruption is insufficient to justify restrictions on independent expenditures.⁶² Put simply: “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”⁶³ The Court has not qualified this position with respect to any category of speaker.

The U.S. Court of Appeals for the District of Columbia Circuit extended the logic of *Citizens United* when it held in *SpeechNow* that a group of individuals who sought to associate together to express their shared political views solely through independent expenditures could not constitutionally be restricted as to the amount of donated funds they were permitted to receive:

[B]ecause *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations.⁶⁴

Following *SpeechNow*, the Commission established a process by which an independent expenditure-only committee could be formed, acknowledging that “corporations may make unlimited independent expenditures using corporate treasury funds” and that “corporations, labor organizations and political committees also may make unlimited contributions to organizations . . . that make only independent expenditures.”⁶⁵ The Commission also recognized that since case law establishes that independent expenditures do not give rise to *quid pro quo* corruption, “there is no basis to limit the amount of contributions to the [independent

⁶² *Buckley v. Valeo*, 424 U.S. 1, 47 (1976); see also *Citizens United*, 130 S. Ct. at 908-10.

⁶³ *Citizens United*, 130 S. Ct. at 909.

⁶⁴ *SpeechNow v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010).

⁶⁵ FEC, Advisory Op. No. 2010-11, at 3 (July 22, 2010) (“Commonsense Ten”); see also FEC, Advisory Op. No. 2010-09 (July 22, 2010) (“Club for Growth”).

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expenditure-only] Committee from individuals, political committees, corporations, and labor organizations.”⁶⁶

C. A Corporation’s Status as a Federal Contractor Does Not Alter the Principle Established in *Citizens United*

Chevron Corporation must be accorded the same First Amendment rights as a natural person without regard to its corporate status.⁶⁷ Indeed, the Supreme Court has clarified that “[q]uite apart from the purpose or effect of regulating content,” the government may not “tak[e] the right to speak from some and giv[e] it to others,” as the “First Amendment protects speech and speaker, and the ideas that flow from each.”⁶⁸

In the context of independent expenditures, the Supreme Court has firmly rejected a reading of FECA that advantages or disadvantages a particular kind of speaker. Specifically, in *Citizens United*, the Court rejected a distinction between media corporations and other corporations on the basis that none exists under the First Amendment.⁶⁹ Treating federal contractors as occupying a disadvantaged position in the exercise of First Amendment rights would directly contradict this bedrock principle.

Most lower courts that have considered the validity of contractor contribution bans and similar restrictions have not done so in the context of giving to an independent expenditure-only group.⁷⁰ For example, in *Wagner v. FEC*, the United States District Court for the District of

⁶⁶ FEC, AO 2010-11, at 3. Here, as was often the case in the first election cycle in which Super PACs operated, the requester voluntarily restricted itself from soliciting federal contractors. *See id.* at 2.

⁶⁷ *See Citizens United*, 130 S. Ct. at 900 (citations omitted). The same would be true if the FEC were to focus its review on Chevron U.S.A. Inc. on the basis that, contrary to the evidence, Chevron U.S.A. Inc. made the contribution to the Congressional Leadership Fund.

⁶⁸ *Id.* at 899. The Court has upheld a narrow class of restrictions for speech related to governmental functions, none of which are applicable here. *See id.*

⁶⁹ *Id.* at 905-06 (citing *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 691 (1990) (Scalia, J., dissenting)).

⁷⁰ *See Ogribene v. Parkes*, 671 F.3d 174 (2d Cir. 2012) (upholding a limit in New York City on contributions by persons “doing business with the city” to candidates for certain city offices); *Green Party of Connecticut v. Garfield*, 616 F.3d 189 (2d Cir. 2010) (upholding a limit on contributions to officials and political party committees by contractors, but striking down other limits, including the ban on lobbyists contributions and a ban on solicitation by contractors and lobbyists, on First Amendment grounds); *Preston v. Leake*, 660 F.3d 726 (4th Cir. 2011) (upholding a North Carolina ban on lobbyists making direct contributions to candidates); (continued...)

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Columbia upheld section 441c's contribution limits as to contributions "to candidates, parties, and their committees," but did not decide the issue as to independent expenditures.⁷¹

The Court in *Wagner* did, however, warn that "*SpeechNow* creates substantial doubt about the constitutionality of any limits on Super PAC contributions—including § 441c's ban on contributions by federal contractors."⁷² A recent Ninth Circuit decision reinforces this view by upholding the trial court's judgment rejecting a request for an injunction against the ban on federal contractors making direct contributions, while granting the injunction as to independent fundraising and spending.⁷³

To the degree the FEC has considered the issue, it has been in only a cursory fashion. As complainants note, a former Commission Chair is reported to have stated in Congressional testimony that the statutory ban in 441c had survived,⁷⁴ several agency decisions note that Super PACs have often voluntarily chosen to operate as if the ban survives,⁷⁵ and in one enforcement matter, the agency concluded 441c applied to contributions to an independent expenditure committee, then exercised its discretion not to pursue the matter further.⁷⁶

Dallman v. Ritter, 225 P.3d 610 (Colo. 2010) (striking down a ban on contractor contributions to elected officials and political parties as vague and overbroad).

⁷¹ *Wagner v. FEC*, No. 11-1841 (JEB), 2012 WL 5378224, *1, *5, *11 (D.D.C. Nov. 2, 2012); see also *Wagner v. FEC*, 854 F. Supp.2d 83 (D.D.C. 2012) (denying a motion for a preliminary injunction as to the same issue).

⁷² *Wagner*, 2012 WL 5378224 at *5 (emphasis added).

⁷³ See *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th Cir. 2011).

⁷⁴ See Ian Duncan & Matea Gold, *Federal Contractors Donate to Super PAC backing Romney*, L.A. Times (Mar. 18, 2012), <http://www.latimes.com/news/nationworld/nation/la-na-contractor-politics-20120318,0,5184326.story?page=1>. This, however, was not included in the Commissioner's prepared testimony. See *Opening Statement Before the Subcomm. on Elections of the Comm. on House Administration, U.S. House of Representatives, 112th Cong. (2011)* (statement of Cynthia L. Bauerly, Chair, FEC), available at http://cha.house.gov/sites/repUBLICans.cha.house.gov/files/documents/hearing_docs/111103_testimony_bauerly.pdf.

⁷⁵ See, e.g., FEC, AO 2010-11, Request by Commonsense Ten, at 3; FEC Advisory Op. No. 2010-20 (Sept. 24, 2010) ("National Defense PAC"), Request by National Defense PAC, at 2.

⁷⁶ See MUR 6403 ("Alaskans Standing Together"), Factual and Legal Analysis, at 9.

