UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

March 15, 2019

Esther L. Moreno
Akerman LLP
esther.moreno@akerman.com

Re: The GEO Group, Inc.
Incoming letter dated January 7, 2019

Dear Ms. Moreno:

This letter is in response to your correspondence dated January 7, 2019 concerning the shareholder proposal (the "Proposal") submitted to The GEO Group, Inc. (the "Company") by Alex Friedmann (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 4, 2019. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates
Special Counsel

Enclosure

cc: Jeffrey S. Lowenthal
Stroock & Stroock & Lavan LLP
jlowenthal@stroock.com

March 15, 2019

**Response of the Office of Chief Counsel**
**Division of Corporation Finance**

Re: The GEO Group, Inc.
Incoming letter dated January 7, 2019

The Proposal requests that the board adopt the following policy, to be implemented no later than December 31, 2019:

1. The Company shall adopt a policy of not accepting immigrant detainee children, who have been separated from their parent or parents by any U.S. government entity, for housing at any facility owned or operated by the Company.
2. The Company shall adopt a policy of not accepting adult immigrant detainees, who have been separated from their child or children by any U.S. government entity, for housing at any facility owned or operated by the Company.
3. If the Company houses at any of its facilities any immigrant detainee children or adults described in sections 1 or 2 above at the time the policies set forth in sections 1 and 2 are implemented, the Company shall: (a) immediately move to modify all such contracts to comply with the above policies or, if such modification is not possible within a six-month period, seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and (b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. In our view, the Proposal micromanages the Company by seeking to impose specific methods for implementing complex policies. Specifically, the Proposal would dictate the terms of services to be provided by the Company and specify the manner in which the Company shall implement certain aspects of the policy requested by the Proposal. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Kasey L. Robinson
Special Counsel

**DIVISION OF CORPORATION FINANCE**
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

STROOCK

February 4, 2019

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U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

**Re: GEO Group, Inc.'s January 7, 2019 No-Action Request Letter Seeking to Exclude Alex Friedmann's Shareholder Proposal**

Ladies and Gentlemen:

I am writing on behalf of Alex Friedmann (the "Proponent") in response to the January 7, 2019 letter (the "No-Action Request") from Akerman LLP, counsel to The GEO Group, Inc. (the "Company" or "GEO"), to the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "SEC") requesting Staff concurrence with GEO's view that GEO may properly exclude a shareholder proposal and supporting statement (the "Proposal") submitted by the Proponent from GEO's proxy materials to be distributed in connection with its 2019 annual meeting of stockholders (the "Proxy Materials"). We respectfully request that the Staff not concur with GEO's view that it may exclude the Proposal from the Proxy Materials, as GEO has failed to meet its burden of persuasion to demonstrate that it may properly omit the Proposal. A copy of this letter has been sent to GEO.

In accordance with Rule 14a-8(k) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), we have submitted this letter to the Staff via electronic mail at shareholderproposals@sec.gov in addition to mailing paper copies.

In the No-Action Request, GEO's counsel requested that the Staff concur with GEO's view that it may exclude the Proposal from its Proxy Materials on four grounds. First, the Company believes it may exclude the Proposal pursuant to Rule 14a-8(i)(3) because "the Proposal is misleading and/or vague." Second, the Company seeks concurrence in its view that it may exclude the Proposal pursuant to Rule 14a-8(i)(6) because the Proposal "includes requirements that the Company does not have the authority to implement." Third, the Company seeks concurrence in its view that it may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it "relates to ordinary business operations of the Company." Lastly, the Company seeks

concurrence in its view that it may exclude the Proposal pursuant to Rule 14a-8(i)(10) because it has been "substantially implemented."

For the reasons set forth below, we submit that GEO has failed to meet its burden of persuasion under Rules 14a-8(i)(3), 14a-8(i)(6), 14a-8(i)(7) or 14a-8(i)(10) and thus the Staff should conclude that the Company cannot exclude the Proposal from its Proxy Materials.

## I. The Proposal

On November 9, 2018, Mr. Friedmann, a beneficial holder of no less than $2,000 in market value of GEO's common stock, submitted a shareholder proposal to the Company pursuant to Rule 14a-8 requesting that the Board of Directors of GEO (the "Board") adopt and implement policies aimed at addressing the issue of immigrant detainees being separated from their children. Specifically, the Proposal seeks for the Company to adopt a corporate policy stating that the Company will not house immigrant detainee children under the age of 18 who have been separated from their parents by the U.S. government, or immigrant detainee adults over the age of 18 who have been separated from their children by the U.S. government. If GEO houses at any of its facilities any separated immigrant detainee children or adults at the time the proposed policies are implemented, the Proposal provides that the Company would need to: (a) immediately move to modify all such contracts to comply with the above policies or, if such modification is not possible within a six-month period, seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and (b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities.

The Proposal reads as follows:

**RESOLVED**: That the stockholders of the Company request that the Board of Directors adopt the following policy, to be implemented no later than December 31, 2019:

> 1. GEO Group shall adopt a policy of not accepting immigrant detainee children (persons under the age of 18), who have been separated from their parent or parents by any U.S. government entity, for housing at any facility owned or operated by the Company.
>
> 2. GEO Group shall adopt a policy of not accepting adult immigrant detainees (persons over the age of 18), who have been separated from their child or children by any U.S. government entity, for housing at any facility owned or operated by the Company.
>
> 3. If GEO Group houses at any of its facilities any immigrant detainee children or adults described in sections 1 or 2 above at the time the policies set forth in sections 1 and 2 are implemented, the Company shall: a) immediately move to modify all such contracts to comply with the above policies or, if such modification is not possible within a six-month period,

> seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities.

