



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 17, 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VIA EMAIL TO:

ckelley@campaignlegalcenter.org

Campaign Legal Center
Catherine Hinckley Kelley, Esq.
1411 K Street, NW, Suite 1400
Washington, DC 20005

RE: MUR 7180

Dear Ms. Kelley:

This letter is in reference to the complaint you filed with the Federal Election Commission on November 11, 2016, against The GEO Group, Inc., GEO Corrections Holdings, Inc., and Rebuilding America Now, and the subsequent supplement to that complaint that you filed on December 20, 2016. The Commission found that there was reason to believe that GEO Corrections Holdings, Inc. violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) and commenced an investigation in the matter. Subsequently, on August 10, 2021, the Commission considered the General Counsel's and GEO Corrections Holdings, Inc.'s briefs but was equally divided over whether to find probable cause to believe that GEO Corrections Holdings, Inc. violated 52 U.S.C. § 30119, and equally divided over whether to find no probable cause to believe that GEO Corrections Holdings, Inc. violated 52 U.S.C. § 30119. Accordingly, the Commission closed its file in this matter as to all respondents.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's reason to believe finding, is enclosed for your information. A Statement of Reasons explaining the Commission's probable cause decision will follow. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

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Catherine Hinckley Kelley, Esq.
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If you have any questions, please contact Nick Mueller, the attorney assigned to this matter, at (202) 694-1650 or nmueller@fec.gov.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Mark Allen

BY: Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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

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

MUR 7180

6 **I. INTRODUCTION**

7 This matter was generated by a complaint filed with the Federal Election Commission by
8 Campaign Legal Center.¹ The Complaint makes allegations that GEO Corrections Holdings, 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.

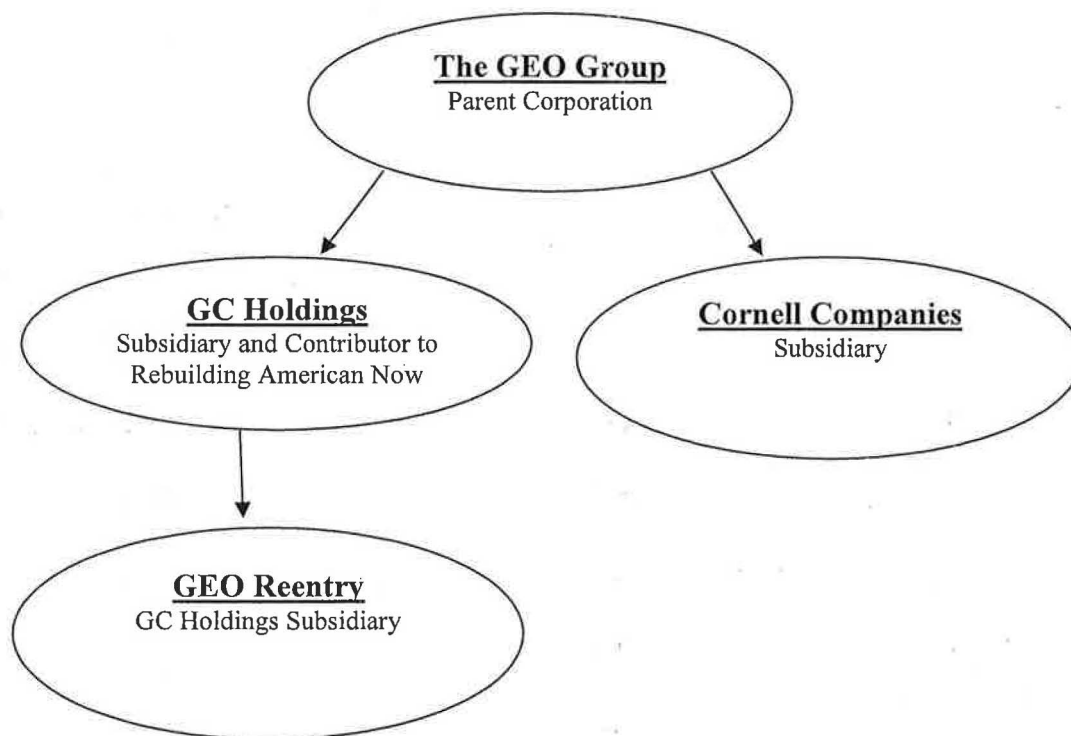
¹⁴ *Id.* at 6.

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
11 The Act prohibits federal contractors from “directly or indirectly” making a contribution
12 to any political party, political committee, federal candidate, or “any person for any political
13 purpose or use.”²⁴ A federal contractor includes any person who is negotiating or performing a
14 contract with the federal government or its agencies for certain enumerated purposes, including
15 the “rendition of personal services.”²⁵ In addition, the Act prohibits any person from knowingly

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
16 1. GC Holdings May Be a Federal Contractor

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. 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).

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.