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Even if there could be a legitimate concern that a direct contribution by a federal contractor to a federal official would raise the specter of *quid pro quo* corruption,⁷⁷ that is not *this* case. This case concerns independent expenditures and contributions to support independent expenditures.

D. Chevron Corporation's Contribution to the Congressional Leadership Fund Does Not Raise the Threat of *Quid Pro Quo* Corruption

Even if one wanted to argue that the prohibition in 441c should apply to contributions to an independent expenditure-only committee, the facts in this matter provide a particularly poor context in which to advance the argument. There are four features to this contribution that make the risk of *quid pro quo* corruption here particularly low: (a) the Congressional Leadership Fund supports an array of candidates, making any one legislator potentially less beholden to donors than if the contribution were to a single-candidate super PAC;⁷⁸ (b) this Super PAC supports candidates in congressional races, rather than the election of an individual to an office that controls federal contracting; (c) this contribution supported the political party that competes with the party that currently controls federal contracting; and (d) federal contracts make up a minuscule portion of the revenue of Chevron entities.

Put simply, any argument that Chevron Corporation could somehow influence specific federal contracts managed by specific federal agency officials through a defined contracting process within the Executive Branch by making a contribution to an independent expenditure-only committee that supports a broad group of House Republicans would be strained and speculative, to say the least.

⁷⁷ See, e.g., *Wagner*, 854 F. Supp. 2d 83 (providing historical context for the federal contractor prohibition and examining the risk of corruption in contracting).

⁷⁸ See Congressional Leadership Fund, *About*, available at <http://www.congressionalleadershipfund.org/about/> (last visited Apr. 17, 2013). Even the complainants argue there is a reduced risk of *quid pro quo* corruption when the Super PAC advocates for many candidates as opposed to a single candidate. See Public Citizen, *Super Connected*, at 18, 34 (2012) (arguing that groups focused on a *single candidate* are "virtually equivalent" to a direct candidate contribution, while acknowledging that groups supporting only party might be expected due to the "partisan outlines of our politics") (attached to complaint).

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E. Section 441c's Prohibition on Contributions is Unconstitutional Unless it is Read to Exempt Super PACs

The Commission has the discretion to read section 441c in a manner that is consistent with the Constitution by exempting contributions to independent expenditure-only committees.⁷⁹ For example, the words "committee" and "person" in section 441c can be read to include only candidate committees, party committees, leadership PACs, and political committees that contribute to those entities. This would preserve the meaning of the statutory text as it was understood before Super PACs existed. Moreover, it would not render any of the statutory language superfluous.⁸⁰ The Commission can and should exercise its discretion to construe section 441c to exclude independent expenditure-only committees.

III. Conclusion

Chevron Corporation made a contribution in October 2012 to the Congressional Leadership Fund, an independent expenditure-only committee that supports House Republican candidates. It was not a federal contractor at the time nor was it seeking to become one. The database upon which complainants rely to suggest that Chevron Corporation was a contractor contains and reflects numerous errors. It does not, however, provide a basis upon which to conclude that Chevron Corporation was a federal contractor when it made the contribution. As such, there is no factual support for the allegation that either Chevron Corporation or Chevron U.S.A. Inc. violated section 441c.

Even if the Commission were to determine that either Chevron Corporation or Chevron U.S.A. Inc. was a federal contractor at the time of the contribution, neither can be constitutionally prohibited from expending funds to support independent expenditures. Like section 441b, which "banned [corporations] from making independent expenditures,"⁸¹ section 441c purports to ban corporations that are federal contractors from making independent

⁷⁹ See, e.g., *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981-82 (2005) (holding that an agency has the authority to interpret the statute it administers, and explaining that, "[a]n initial agency interpretation is not instantly carved in stone. On the contrary, the agency . . . must consider varying interpretations and the wisdom of its policy on a continuing basis" (quoting *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 863-64 (1984))).

⁸⁰ See, e.g., *Stop This Insanity, Inc. Employee Leadership Fund v. FEC*, No. 12-1140(BAH), 2012 WL 5383581, *14 (D.D.C. Nov. 5, 2012) ("[T]he government's interest in 'deal[ing] with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions,' is directly implicated when contributions are made to groups that in turn make direct contributions to candidates or political parties." (citations omitted)).

⁸¹ *Citizens United*, 130 S. Ct. at 913.

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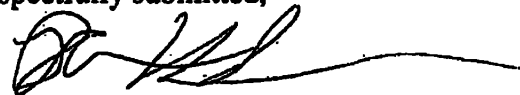
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expenditures.⁸² Independent expenditures and contributions to independent expenditure-only committees, by definition, do not give rise to a threat of *quid pro quo* corruption,⁸³ which is the only remaining legitimate governmental interest that might support a ban on a domestic corporation such as Chevron Corporation from expending funds to support independent expenditures. This constitutional issue can be avoided if the Commission reads the prohibition in section 441c in light of case law and history to exclude its application to the specialized entities commonly referred to as "Super PACs."

For all of the foregoing reasons, Chevron Corporation and Chevron U.S.A. Inc. respectfully request that the Commission conclude there is no reason to believe that a violation of the FECA has occurred and dismiss this matter under review.

Respectfully submitted,



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⁸² See 2 U.S.C. § 441c; 11 C.F.R. § 115.2(a).

⁸³ *Citizens United*, 130 S. Ct. at 909 (holding that independent expenditures do not give rise to the threat of *quid pro quo* corruption); *SpeechNow*, 599 F.3d at 696 (extending this reasoning to contributions to independent expenditure-only committees).

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FIRST GENERAL COUNSEL'S REPORT

MUR: 6726
DATE COMPLAINT FILED: March 5, 2013
DATE OF NOTIFICATION: March 12, 2013
DATE OF LAST RESPONSE: May 1, 2013
DATE ACTIVATED: June 13, 2013

EXPIRATION OF STATUTE OF LIMITATIONS:
October 7, 2017
ELECTION CYCLE: 2012

COMPLAINANT:

Craig Holman,
Public Citizen

Erich Pica,
Friends of the Earth – U.S.

Charlie Cray,
Greenpeace USA

Stephen Kretzmann
Oil Change International

RESPONDENTS:

Chevron Corporation

Chevron U.S.A., Inc.