The Proponent's supporting statement points to the major public policy issue of family separation that is occurring today, and highlights the Company's controversial history with respect to the housing of immigrant detainees at its detention centers, including that, of the five immigrant detention facilities with the highest number of sexual abuse complaints, three are operated by GEO. Further, immigrant detainees have staged hunger strikes at GEO detention centers and, most abhorrent, of the 18 detainee deaths in Immigration and Customs Enforcement ("ICE") custody in fiscal years 2016 and 2017, nine occurred at GEO-run facilities. Currently, the Company is facing lawsuits for using immigrant detainees to perform work for wages as low as $1.00 per day. The supporting statement notes how this controversial history can lead to reputational harm and liability risks for the Company and reiterates the importance of enacting the policies contained in the Proposal in order to reduce further reputational harm and liability risk to the Company with respect to housing immigrant detainees in its facilities.

## II. The Company has Failed to Demonstrate that the Proposal is Impermissibly Vague and Inherently Misleading

Under Rule 14a-8(i)(3), a company may omit a proposal if it is "false or misleading with respect to any material fact." In a 2004 Staff Legal Bulletin, the Staff stated that there has been an "unintended and unwarranted extension of Rule 14a-8(i)(3), as many companies have begun to assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety." *Staff Legal Bulletin (CF)* No. 14B (Sept. 15, 2004). Calling this extension "inappropriate," the Staff reminded companies of Rule 14a-8(l)(2), which states that "the company is not responsible for the contents of the [shareholder's] proposal or supporting statement," and as such, the Staff will only concur in the company's reliance on Rule 14a-8(i)(3) where that company "has demonstrated objectively that the proposal or statement is *materially* false or misleading." *Id.* Further, the Staff took the position that a shareholder proposal is excludable under Rule 14a-8(i)(3) as vague and indefinite only if "neither the stockholders voting on the proposal, nor the company implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *Id.* For a statement to be misleading, the company must "demonstrate[e] *objectively* that a factual statement is *materially* false or misleading." *Id. (emphasis added).*

The Proposal is narrow in scope, and limits any change in policies to apply only to those immigrants held in the Company's detention centers. Further, the Proposal asks the Company to implement the policy, the essential and intended purpose of which is clear. The Company asserts that the Proposal's supporting statement is misleading and/or vague and is in violation of the Commission's proxy rules, including Section 14a-9, which prohibits *materially* false or misleading statements in proxy soliciting materials. The Company's assertion that the Proposal is "misleading and/or vague" is focused entirely on a few phrases in the supporting statement.

Specifically, the Company claims that certain clauses of the supporting statement are false or misleading because they relate to statements "which directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal or immoral conduct or associations, *without factual foundation*." (Citing to the notes to Rule 14a-9). Yet, the Company fails to (i) point to *any* specific assertion on part of the Proponent that is factually false, and (ii) does not assert, or provide any evidence whatsoever, that the purported misleading statements were of a *material* nature as required under Rule 14a-8(i)(3). For example, the Company claims that it is misleading to say that the Company is currently facing lawsuits, in plural, for using immigrant detainees to perform work for wages as low as $1.00 per day, since the word "lawsuits" doesn't indicate a specific number and might imply that there are three, when in fact there are only two. This argument is wholly without merit. An objective person would understand the plural of a word to mean more than one, and would not assume, without anything further that "lawsuits" means three lawsuits. The Company confirms there are currently two lawsuits, so the term "lawsuits" is used accurately and is neither factually false nor misleading. It is certainly not materially misleading. In any case, the Company is free to elaborate, if it so chooses, in its opposing statement in the proxy statement, and in line with the Staff's rulings on previous no-action letters, this Proposal, which is not materially misleading, should not be excluded under 14a-8(i)(3). *See, Putnam High Income Securities Fund* (Mar. 14, 2006) (the Staff determined that, where a supporting statement contains statements of the proponent's opinion, a proposal is not excludable under Rule 14a-8(i)(3) and the company has an opportunity to state its own point of view on the supporting statement in its proxy statement); *ACM Income Fund, Inc.* (Jan. 8, 2003) (a proposal could not be excluded under Rule 14a-8(i)(3) simply because it focused on the decline in net asset value per share during a rights offering, but omitted information regarding the increase in value after the conclusion of such offering).

In addition, to the extent any portion of the Proposal or Supporting Statement is vague, words are given their ordinary meaning and should be construed in accordance therewith, unless otherwise defined. Accordingly, the Company's claimed inability to comprehend the meaning of "controversial history," "reputation" and "lawsuits" as used in the supporting statement is without merit. It is clear that the Company is cognizant of what these terms mean: throughout the Company's No-Action Request it cites to Staff precedent addressing companies' controversial actions and reputational harm - although the Company itself fails to define those terms in its No-Action Request. Further, it is impossible to define every common term in a proposal that has a 500-word limit. Nor has the Company shown how its purported inability to comprehend the meaning of those common terms is materially false or misleading. Accordingly, we respectfully ask the Staff to find that the Company has failed to meet its burden of proof to demonstrate that the Proposal is materially misleading under Rule 14a-8(i)(3). Nonetheless, the Proponent would be amenable to modifying the portion of the supporting statement regarding the Proposal to which the Company objects. *See, The Southern Africa Fund, Inc.* (Jan. 23, 2002) (where the Staff concluded that an entire supporting statement may not be excluded where the proponent could cure any potential violations by amending the supporting statement).

## III. The Proposal May Not Be Excluded Under Rule 14a-8(i)(6) Because the Company Has the Power and Authority to Implement the Proposal

Under Rule 14a-8(i)(6), a shareholder proposal may be excluded where the company lacks the power or authority to implement the Proposal. The Company claims that it does not have the power to implement the Proposal, because it does not have the ability to unilaterally amend existing contracts to which the Company is a party or to make arrangements to house immigrant detainees outside of GEO's detention centers. The Proposal, however, merely requests that the Company implement a policy that disallows the housing in its own facilities of immigrant children and parents who have been separated by the U.S. government. *Only* if the Company were to be non-compliant with the proposed policy would it, as a last resort pursuant to Paragraph (3) of the Proposal, have to modify or terminate a contract. Significantly, any necessary termination or amendment of a future contract would depend entirely on the knowing violation of the proposed policy by the Company. Further, and as the Company stated in its No-Action Request to the Staff, the Company does not currently engage in the separation of immigrant children from their parents. Accordingly, GEO's concern that implementing the Proposal would force it to modify its contracts is not congruent with its publicly announced practices with respect to this issue. Similarly, the Company argues that compliance with the Proposal would require the Company to seek the intervention of independent third parties, not under its control. Specifically, the Company states that implementing the Proposal would mean that ICE would have to intervene in order to provide GEO with information regarding separations of children from their parents so that GEO could comply with the policy called for by the Proposal of not housing separated immigrant parents or children. Yet, as described above, this argument is also incompatible with the Company's public stance on the subject matter.

The Company's statement on the separation of children from their parents, as of the second quarter of 2018, reads as follows:

> I would like to briefly address the recent coverage of immigration policies and separation of families. To be clear, our company does not manage any facility that house unaccompanied minors nor has our company ever provided transportation or any other services for that purpose.
>
> For the last three decades, our company has managed ICE processing centers providing services for adults in the care of federal authorities under both Democratic and Republican administrations. We have also managed the Karnes Family Residential Center, which has cared exclusively for mothers, together with their children, since 2014, when it was established by the Obama administration.[1]

Specifically, if the Company does not currently engage in such activity, and has "clear" knowledge that none of its facilities house unaccompanied minors, it would seem unlikely that the

[1] https://www.sec.gov/Archives/edgar/data/0000923796/000119312518242807/d571532dex992.htm

Company (i) would not "necessarily know or have access" to the relevant information or (ii) have to mandate ICE to disclose such information, if it were to adopt the Proposal's requested policy.

Furthermore, even if the Company does not have the unilateral ability to modify its contracts absent the agreement of ICE, it *does* have the ability to terminate its own contracts. The Proposal specifically provides for such termination if modification is not possible, in Section 3 of the Proposal: "If GEO Group houses at any of its facilities any immigrant detainee children or adults described in sections 1 or 2 above at the time the policies set forth in sections 1 and 2 are implemented, the Company shall: a) immediately move to modify all such contracts to comply with the above policies *or, if such modification is not possible within a six-month period,* seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities" (emphasis added).

Also, while the Company claims there is no indication their contracting partners would agree to such a policy or contract amendments, it provides no proof that such contracting parties would *not* agree. That is, the Company has provided no statement, letter or opinion from ICE or other governmental agencies to support its suggestion that these parties would not agree to reasonable contract amendments. Even if such support did exist, then termination of any contracts in conflict with the policy requested by the Proposal would still be within the Company's power and authority. The Company does not deny that it has the power and authority to terminate contracts to which it is a party.

The Company relies on various no-action letters where proposals required the company to obtain consent from independent third parties, or required affirmative acts by independent third parties, but such proposals are distinguishable from the Proposal. *See, e.g., Ebay, Inc.* (Mar. 26, 2018) (exclusion of a proposal was allowed because it required the affirmative compliance of a joint venture, of which Ebay did not hold a majority interest); and *Catellus Development Corp.* (Mar. 3, 2005), (involving a proposal requesting that the company stop development of a certain parcel of land and negotiate for its transfer, where the company only served as the development manager but no longer owned the parcel of land). Unlike the no-action letters relied on by the Company, which all include instances of affirmative requirements placed on independent or unrelated third parties which the company did not control, here, the party in question that would potentially need to agree to amend a contract is the counterparty to the contract, not some independent or unrelated third party. Further, the Proposal includes an option – termination of contracts in conflict when the requested policy goes into effect – that is entirely within the Company's power and authority. Thus, the Company has failed to meet its burden of showing that the Proposal should be excluded under Rule 14a-8(i)(6).