Congressional Leadership Fund and Caleb Crosby
in his official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441c(a)
11 C.F.R. § 115.2

INTERNAL REPORTS CHECKED:

Disclosure Reports; Commission Indices

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Chevron Corporation ("Chevron") or its subsidiary Chevron U.S.A., Inc. ("Chevron U.S.A.") made a contribution as a federal contractor in violation

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1 of the Federal Election Campaign Act, as amended (the "Act").¹ Relying upon a government
 2 website, www.usaspending.gov, which tracks contracts awarded by the federal government,
 3 Complainants allege that Chevron was a federal contractor in October 2012 when it made a
 4 contribution to the Congressional Leadership Fund ("CLF"), an independent expenditure-only
 5 political committee. Chevron acknowledges that, on October 7, 2012, it made a \$2.5 million
 6 contribution to CLF but denies that it is a government contractor subject to the provisions of the
 7 Act cited by the Complainant. In contrast, Chevron U.S.A. acknowledges that it is a government
 8 contractor but denies that it made any federal political contribution in violation of the Act.
 9 Finally, CLF states that Chevron represented that it was not a federal contractor when it made the
 10 contribution and denies that CLF knowingly solicited a prohibited contribution from a federal
 11 contractor.

12 As discussed below, the available information indicates that Chevron was the entity that
 13 made the contribution to CLF, Chevron was not a federal contractor at the time it made the
 14 contribution, and Chevron and Chevron U.S.A. appear to be separate and distinct legal entities.
 15 It therefore does not appear that Chevron was subject to the Act's ban on contributions by federal
 16 contractors at the time of the contribution or that Chevron's contribution should be attributed to
 17 Chevron U.S.A. Accordingly, we recommend that the Commission find no reason to believe that
 18 Chevron or Chevron U.S.A. violated 2 U.S.C. § 441c(a). In addition, because there is no
 19 information indicating that CLF knowingly solicited a contribution from a federal contractor, we
 20 recommend that the Commission find no reason to believe that CLF violated 2 U.S.C. § 441c(a).

¹ On March 5, 2012, the Complainants filed the original Complaint alleging that Chevron U.S.A., Inc. made the contribution at issue in this matter. Based on Chevron's subsequent comments to the press that it, not Chevron U.S.A., made the contribution, the Complainants filed an Addendum to the Complaint, requesting that the Commission also conduct an investigation of Chevron. Addendum to Compl. at 1 (Mar. 22, 2012).

1 **II. FACTUAL BACKGROUND**

2 **A. Corporate Structure of Chevron and Its Subsidiaries**

3 1. Chevron Corporation

4 Chevron is a Delaware corporation with headquarters in San Ramon, California. *See*
5 Chevron Resp. at 2; Chevron Corp. 2012 Annual Report,

6 <http://www.chevron.com/annualreport/2012/documents/pdf/Chevron2012AnnualReport.pdf>

7 (“Chevron Annual Report”). Chevron describes itself and its numerous subsidiaries as “one of
8 the world’s leading integrated energy companies.” Chevron Resp., Declaration of Kari H.
9 Endries ¶ 9 (“Endries Decl.”); Chevron Ann. Rept. at 6. Chevron reports that its combined sales
10 and other revenue exceeded \$230 billion in 2012 and its combined income from its subsidiaries
11 exceeded \$26.2 billion. Endries Decl. ¶ 9.

12 Chevron holds 100% of the stock of Chevron Investments, Inc., which in turn owns the
13 stock of other companies, including 100% of the stock of Texaco, Inc. Endries Decl. ¶ 2.
14 Texaco, Inc. owns the stock of other companies, including 100% of Chevron U.S.A. Holdings,
15 Inc., which in turn owns 100% of the shares of Chevron U.S.A. *Id.*

16 Although Chevron’s Annual Report portrays Chevron and its subsidiaries as an integrated
17 organization, the Response distinguishes Chevron from its subsidiaries, stating that its
18 subsidiaries are separate legal entities. Chevron Resp. at 2. The Response indicates that
19 Chevron, “[a]s a general matter . . . does not sell any goods or services.” *Id.* Rather, Chevron:

20 owns shares in, allocates capital to, reviews financial and performance goals for,
21 monitors the performance of, and provides general policy guidelines to numerous
22 global subsidiaries and affiliates, which are the separate holding or operating
23 companies, under the direction and control of their own management, engaged in
24 all aspects of worldwide energy operations.
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1 *Id.* Consequently, Chevron's primary assets consist of stock of other companies, and Chevron
 2 derives most of its income from the dividends of those companies. *Id.*

3 Contrary to the Complaint's assertions, Chevron claims that it was neither a federal
 4 contractor nor seeking to become one in October 2012 and that it has no division, unit, or person
 5 responsible for federal contracting. *Id.*; Endries Decl. ¶ 5. Although publicly available
 6 information available on www.usaspending.gov identifies "Chevron Corporation" as a federal
 7 contractor during the relevant time period, Chevron argues that this information is in error.
 8 Chevron Resp. at 6-7. Chevron states that many of the entries in the database involve companies
 9 other than Chevron or one of its subsidiaries and do not list the true vendor. *Id.* at 7 (citing
 10 Endries Decl. ¶¶ 16, 18-22). Moreover, many of the entries are dated outside the relevant time
 11 period. *Id.* at 7-8.

12 2. Chevron U.S.A., Inc.

13 Chevron U.S.A. is a Pennsylvania corporation with headquarters also located in San
 14 Ramon, California.² According to its Response, Chevron U.S.A. is engaged in all branches of
 15 the petroleum industry as well as mineral, geothermal, and other activities but derives a relatively
 16 insignificant amount from contracts with the federal government. Chevron Resp. at 2; Endries
 17 Decl. ¶ 7. Chevron U.S.A. not only explores for and produces crude oil and natural gas but also
 18 refines crude oil into petroleum products and markets such products. Endries Decl. ¶ 7.
 19 Chevron U.S.A.'s sales and other operating revenues exceeded \$183 billion in 2012, which was

² According to Dun & Bradstreet, both Chevron and Chevron USA are located at the same street address, 6001 Bollinger Canyon Road, San Ramon, California. See D&B Business Information Report for Chevron Corporation (accessed July 25, 2013), Attach. A; D&B Business Information Report for Chevron U.S.A. Inc. (accessed July 25, 2013), Attach. B (hereinafter "D&B Report for Chevron U.S.A."). Chevron's 2012 Annual Report indicates that Chevron is located at this address. Further, according to publicly available information, Chevron's Chief Executive Officer ("CEO"), John S. Watson, is also the CEO of Chevron U.S.A. Compare D&B Report for Chevron U.S.A., with Pennsylvania Department of State, Business Search, <http://www.corporations.state.pa.us/corp/soskb/Corp.asp?141525> (last visited Aug. 6, 2013), Attach. C.