## IV. The Company May Not Exclude the Proposal Under Rule 14a-8(i)(7) Because the Proposal Raises Policy Issues that are Sufficiently Significant That They Transcend Ordinary Business Operations

A company may omit a shareholder proposal under Rule 14a-8(i)(7) if the proposal relates to the company's ordinary business operations. The Staff has stated that "the ordinary business exclusion rests on two central considerations." Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"). The first consideration relates to the subject matter of the proposal: "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The second consideration "relates to the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* In its recent updated guidance, the Staff reaffirmed, however, that a proposal that relates to ordinary business matters would nonetheless not be excludable if it focuses on policy issues that are "sufficiently significant" because such issues "transcend ordinary business and would be appropriate for a shareholder vote." Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("SLB 14I"). The Staff further noted that a proposal would generally not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company" (*Id., citing to* Staff Legal Bulletin No. 14H (Oct. 22, 2015), *citing* Staff Legal Bulletin No. 14E (Oct. 27, 2009).

### *A. The Proposal Does Not Impede Upon the Fundamental Task of Offering Products or Services of the Company*

The subject matter of the Proposal is not so fundamental to management's ability to run the Company's ordinary operations that they could not, as a practical matter, be subject to shareholder oversight. *See* 1998 Release. The Company contends that the Proposal's request for implementation of a policy that blocks the ability to house immigrant children separated from their parents, or immigrant adults separated from their children, is excludable under Rule 14a-8(i)(7) because the Proposal addresses decisions that are operational decisions meant to be covered by the ordinary business operations exception - namely, the sale of particular products or services. However, the fact that the Company does *not* currently engage in separation of immigrant children from their parents in its facilities – as it has expressly stated in its No-Action Request and has announced publicly – is compelling evidence that such activity and a policy to prohibit such separation, as called for by the Proposal, is not "fundamental" to management's ability to run the Company on a day-to-day basis, as the Company has managed to operate without the separation of immigrant families in its facilities up to this point in time.

The Company argues that the Proposal would impede management's ability to determine the services the Company provides, its relationship with ICE, and its role in advocating for or against immigration policies, and cites to various no-action letters in which proposals that curtailed a company's ability to sell certain products or services were excluded from the Proxy Materials. *See, e.g., Marriott International, Inc.*(Feb. 13, 2004) (dealing with a proposal that was aimed at prohibiting the sale of sexually explicit material at Marriott owned properties); *see also, PetSmart, Inc.* (Apr. 8, 2009) (a shareholder proposal directed the company to produce a report on

the feasibility of the company phasing out from its *current* business of the sale of live animals). These letters are all inapposite, as the Proposal does not seek to fundamentally change the Company's preexisting offered services or relationships. In fact, as the Company has noted, it has a publicly announced position of *not* housing immigrant detainee children who have been separated from their parents. The Proposal would not require the Company to take any affirmative action with respect to its contracts or offered services unless it becomes non-compliant with the proposed policy by the time such policy is implemented. The Company manages over 130 correctional and detention facilities, none of which, by the Company's own admission, offer the service of housing immigrant children separated from their parents; clearly, if the Proposal is adopted, it would not impact business operations "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight," and in fact would have a minimal impact on the Company.

Therefore, the Proposal does not implicate a task fundamental to management's ability to run the Company and should not be excluded from the Proxy Materials on this basis.

*B. The Proposal May Not be Excluded in Reliance on Rule 14a-8(i)(7) Because it Does Not Micro-manage the Company*

The Company points to Staff Legal Bulletin No. 14J (Oct. 23, 2018), to highlight that a proposal might be seen to micro-manage a company if it "probe[s] too deeply into matters of a complex nature," such as if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." Based on the above, the Company argues that "immigrant detention and the policy of whether to house any adult immigrant detainees who have been separated from the child…is incredibly complex and the Company is not the proper party to address this policy." However, contrary to its statement that the Company is not the proper party to address the policy, as previously noted, the Company *has* already done just that in its earnings call for the second quarter of 2018 ("I would like to briefly address the recent coverage of immigration policies and separation of families. To be clear, our company does not manage any facility that house unaccompanied minors nor has our company ever provided transportation or any other services for that purpose…").[2] Also, as previously noted, the Company is claiming it would be a complex undertaking to comply with the policy requested by the Proposal, when it clearly is able to do so given that the Company is fully aware of whether, and which of, its facilities currently house immigrant detainees that have been separated from their parents – that is, none of its facilities.

GEO relies on various no-action letters where shareholder proposals were excluded for seeking to micro-manage the company because they called for complex policies or imposed specific time frames on the Company. *See, e.g., Apple, Inc.* (Dec. 5, 2016) (allowing exclusion of a proposal requiring the company to reach a net-zero greenhouse gas emission status by 2030 for all aspects of its business); *JP Morgan Chase & Co.* (Mar. 30, 2018) (where the Staff concurred that a proposal that included consideration of a policy that would prohibit the company from financing tar sands projects). The foregoing letters, however, are examples of proposals that are much

[2] *Ibid.*

more complex and burdensome then the Proposal put forth by the Proponent. The Proposal only requests that a policy be established by year end – hardly a burdensome time-frame, with the exact timing being left to the Board – and within the broad parameters of the requested policy, how it is to be applied and implemented, and its exact wording and formulation, is also entirely up to the Board. Further, the Company, under the Proposal, is not required to make changes to any of its existing contacts; it would only need to modify or terminate contracts if any were in conflict with the policy sought by the Proposal at the time that policy is implemented. Notably, the Company has control over that process, as, pursuant to the Proposal, it has until December 31, 2019 to adopt the requested policy, and any non-compliance would be solely due to the Company's own decisions and actions. The nature of any contract modifications and how any terminations are effectuated would be left to the Company itself.

Previous shareholder proposals that have left open to management the method by which a company implements the proposal have been determined by the Staff not to micro-manage the companies at issue. *See, e.g., Wal-Mart Stores, Inc.* (Mar. 29, 2011) (no micro-management found where proposal mandated the issuance of sustainability reports but did not prescribe the process by which the reports were to be compiled or the consequences for supplier non-compliance). And, in fact, some proposals with significantly stricter demands have been upheld by the Staff. *See, e.g., The Gap, Inc.* (Mar. 14, 2012) (proposal to bar The Gap entirely from using Sri Lankan labor not micromanaging); *Corrections Corp. of America* (Feb. 10, 2012) (proposal requesting bi-annual reports on the company's efforts to reduce prisoner rape and sexual abuse, specifying data to be included in reports, not micromanaging); *Amazon.com, Inc.* (Mar. 25, 2015) (proposal requesting a report on human rights risks within the company's entire operations and supply chain not excluded under Rule 14a-8(i)(7)).

The Company also argues that the Proposal should be excluded as it would constitute a "material departure from the Company's historical and current practice that it does not advocate for or against immigration enforcement and detention policies." The Staff has routinely held that proposals which address "general political activities" of a company, are not excludable under the ordinary business exclusion. *See generally, American Telephone & Telegraph* (Jan. 11, 1984) and *Exxon Mobil* (Mar. 5, 2004). Under the umbrella of political activity the Staff has allowed many different types of shareholder proposals. Significantly, and in contrast to the core of the Company's argument in favor of exclusion, the Staff has allowed proposals that directly or indirectly lead a company to favor one political position over another. See *The Proctor and Gamble Company* (Aug. 6, 2014) (the Staff allowed a proposal that sought to limit the company's political contributions to one political affiliation). In particular, the Staff noted that, in "our view, the proposal focuses primarily on Proctor & Gamble's general political activities and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate." *Id.* In fact, the Proposal does not impact the Company's *political* activities at all; it does not seek to halt the policy of immigrant family separation, only to prohibit GEO from housing separated children and parents at its own facilities. The Company is free to engage in its usual political activities such as lobbying and making political campaign contributions.

As shown above, the Proposal does not seek to micro-manage the Company to an unreasonable degree. The Proponent therefore submits that the Company has failed to meet its burden of

persuasion under Rule 14a-8(i)(7) and thus should not be allowed to exclude the Proposal from its Proxy Materials on this basis.

*C. The Proposal Focuses On a Policy Issue That is Sufficiently Significant and Transcends Ordinary Business Operations*

Even if the Proposal were found to relate to ordinary business matters, the No-Action Request disregards the fact that the Staff has a longstanding history of refusing to permit a company to exclude a shareholder proposal under Rule 14a-8(i)(7) when the proposal deals with significant social policy issues. *See, e.g., Exxon Mobil Corporation* (Mar. 13, 2017) (proposal requesting company to report on its actions to minimize methane emissions not excludable under 14a-8(i)(7), with the Staff noting "the proposal transcends ordinary business matters and does not seek to micro-manage the company to such a degree that exclusion of the proposal would be appropriate"); *Revlon Inc.* (Mar. 18, 2014) (no-action request denied because the proposal focused on the significant policy issue of the humane treatment of animals); *McDonald's Corporation* (Mar. 14, 2012) (shareholder proposal that addressed the fast food industry's contribution to childhood obesity was not excludable because the proposal addressed a significant social policy issue); *Aqua America, Inc.* (Mar. 13, 2012) (proposal for water supply company to adopt a policy regarding the human right to water was not excludable because the proposal focused primarily on the significant policy issue of human rights); *Corrections Corp. of America* (Feb. 10, 2012) (no-action request denied for proposal seeking biannual reports to shareholders on the company's efforts to reduce incidents of rape and sexual abuse of prisoners housed in facilities operated by the Company); *Chevron Corp.* (Mar. 28, 2011) (proposal would amend the bylaws to establish a board committee on human rights was not excludable).

The Proposal, which requests the Company to implement a policy forbidding the housing of separated immigrant children or separated adults within its detention centers, similarly raises significant social policy issues that have been widely discussed. Specifically, the Proposal focuses on the significant policy issue of separating immigrant children and parents. During 2018, 2,654 immigrant children, 103 aged four and younger, were separated from their parents. As of October 2018, at least 254 immigrant children remained separated.[3] On average, children held in detention centers similar to GEO's have spent five months in custody. Underscoring this public policy issue, two Guatemalan children passed away while in federal custody in December 2018.[4] Recently, news reports have indicated that thousands more immigrant children may have been separated than initially thought.[5]

[3] "Nearly 250 migrant children still separated from parents, ACLU report says" *Washington Post*, https://www.washingtonpost.com/local/immigration/nearly-250-migrant-children-still-separated-from-parents-aclu-report-says/2018/10/18/d3fc2fd0-d222-11e8-b2d2-f397227b43f0_story.html?noredirect=on

[4] "Trump Politicizes deaths of two immigrant children to score points in border wall fight" *Washington Post*, https://www.washingtonpost.com/politics/trump-politicizes-deaths-of-two-immigrant-children-to-score-points-in-border-wall-fight/2018/12/29/e46dc884-0b9c-11e9-a3f0-71c95106d96a_story.html

[5] "Family Separation May Have Hit Thousands More Migrant Children Than Reported" *The New York Times*, https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html