1 approximately 79% of the revenue generated by Chevron and its subsidiaries, *see* Chevron Ann.
 2 Report at 40, and publicly available information indicates that Chevron U.S.A.'s net worth is
 3 approximately \$36.8 billion. *See* D&B Report for Chevron U.S.A. Chevron U.S.A.
 4 acknowledges that it is a federal contractor, but derives "a relatively insignificant amount of
 5 revenue" from federal contracts. Resp. at 2.³

6 **B. Contribution to the Congressional Leadership Fund**

7 CLF is an independent expenditure-only political committee registered with the FEC.
 8 CLF Resp. at 1; CLF Statement of Organization (filed Oct. 24, 2011). According to its
 9 Response, CLF does not accept contributions from federal contractors and does not solicit such
 10 contributions. CLF Resp. at 1, citing Affidavit of Trent T. Edwards ¶ 4 ("Edwards Aff."). CLF
 11 claims that its fundraising materials, including its website, have stated its policy against
 12 accepting contributions from federal contractors. CLF Resp. at 1, citing Edwards Aff. ¶¶ 2, 4.

13 According to CLF, in late September 2012, Trent T. Edwards, Director of Development
 14 for CLF, met with representatives of Chevron to explore the possibility of Chevron's making a
 15 contribution to CLF. Edwards Aff. ¶ 5. Soon after that meeting, a representative of Chevron
 16 indicated that Chevron was considering a contribution to CLF and that Chevron was not a federal
 17 contractor. *Id.* According to a sworn statement provided by the Chevron Response, Chevron's
 18 Policy, Government and Public Affairs Corporate Department requested the \$2.5 million
 19 contribution to CLF, and the payment was "charged to Chevron." *See* Chevron Resp.,

³ Based upon a search we conducted on www.usaspending.gov, the federal government appears to have awarded Chevron U.S.A. over \$1.9 billion in federal contracts since 2001. *See* <http://www.usaspending.gov> (last visited Aug. 19, 2013), Search Results for "Chevron U.S.A., Inc." This amount, however, includes contracts that fall outside the relevant time period. Based upon a search for contracts awarded to Chevron U.S.A. during fiscal year 2012, Chevron U.S.A. appears to have been a federal contractor during the relevant time period, with approximately \$307 million in obligated funds. *See* <http://www.usaspending.gov> (last visited Aug. 19, 2013), Search Results for "Chevron U.S.A., Inc. FY 2012," Attach. D; *see also* Federal Government Contracts Received by Chevron U.S.A., Inc., Compl., App. A.

1 Declaration of Thomas G. Hoffman ¶ 3 (“Hoffman Decl.”). On October 7, 2012, CLF received a
2 check from Chevron in the amount of \$2.5 million. *See id.*; Check No. 0024282612, Chevron
3 Resp., Ex. A.; CLF Amended 2012 12 Day Pre-Election Report (filed Oct. 26, 2012).

4 III. LEGAL ANALYSIS

5 A. The Act’s Prohibition of Contributions Made By Federal Contractors

6 The Act prohibits any person who is negotiating or performing a contract with the United
7 States government or any of its agencies or departments from making a contribution to any
8 political party, political committee, federal candidate, or “any person for any political purpose or
9 use.” 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a). In addition, the Act prohibits any person
10 from knowingly soliciting a contribution from any person who is negotiating or performing a
11 contract with the United States government. 2 U.S.C § 441c(a)(2); 11 C.F.R. § 115.2(c).⁴ “When
12 determining whether an entity has made a contribution in violation of 2 U.S.C. § 441c, the
13 Commission first looks to whether the entity met the statutory and regulatory definition of
14 government contractor at the time the contribution was made.” Factual and Legal Analysis at 5,
15 MUR 6403 (Aleut Corp., *et al.*).

16 The available information indicates that Chevron made the contribution to CLF and that
17 Chevron was not a federal contractor when it made that contribution. The Chevron Response
18 includes sworn testimony and documentation that Chevron, not Chevron U.S.A., made the

⁴ In Advisory Opinion 2010-11 (Commonsense Ten), the Commission determined that corporations may make contributions to independent expenditure-only political committees without violating 2 U.S.C. § 441b as a consequence of the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010) and the D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*), which found that “independent expenditures do not corrupt or give the appearance of corruption as a matter of law.” The Commission, however, has determined federal contractors remain prohibited from making contributions to any political committee, including independent expenditure-only political committees. *See* Factual and Legal Analysis, MUR 6403 (Ahtna, Inc.).

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1 contribution to CLF in October 2012. *See* Thomas Decl. ¶ 3. We are aware of no information
2 that would contradict this evidence.

3 Chevron also asserts that “Chevron Corporation is not, and was not in October 2012, in
4 the business of federal contracting.” Chevron Resp. at 12. It supports this assertion with
5 testimony from staff responsible for Chevron’s corporate governance and the results of an
6 internal review initiated in response to the Complaint. *See* Endries Decl. ¶¶ 1-5, 10-31. Chevron
7 declares that, upon reviewing www.usaspending.gov and the Complaint, it identified 140 results
8 for “Chevron Corporation.” *Id.* ¶ 11. Fifty-one of those entries pertained to agreements by
9 companies other than Chevron. *Id.* ¶¶ 13-14 (explaining that the website returned entries for a
10 corporation that makes insignia shaped as “chevrons”). The remaining 89 entries, which include
11 purchase or delivery orders and contract modifications, reflect a total of only 16 underlying
12 contracts. *Id.* ¶ 15. Chevron was able to locate nine of these contracts. *Id.* Of these nine
13 contracts, five were “issued in the names of Chevron affiliates and not Chevron Corporation.”
14 *Id.* Four of the nine located contracts “had erroneously been issued in the name of Chevron,”
15 and performance was complete on all before October 2012. *Id.* at ¶¶ 15, 17-24.

16 Chevron was unable to locate the remaining 7 of the 16 contracts. *Id.* ¶¶ 15-16. Chevron
17 provides testimony, however, that “the database contains sufficient information about the
18 contracting company, the product, or service to be delivered . . . that it can be reasonably
19 ascertained that, if these contracts listed Chevron Corporation as the contracting party, it would
20 have been in error.” *Id.* ¶ 16. These contracts included, for example, providing fuel to the U.S.
21 Coast Guard in El Salvador, a service Chevron Corporation does not provide. *Id.* ¶ 26.

22 Finally, we conducted a search for contracts awarded to “Chevron Corporation” on
23 www.usapending.gov. Consistent with Chevron’s sworn testimony, most of the contracts

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1 appeared to have been completed prior to October 2012 and awarded to a Chevron subsidiary.
2 See <http://www.usaspending.gov> (last visited Sept. 26, 2013), Search Results for "Chevron
3 Corporation," Attach. E. Although we found one contract that could arguably be attributed to
4 Chevron during the relevant time period (Contract No. SP0600095C5541), Chevron states that
5 the true vendor for this contract was its subsidiary, Chevron U.S.A. Product Company. See
6 Endries Decl. ¶ 21.