The Staff has adopted the "widespread public debate" standard with respect to determining if a shareholder proposal focuses on a significant social policy issue. *See* Staff Legal Bulletin No. 14A (July 12, 2002) ("The Division has noted many times that the presence of widespread public debate regarding an issue is among the factors to be considered in determining whether proposals concerning that issue 'transcend the day-to-day business matters.'"); *see also, Verizon Communications Inc.* (Jan. 23, 2003) ("In view of the widespread public debate concerning the impact of non-audit services on auditor independence and the increasing recognition that this issue raises significant policy issues, we do not believe that Verizon may omit the proposal from its proxy materials in reliance on Rule 14a-8(i)(7)"); *Bank of America Corporation* (March 14, 2011 ("In view of the public debate concerning widespread deficiencies in the foreclosure and modification processes for real estate loans and the increasing recognition that these issues raise significant policy considerations, [the Staff does] not believe that Bank of America may omit the first proposal from its proxy materials in reliance on rule 14a-8(i)(7)").It is clear that immigrant family separation constitutes a topic of "widespread public debate." Since the Trump administration announced the "zero tolerance" policy, individuals, civil rights groups and corporations raised their collective voice in opposition. Dozens of federal lawsuits have been filed, including by the American Civil Liberties Union (see, *Ms. L, et al., v. U.S. Immigration and Customs Enforcement, et al. Case No. 18-cv-428 DMS MDD (S.D. Cal. 2018); and, Beata Mariana De Jesus Mejia-Mejia v. U.S. Immigration and Customs Enforcement, et. al.,* (D.D.C. 2018), raising multiple constitutional violations as the main point of concern. Further, there have been countless news articles detailing, not only the underlying moral dilemma presented by the separation of immigrant families, but also the public reaction to such separations, throughout the country and internationally. Throughout 2018, people "outraged over the separation of children from their parents at the border… [planned] protests throughout the country," CNN reported on June 19, 2018. (CNN recounting the details of a family separation vigil held at the ICE headquarters in Washington, D.C., a march in El Paso, Texas to the Processing Center, followed by a rally against family separation and a protest that occurred at Philadelphia's Rittenhouse Square, where participants brought children's shoes to line the street).[6]

Even more significant in demonstrating that family separation is an important public policy issue and a topic of "widespread public debate" is the intervention by federal district court judges. Beginning in June 2018, federal judges began issuing orders commenting on the immorality and illegality of the Trump administration's "zero-policy" directive. Specifically, in explaining the decision to halt family separations, U.S. District Court Judge Dana Sabraw stated that the "balance of the equities and the public interest" weigh in favor of those opposing family separation. [7]

Additionally, legislation was introduced in Congress to address the family separation issue, and President Donald Trump signed an executive order to end the controversial practice of family separation in June 2018 – indicating that this is such a significant policy issue that it resulted in action by Congress and the president of the United States.[8] Despite that executive order, as noted

[6] "Here are some of the protests against family separation happening today" *CNN*, https://www.cnn.com/2018/06/19/us/immigration-protests-family-separation/index.html
[7] https://www.cnn.com/2018/06/26/politics/federal-court-order-family-separations/index.html

above, immigrant children still remain separated from their parents, and the government has indicated that family separation may be reinstated in the future.[9] Because the social policy issue addressed by the Proposal is one that is clearly a matter of public debate, it should be found to amount to a social policy issue that may not be omitted from the Proxy Materials in reliance on Rule 14a-8(i)(7).

Importantly, as previously noted, the Staff has also stated that a proposal would generally not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company." (SLB 14I, *citing to* Staff Legal Bulletin No. 14H (Oct. 22, 2015), citing Staff Legal Bulletin No. 14E (Oct. 27, 2009)). In this instance, the nexus between the nature of the Proposal and the Company is clear. The Proposal addresses a policy regarding the detention of separated immigrant children and parents, and the Company's business is in operating detention centers. Specifically, the Company contracts with the federal government to operate immigrant detention facilities, and houses both immigrant children and parents at one of its facilities.

The Company should not be permitted to hide behind the cloak of the ordinary business exclusion, given that the subject matter of the Proposal raises significant social policy issues as to the separation of immigrant children and parents, and the issue has a sufficient nexus to the Company. The Staff has found various types of issues to rise to the level of a significant policy issue. Cited above, for example, are issues such as childhood obesity (*McDonald*'s), treatment of the environment (*Exxon Mobil Corporation*) humane treatment of animals (*Revlon, Inc.*) and sexual abuse of prisoners (*Corrections Corp. of America).* Certainly, if children's diets, treatment of the environment and animals, and how prisoners are treated are important social policy concerns, then the fundamental right of a *civilly detained* child to be with a parent and the emotional and physical health and well being of a child that has been forcibly taken away from his or her parent is undoubtedly significant as a policy concern.