7 Accordingly, Chevron does not appear to have been a federal contractor during the
8 relevant time period.

9 **B. Chevron Appears to Have Been Separate and Distinct from Chevron U.S.A.
10 With Sufficient Revenue to Make the Contribution from Non-Federal
11 Contractor Funds**
12

13 Even if Chevron did not enter into its own contracts with the federal government, because
14 Chevron U.S.A. appears to have been a federal contractor during the relevant time period,
15 Chevron could make a contribution to CLF only if Chevron was separate and distinct from
16 Chevron U.S.A and had sufficient revenue not derived from Chevron U.S.A. to make the
17 contribution. The Commission has recognized that if a parent company has an ownership
18 interest in a subsidiary that is a federal contractor, the parent company may make a contribution
19 without violating section 441c if it is a "separate and distinct legal entity" from its federal
20 contractor subsidiary and has sufficient revenue not derived from its contractor subsidiary to
21 make a contribution. See, e.g. MUR 6403 (Aleut Corp. *et al.*); Advisory Op. 2005-01
22 (Mississippi Band of Choctaw Indians); Advisory Op. 1998-11 (Patriot Holdings LLC)
23 (superseded on other grounds). If, however, the subsidiary is merely an agent, instrumentality,
24 or alter ego of the holding company, then the parent company is prohibited from making a
25 contribution. Advisory Op. 1998-11 at 5.

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1 In determining whether a parent company is "separate and distinct" from its subsidiary,
 2 the Commission has not articulated a specific test but has instead made determinations based on
 3 the facts and circumstances presented in each matter.⁵ Here, the record supports the conclusion
 4 that Chevron and Chevron U.S.A. are separate and distinct entities. Chevron and Chevron
 5 U.S.A. are separately incorporated: Chevron is a registered corporation in Delaware, and
 6 Chevron U.S.A. is registered as a Pennsylvania corporation. The companies are under the
 7 direction and control of separate management. *See* Chevron Resp. at 2. Although publicly
 8 available information indicates that Chevron and Chevron U.S.A. may share the same CEO, the
 9 public record also indicates most of the companies' directors and officers do not overlap. *See*
 10 Advisory Op. 1998-11 at 5, n. 3 (determining that overlapping officers and directors between a
 11 parent company and its subsidiaries was insufficient to establish that the subsidiaries were alter
 12 egos of the parent company).

13 Finally, Chevron appears to have had sufficient funds *not* derived from revenue of
 14 subsidiaries with federal contracts to make the \$2.5 million contribution to CLF. Chevron's
 15 combined sales and operating revenues in 2012 exceeded \$230 billion, and it has provided sworn
 16 testimony that significantly more than \$2.5 million was derived from dividend revenues from
 17 domestic subsidiaries that were not federal contractors. *See* Endries Decl. ¶ 9.⁶

⁵ *See* 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).

⁶ Indeed, that Chevron U.S.A. is well capitalized and maintains its own assets exceeding \$36 billion may alone suffice to establish that Chevron U.S.A. constitutes a separate legal entity from Chevron. *See Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001) (per curiam) (inadequate capitalization of subsidiary alone may be sufficient to hold parent corporation liable for acts of subsidiary under California law); *Cf. Commodity Futures*

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1 Accordingly, we conclude that Chevron and Chevron U.S.A. have sufficiently
2 demonstrated that they are separate and distinct legal entities and that Chevron made its
3 contribution to CLF with revenue from sources other than subsidiaries holding federal contracts.

4 **C. Conclusion**

5 Because Chevron was not a federal contractor and has sufficiently demonstrated that it is
6 a separate and distinct entity from Chevron U.S.A, we recommend that the Commission find no
7 reason to believe that Chevron or Chevron U.S.A. violated 2 U.S.C. § 441c(a) by making a
8 contribution as a federal contractor.⁷ Further, given our determination as to Chevron and CLF's
9 sworn testimony that Chevron represented to CLF that Chevron was not a federal contractor, we
10 also recommend that the Commission find no reason to believe that CLF violated 2 U.S.C.
11 § 441c(a) by knowingly soliciting a contribution made by a federal contractor.

12

Trading Comm'n v. Tropworth Int'l, Ltd., 205 F.3d 1107, 1112-13 (9th Cir. 2000) (finding alter ego liability based upon undercapitalization of subsidiary).


⁷ Chevron argues also that Section 441c's prohibition on contributions is unconstitutional with respect to contributions to independent expenditure-only political committees under *Citizens United*, 130 S. Ct. at 876. Chevron Resp. at 13-18. Because we do not recommend proceeding, we do not address Chevron's constitutional challenge.


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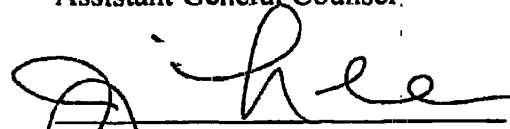
1 **IV. RECOMMENDATIONS**

- 2 1. Find no reason to believe that Chevron Corporation or Chevron U.S.A., Inc. violated
- 3 2 U.S.C. § 441c(a);
- 4 2. Find no reason to believe that the Congressional Leadership Fund and Caleb Crosby
- 5 in his official capacity as treasurer violated 2 U.S.C. § 441c(a);
- 6 3. Approve the attached Factual and Legal Analyses;
- 7 4. Approve the appropriate letters; and
- 8 5. Close the file.

9
10
11 Date: 11/14/13


 Daniel A. Petalas
 Associate General Counsel


 Mark Shonkwiler
 Assistant General Counsel


 Jia Lee
 Attorney

24
25 Attachment

26
27
28
29 C. Pennsylvania Dept. of State, Business Search

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Corporations

Online Services | Corporations | Forms | Contact Corporations | Business Services

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- Search**
- By Business Name
 - By Business Entity ID
 - Verify Certifications
 - Online Orders
 - Register for Online Orders
 - Order Good Standing
 - Order Certified Documents
 - Order Business List
 - My Images
 - Search for Images

Business Entity Filing History

Date: 8/6/2013

(Select the link above to view the Business Entity's Filing History)

Business Name History

Name	Name Type
Chevron U.S.A. Inc.	Current Name
Gulf Oil Corporation	Prior Name
Gulf Oil Corporation of Pennsylvania	Prior Name

Business Corporation - Domestic - Information

Entity Number: 149371
 Status: Active
 Entity Creation Date: 8/9/1922
 State of Business.: PA
 Registered Office Address: % PRENTICE-HALL CORPORATION SYSTEM,INC.
 PA 0 -0
 Dauphin
 Mailing Address: No Address

Officers

Name: W J PRICE
 Title: President
 Address: PO BOX 6028
 SAN RAMON CA 94583-0728

Name: K ENDRIES
 Title: Secretary
 Address: PO BOX 6028
 SAN RAMON CA 94583-0728

Name: A D CORNWELL
 Title: Treasurer
 Address: PO BOX 6028
 SAN RAMON CA 94583-0728

Name: W E CRAIN
Title: Vice President
Address: PO BOX 6028
SAN RAMON CA 94583-0728



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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert K. Kelner, Esq.
Robert D. Lenhard, Esq.
Kevin R. Glandon, Esq.
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

MAR 11 2014.

RE: MUR 6726
Chevron Corporation
Chevron U.S.A., Inc.

Dear Messrs. Kelner, Lenhard, and Glandon:

On March 12, 2013, the Federal Election Commission notified your clients, Chevron Corporation ("Chevron") and Chevron U.S.A., Inc. ("Chevron U.S.A.") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On February 25, 2014, the Commission found, on the basis of the information in the complaint and information provided by you that there is no reason to believe that Chevron or Chevron U.S.A. violated 2 U.S.C. § 441c(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Jin Lee, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Chevron Corporation
6 Chevron U.S.A., Inc.

MUR 6726

7
8 **I. INTRODUCTION**

9 This matter involves allegations that Chevron Corporation ("Chevron") or its subsidiary
10 Chevron U.S.A., Inc. ("Chevron U.S.A.") made a contribution as a federal contractor in violation
11 of the Federal Election Campaign Act, as amended (the "Act").¹ Relying upon a government
12 website, www.usaspending.gov, which tracks contracts awarded by the federal government,
13 Complainants allege that Chevron was a federal contractor in October 2012 when it made a
14 contribution to the Congressional Leadership Fund ("CLF"), an independent expenditure-only
15 political committee. Chevron acknowledges that, on October 7, 2012, it made a \$2.5 million
16 contribution to CLF but denies that it is a government contractor subject to the provisions of the
17 Act cited by the Complainant. In contrast, Chevron U.S.A. acknowledges that it is a government
18 contractor but denies that it made any federal political contribution in violation of the Act.

19 As discussed below, the available information indicates that Chevron was the entity that
20 made the contribution to CLF, Chevron was not a federal contractor at the time it made the
21 contribution, and Chevron and Chevron U.S.A. appear to be separate and distinct legal entities.
22 It therefore does not appear that Chevron was subject to the Act's ban on contributions by federal
23 contractors at the time of the contribution or that Chevron's contribution should be attributed to

¹ On March 5, 2012, the Complainants filed the original Complaint alleging that Chevron U.S.A., Inc. made the contribution at issue in this matter. Based on Chevron's subsequent comments to the press that it, not Chevron U.S.A., made the contribution, the Complainants filed an Addendum to the Complaint, requesting that the Commission also conduct an investigation of Chevron. Addendum to Compl. at 1 (Mar. 22, 2012).

MUR 6726 (Chevron Corp. *et al.*)
Factual and Legal Analysis

1 Chevron U.S.A. Accordingly, the Commission finds no reason to believe that Chevron or
2 Chevron U.S.A. violated 2 U.S.C. § 441c(a).

3 **II. FACTUAL BACKGROUND**

4 **A. Corporate Structure of Chevron and Its Subsidiaries**

5 1. Chevron Corporation

6 Chevron is a Delaware corporation with headquarters in San Ramon, California. *See*
7 Chevron Resp. at 2. Chevron describes itself and its numerous subsidiaries as “one of the
8 world’s leading integrated energy companies.” Chevron Resp., Declaration of Kari H. Endries ¶
9 9 (“Endries Decl.”). Chevron reports that its combined sales and other revenue exceeded \$230
10 billion in 2012 and its combined income from its subsidiaries exceeded \$26.2 billion. Endries
11 Decl. ¶ 9.

12 Chevron holds 100% of the stock of Chevron Investments, Inc., which in turn owns the
13 stock of other companies, including 100% of the stock of Texaco, Inc. Endries Decl. ¶ 6.
14 Texaco, Inc. owns the stock of other companies, including 100% of Chevron U.S.A. Holdings,
15 Inc., which in turn owns 100% of the shares of Chevron U.S.A. *Id.*

16 The Response distinguishes Chevron from its subsidiaries, stating that its subsidiaries are
17 separate legal entities. Chevron Resp. at 2. The Response indicates that Chevron, “[a]s a general
18 matter . . . does not sell any goods or services.” *Id.* Rather, Chevron:

19 owns shares in, allocates capital to, reviews financial and performance goals for,
20 monitors the performance of, and provides general policy guidelines to numerous
21 global subsidiaries and affiliates, which are the separate holding or operating
22 companies, under the direction and control of their own management, engaged in
23 all aspects of worldwide energy operations.

24
25 *Id.* Consequently, Chevron’s primary assets consist of stock of other companies, and Chevron
26 derives most of its income from the dividends of these companies. *Id.*

1 Contrary to the Complaint's assertions, Chevron claims that it was neither a federal
2 contractor nor seeking to become one in October 2012 and that it has no division, unit, or person
3 responsible for federal contracting. *Id.*; Endries Decl. ¶ 5. Although publicly available
4 information identified in the Complaint and Response available on www.usaspending.gov
5 identifies "Chevron Corporation" as a federal contractor during the relevant time period,
6 Chevron argues that this information is in error. Chevron Resp. at 6-7. Chevron states that many
7 of the entries in the database involve companies other than Chevron or one of its subsidiaries and
8 do not list the true vendor. *Id.* at 7 (citing Endries Decl. ¶¶ 16, 18-22). Moreover, many of the
9 entries are dated outside the relevant time period. *Id.* at 7-8.

10 2. Chevron U.S.A., Inc.

11 Chevron U.S.A. is a Pennsylvania corporation with headquarters also located in San
12 Ramon, California.² According to its Response, Chevron U.S.A. is engaged in all branches of
13 the petroleum industry as well as mineral, geothermal, and other activities but derives a relatively
14 insignificant amount from contracts with the federal government. Chevron Resp. at 2; Endries
15 Decl. ¶ 7. Chevron U.S.A. not only explores for and produces crude oil and natural gas but also
16 refines crude oil into petroleum products and markets such products. Endries Decl. ¶ 7.
17 Chevron U.S.A. acknowledges that it is a federal contractor, but asserts that it derives "a
18 relatively insignificant amount of revenue" from federal contracts. Resp. at 2.

19 B. **Contribution to the Congressional Leadership Fund**

20 CLF is an independent expenditure-only political committee registered with the FEC.
21 CLF Resp. at 1; CLF Statement of Organization (filed Oct. 24, 2011). According to its
22 Response, CLF does not accept contributions from federal contractors and does not solicit such

² According to www.usaspending.gov, both Chevron and Chevron USA are located at the same street address, 6001 Bollinger Canyon Road, San Ramon, California. Compl., Appendix A; Addendum to Compl., Attachment.