## V. The Company May Not Exclude the Proposal Under Rule 14a-8(i)(10) Because the Proposal Has Not Already Been Substantially Implemented By the Company

The Company also objects to the Proposal under Rule 14a-8(i)(10) on the grounds that it has already been substantially implemented. However, here, too, the Company is not correct. The Staff has stated that whether a shareholder proposal has been substantially implemented by a company under Rule 14a-8(i)(10) "depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). To show "substantial implementation," the Company must prove that its actions address the underlying concerns and the essential objective of the Proposal. *See, e.g.*, *Corrections Corp. of America* (Feb. 10, 2012) (no exclusion of proposal requesting bi-annual reports for each company facility on company's efforts to reduce prisoner rape and sexual abuse where company merely intended to release annual reports using aggregated data); *The J.M. Smucker Company* (May 9, 2011) (proposal to commit company to issue environmental report not substantially implemented despite company's existing commitment to issue a different report, where proposal would commit company to discussing additional issues); *Wal-Mart Stores, Inc.* (Mar. 29, 2011) (proposal to have company demand that suppliers deliver sustainability reports not substantially implemented where company's Supplier Code of Conduct exempted majority of suppliers from

delivering such reports); *General Motors Corp.* (Mar. 5, 2004) (proposal sought a report on global warming, and company was set to release information on a website; shareholder successfully argued that "a website is not a report to stockholders"); *c.f. The Proctor & Gamble Company* (Aug. 4, 2010) (substantial implementation where existing updated policy addressed every one of the proposal's policy concerns); *3M Company* (Mar.2, 2005) (proposal seeking implementation on eleven principles relating to human and labor rights in China not substantially implemented despite company's comprehensive policies and guidelines).

The Company argues that it has already substantially implemented the Proposal as evidenced by its 2018 statement on the subject. This is the only information proffered by GEO purporting to show that it is unnecessary for it to include the Proposal, based on having already substantially implemented a similar policy. While the Proposal asks the Company to implement a policy prohibiting the housing of separated immigrant detainee children and parents, the Company points to no such policy that it has developed or implemented. It has not provided a copy of any such policy to the Staff. It only points to its voluntary, non-binding and current practice, that it does not house separated immigrant children.

The Company's view that it has substantially implemented the policy via public statements and actual practice further ignores the fact that the Company can reverse its position (and practice) at any time, absent the formal policy that the Proposal seeks. However, even if the Company's public statement did constitute substantial implementation, the statement only addresses one part of the Proposal regarding housing separated children – the public statement does not address the Proposal's requested policy to prohibit housing immigrant parents who have been separated from their children, as stated in Section 2: "GEO Group shall adopt a policy of not accepting adult immigrant detainees (persons over the age of 18), who have been separated from their child or children by any U.S. government entity, for housing at any facility owned or operated by the Company." Absent any action with respect to the part of the Proposal regarding housing adults over the age of 18 who have been separated from their children, or the part of the Proposal regarding amending or terminating contracts that are in conflict with the policy once it is implemented, the Company has, at best, addressed only one of three parts of the Proposal. Such actions do not amount to "substantial implementation."

In short, the Company has failed to demonstrate that it has substantially implemented – or even partially implemented – the provisions specified in the clear language of the Proposal, as none of the policies currently in place by the Company conform to those requested by the Proposal. Therefore, the Proposal should not be excluded under Rule 14a-8(i)(10).

## VI. Conclusion

For the foregoing reasons, and without addressing or waiving any other possible arguments we may have, we respectfully submit that the Company has failed to meet its burden of persuasion under Rules 14a-8(i)(3), (i)(6), (i)(7) and (i)(10), and thus the Staff should not concur that the Company may omit the Proponent's Proposal from its Proxy Materials.

If the Staff disagrees with our analysis, or if additional information is necessary in support of the Proponent's position, I would appreciate an opportunity to speak with you by telephone prior to the issuance of a written response. Please do not hesitate to contact either me at (212) 806-5561, or by fax at (212) 806-6006, or by e-mail at sphilips@stroock.com, or my colleague Jeffrey S. Lowenthal at (212) 806-5509, or by fax at (212) 806-6006, or by e-mail at jlowenthal@stroock.com, at if we can be of any further assistance in this matter.

Very truly yours,

Shayna Philips

Shayna Philips

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January 7, 2019

**VIA EMAIL (shareholderproposals@sec.gov)**

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

**Re: The GEO Group, Inc.**
**Shareholder Proposal Submitted by Alex Friedmann**

Dear Ladies and Gentlemen:

We submit this letter and the enclosed materials on behalf of The GEO Group, Inc., a Florida corporation (the "Company," "GEO," "we," "us" and "our"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, the shareholder proposal and supporting statement (the "Proposal") submitted by Alex Friedmann (the "Proponent") may be properly omitted from the Company's proxy materials for its 2019 Annual Meeting of Shareholders (the "2019 Proxy Materials"). The Company believes that it may properly omit the Proposal from the 2019 Proxy Materials for the reasons discussed in this letter.

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), we have submitted this letter and the related materials to the Commission via e-mail to shareholderproposals@sec.gov. A copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from its 2019 Proxy Materials. The Company will promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by electronic mail or fax only to the Company. The Company would also like to take this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be concurrently furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) under the Exchange Act and SLB 14D.



***FISMA & OMB Memorandum M-07-16

## THE COMPANY

The Company is a fully-integrated real estate investment trust ("REIT") specializing in the ownership, leasing and management of correctional, detention and reentry facilities and the provision of community-based services and youth services in the United States, Australia, South Africa and the United Kingdom. The Company owns, leases and operates a broad range of correctional and detention facilities including maximum, medium and minimum security prisons, immigration detention centers, minimum security detention centers, as well as community-based reentry facilities and offers an expanded delivery of offender rehabilitation services under its 'GEO Continuum of Care' platform. The 'GEO Continuum of Care' program integrates enhanced in-prison programs, which are evidence-based and include cognitive behavioral treatment and post-release services, and provides academic and vocational classes in life skills and treatment programs while helping individuals reintegrate into their communities. The Company develops new facilities based on contract awards, using its project development expertise and experience to design, construct and finance what it believes are state-of-the-art facilities that maximize security and efficiency. The Company provides innovative compliance technologies, industry-leading monitoring services, and evidence-based supervision and treatment programs for community-based parolees, probationers and pretrial defendants. The Company also provides secure transportation services for offender and detainee populations as contracted domestically and in the United Kingdom through its joint venture GEO Amey PECS Ltd.