MUR 6726 (Chevron Corp. *et al.*)
Factual and Legal Analysis

1 contributions. CLF Resp. at 1, citing Affidavit of Trent T. Edwards ¶ 4 (“Edwards Aff.”). CLF
2 claims that its fundraising materials, including its website, have stated its policy against
3 accepting contributions from federal contractors. CLF Resp. at 1, citing Edwards Aff. ¶¶ 2, 4.

4 According to CLF, in late September 2012, Trent T. Edwards, Director of Development
5 for CLF, met with representatives of Chevron to explore the possibility of Chevron’s making a
6 contribution to CLF. Edwards Aff. ¶ 5. Soon after that meeting, a representative of Chevron
7 indicated that Chevron was considering a contribution to CLF and that Chevron was not a federal
8 contractor. *Id.* According to a sworn statement provided by the Chevron Response, Chevron’s
9 Policy, Government and Public Affairs Corporate Department requested the \$2.5 million
10 contribution to CLF, and the payment was “charged to Chevron.” *See* Chevron Resp.,
11 Declaration of Thomas G. Hoffman ¶ 3 (“Hoffman Decl.”). On October 7, 2012, CLF received a
12 check from Chevron in the amount of \$2.5 million. *See id.*; Check No. 0024282612, Chevron
13 Resp., Ex. A.; CLF Amended 2012 12 Day Pre-Election Report (filed Oct. 26, 2012).

14 III. LEGAL ANALYSIS

15 A. The Act’s Prohibition of Contributions Made By Federal Contractors

16 The Act prohibits any person who is negotiating or performing a contract with the United
17 States government or any of its agencies or departments from making a contribution to any
18 political party, political committee, federal candidate, or “any person for any political purpose or
19 use.” 2 U.S.C. § 441c(a)(1); 11 C.F.R. § 115.2(a). In addition, the Act prohibits any person
20 from knowingly soliciting a contribution from any person who is negotiating or performing a
21 contract with the United States government. 2 U.S.C § 441c(a)(2); 11 C.F.R. § 115.2(c).

22 The available information indicates that Chevron made the contribution to CLF and that
23 Chevron was not a federal contractor when it made that contribution. The Chevron Response

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Factual and Legal Analysis

1 includes sworn testimony and documentation that Chevron, not Chevron U.S.A., made the
2 contribution to CLF in October 2012. *See* Thomas Decl. ¶ 3. There is no available information
3 to contradict this evidence.

4 Chevron asserts that “Chevron Corporation is not, and was not in October 2012, in the
5 business of federal contracting.” Chevron Resp. at 12. It supports this assertion with testimony
6 from staff responsible for Chevron’s corporate governance and the results of an internal review
7 initiated in response to the Complaint. *See* Endries Decl. ¶¶ 1-5, 10-31. Chevron declares that,
8 upon reviewing www.usaspending.gov and the Complaint, it identified 140 results for “Chevron
9 Corporation.” *Id.* ¶ 11. Fifty-one of those entries pertained to agreements by companies other
10 than Chevron. *Id.* ¶¶ 13-14 (explaining that the website returned entries for a corporation that
11 makes insignia shaped as “chevrons”). The remaining 89 entries, which include purchase or
12 delivery orders and contract modifications, reflect a total of only 16 underlying contracts. *Id.*
13 ¶ 15. Chevron was able to locate nine of these contracts. *Id.* Of these nine contracts, five were
14 “issued in the names of Chevron affiliates and not Chevron Corporation.” *Id.* Four of the nine
15 located contracts “had erroneously been issued in the name of Chevron,” and performance was
16 complete on all before October 2012. *Id.* at ¶¶ 15, 17-24.

17 Chevron was unable to locate the remaining 7 of the 16 contracts. *Id.* ¶¶ 15-16. Chevron
18 provides testimony, however, that “the database contains sufficient information about the
19 contracting company, the product, or service to be delivered . . . that it can be reasonably
20 ascertained that, if these contracts listed Chevron Corporation as the contracting party, it would
21 have been in error.” *Id.* ¶ 16. These contracts included, for example, providing fuel to the U.S.
22 Coast Guard in El Salvador, a service Chevron Corporation does not provide. *Id.* ¶ 26.

MUR 6726 (Chevron Corp. *et al.*)
Factual and Legal Analysis

1 Consistent with Chevron's sworn testimony, most of the contracts listed on
2 www.usaspending.gov appeared to have been completed prior to October 2012 and awarded to a
3 Chevron subsidiary. See <http://www.usaspending.gov> (last visited Sept. 26, 2013), Search
4 Results for "Chevron Corporation." Although OGC found one contract that could arguably be
5 attributed to Chevron during the relevant time period (Contract No. SP0600095C5541), Chevron
6 states that the true vendor for this contract was its subsidiary, Chevron U.S.A. Product Company.
7 See Endries Decl. ¶ 21.

8 Accordingly, Chevron does not appear to have been a federal contractor during the
9 relevant time period.

10 **B. Chevron Appears to Have Been Separate and Distinct from Chevron U.S.A.**

11
12 The Commission has recognized a parent company may make a contribution to an
13 independent-expenditure-only political committee if it has an ownership interest in a federal-
14 contractor subsidiary when (1) the subsidiary is a "separate and distinct legal entity" and (2) the
15 parent company has sufficient revenue derived from sources other than its contractor subsidiary
16 to make the contribution. See, e.g. MUR 6403 (Alaskans Standing Together. *et al.*). Here, the
17 available information indicates that Chevron and Chevron U.S.A. appear to be separate and
18 distinct entities. Chevron and Chevron U.S.A. are separately incorporated: Chevron is a
19 registered corporation in Delaware, and Chevron U.S.A. is registered as a Pennsylvania
20 corporation. Although both Chevron and Chevron U.S.A. are located at the same street address.
21 Compl., Appendix A; Addendum to Compl., Attachment, the companies are under the direction
22 and control of separate management. See Chevron Resp. at 2. Although publicly available
23 information indicates that Chevron and Chevron U.S.A. may share the same CEO, the public
24 record also indicates most of the companies' directors and officers do not overlap. See

MUR 6726 (Chevron Corp. *et al.*)
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1 *generally* Advisory Op. 1998-11 at 5, n. 3 (determining that overlapping officers and directors
2 between a parent company and its subsidiaries was insufficient to establish that the subsidiaries
3 were alter egos of the parent company). In addition, Chevron appears to have had sufficient
4 funds *not* derived from revenue of subsidiaries with federal contracts to make the \$2.5 million
5 contribution to CLF. Chevron's combined sales and operating revenues in 2012 exceeded \$230
6 billion, and it has provided sworn testimony that significantly more than \$2.5 million was
7 derived from dividend revenues from domestic subsidiaries that were not federal contractors.
8 *See* Endries Decl. ¶ 9.

9 Accordingly, the available information indicates that Chevron and Chevron U.S.A.
10 appear to be separate and distinct legal entities and that Chevron made its contribution to CLF
11 with revenue from sources other than subsidiaries holding federal contracts.

12 IV. CONCLUSION

13 Accordingly, the Commission finds no reason to believe that Chevron or Chevron U.S.A.
14 violated 2 U.S.C. § 441c(a) by making a contribution as a federal contractor.³
15

³ Because the Commission is not proceeding in this matter, we do not address the constitutional challenges to 441c(a) raised by the respondents. *See* Chevron Resp. at 13-18.

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BEFORE THE FEDERAL ELECTION COMMISSION

2014 FEB 28 PM 3: 50

In the Matter of)
) MUR 6726
Chevron Corporation; Chevron U.S.A.,)
Inc.; Congressional Leadership Fund)
and Caleb Crosby in his official)
capacity as treasurer)

CELA

CERTIFICATION

I, Shawn Woodhead Werth, recording secretary for the Federal Election Commission executive session on February 25, 2014, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions:

1. Find no reason to believe that Chevron Corporation or Chevron U.S.A., Inc., violated 2 U.S.C. § 441c(a).
2. Find no reason to believe that the Congressional Leadership Fund and Caleb Crosby in his official capacity as treasurer violated 2 U.S.C. § 441c(a).
3. Approve the Factual and Legal Analyses, as recommended in the First General Counsel's Report date stamped November 14, 2013 subject to the edits circulated prior to the meeting and as discussed at the meeting, and authorize technical and confirming edits by the Office of General Counsel.
4. Approve the appropriate letters.
5. Close the file.

Commissioners Goodman, Hunter, Petersen, Ravel, and Weintraub voted affirmatively for the decision. Commissioner Walther dissented.

Attest:

February 27, 2014
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

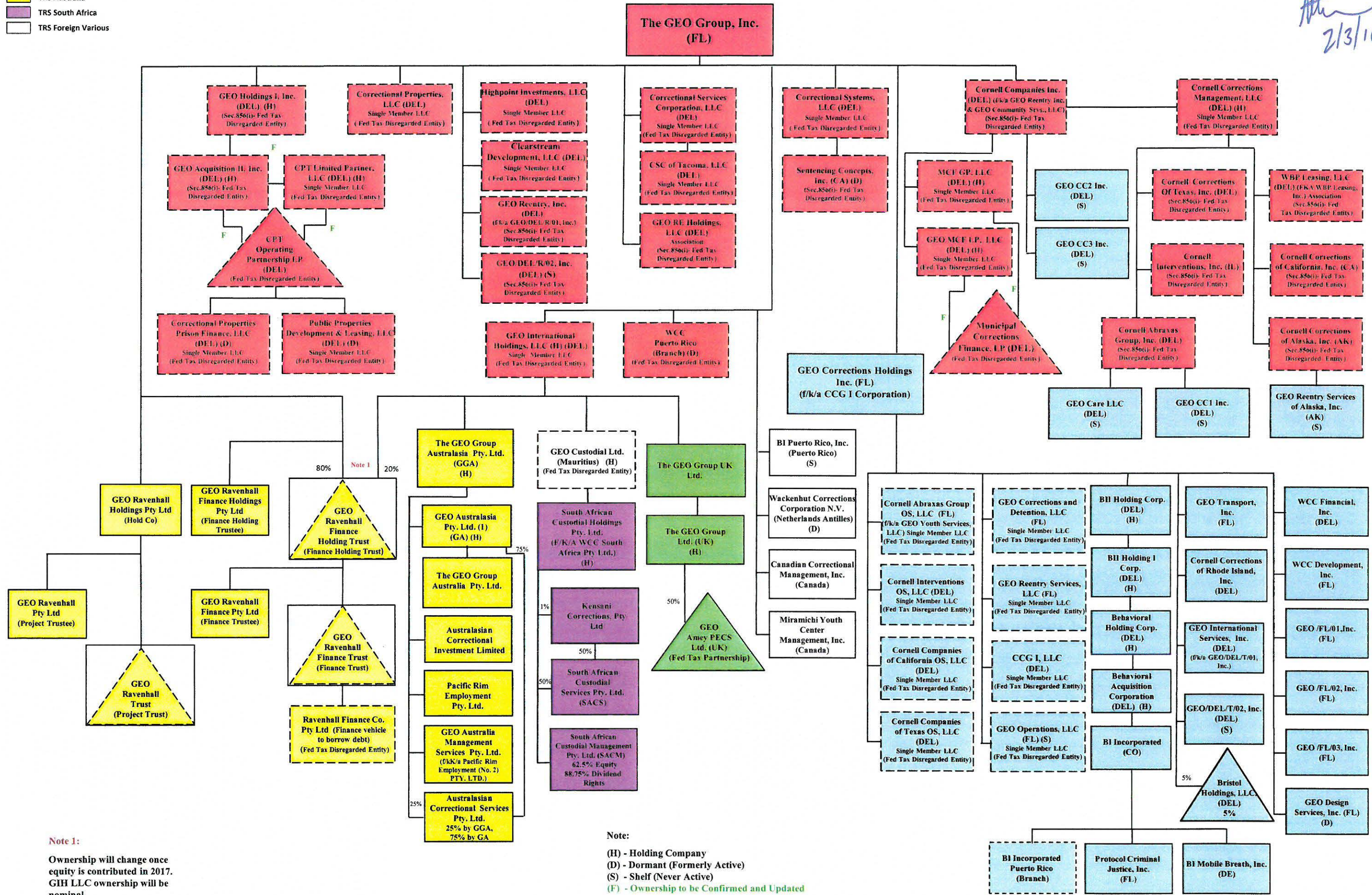
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ATTACHMENT N
GEO ORGANIZATIONAL CHART

MUR718001059
The GEO Group, Inc.
Organizational Chart
As of February 1st, 2016

- REIT - Domestic & Puerto Rico Branch
- TRS Domestic
- TRS United Kingdom
- TRS Australia
- TRS South Africa
- TRS Foreign Various

[Handwritten Signature]
 2/3/16



Note 1:
 Ownership will change once equity is contributed in 2017. GIH LLC ownership will be nominal.

Note:
 (H) - Holding Company
 (D) - Dormant (Formerly Active)
 (S) - Shelf (Never Active)
 (F) - Ownership to be Confirmed and Updated