As of September 30, 2018, the Company's worldwide operations include the management and/or ownership of approximately 96,000 beds at 136 correctional and detention facilities, including idle facilities, projects under development and recently awarded contracts, and also include the provision of community supervision services for more than 192,000 offenders and pretrial defendants, including approximately 100,000 individuals through an array of technology products including radio frequency, GPS, and alcohol monitoring devices.

## THE PROPOSAL

The Proposal requests that the Board of Directors of the Company adopt and implement the following policy no later than December 31, 2019:

1. GEO Group shall adopt a policy of not accepting immigrant detainee children (persons under the age of 18), who have been separated from their parent or parents by any U.S. government entity, for housing at any facility owned or operated by the Company.

2. GEO Group shall adopt a policy of not accepting adult immigrant detainees (persons over the age of 18), who have been separated from their child or children by any U.S. government entity, for housing at any facility owned or operated by the Company.

3. If GEO Group houses at any of its facilities any immigrant detainee children or adults described in sections 1 or 2 above at the time the policies set forth in sections 1 and 2 are

implemented, the Company shall: a) immediately move to modify all such contracts to comply with the above policies or, if such modification is not possible within a six month period, seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities.

A copy of the Proposal and the accompanying letter from the Proponent is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

We believe that the Proposal may be properly excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(3), 14a-8(i)(6), 14a-8(i)(7) and 14a-8(i)(10) because the Proposal (i) is misleading and/or vague, (ii) includes requirements that the Company does not have the authority to implement, (iii) relates to the ordinary business operations of the Company and (iv) the Proposal has been substantially implemented.

## ANALYSIS

**The Proposal may be excluded under Rule 14a-8(i)(3) because the subject matter of the Proposal is misleading and/or vague.**

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if it is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9, which specifically prohibits materially false or misleading statements in proxy solicitation materials. The note to Rule 14a-9 states that misleading materials include "material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation." See *Cisco Systems, Inc.* (September 19, 2002).

The Proponent's supporting statements are misleading and/or vague. In particular, the Proposal's supporting statement provides that:

- The Company has had a controversial history with respect to housing immigrant detainees.
- The Company is currently facing lawsuits for using immigrant detainees to perform work for wages as low as $1.00 per day.

- These incidents pose risks to GEO Group's reputation and raise liability concerns.

With respect to the first bullet above, the statement is misleading and vague because it is unclear what the Proponent means by a "controversial history with respect to housing immigrant detainees." With respect to the second bullet above, the statement is misleading since it is unclear from the statement how many lawsuits have been filed (there are currently two cases pending in Washington and one in California but the statement appears to be purposely vague so a reader may interpret it to mean more than three cases), and it does not mention that the voluntary work program as well as the wage rates and standards associated with the program that are at issue in the case are authorized by the Federal government under guidelines approved by the United States Congress. Additionally, the Internet address to the Prison Legal News article being used as one of two sources of support for this statement is not operational. With respect to the third bullet above, the statement is misleading and vague because it is unclear what is meant by "reputation" and "liability concerns."

**The Proposal may be excluded under Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.**

Rule 14a-8(i)(6) provides that a company may exclude a proposal if the company would lack the power or authority to implement the proposal. The Staff has consistently concurred that a shareholder proposal is excludable under Rule 14a-8(i)(6) where the company cannot ensure that the requested actions in the proposal would occur if the shareholder proposal were approved by shareholders. For example, a company may be unable to implement a proposal "where implementing the proposal would require intervening actions by independent third parties." See the Commission's Exchange Act Release No. 34-40018 from May 21, 1998 ("Release 34-40018") that accompanied the 1998 amendments to Rule 14a-8.

The third part of the Proposal reads as follows:

> If GEO Group houses at any of its facilities any immigrant detainee children or adults described in sections 1 or 2 above at the time the policies set forth in sections 1 and 2 are implemented, the Company shall: a) immediately move to modify all such contracts to comply with the above policies or, if such modification is not possible within a six month period, seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities.

With respect to that portion of the Proposal that relates to "adopting a policy of not accepting adult immigrant detainees who have been separated from their child or children by an U.S. government entity," the Company would not necessarily know or have access to the information regarding whether an adult immigrant detainee has been separated from their child or children. The

Company operates immigration detention centers under contracts it has in place with U.S. Immigration and Customs Enforcement ("ICE"). ICE is not under any contractual obligation to provide this type of information to the Company. Even if the Company would know or have access to this type of information, the Company does not have the ability to unilaterally modify its contracts with ICE so that it does not accept adult immigrant detainees who have been separated from their child or children into the immigration detention centers the Company operates. Additionally, the Proposal requests that the Company "diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities." Again, the Company lacks the power to unilaterally make arrangements to house immigrant detainees within the purview of the immigration detention centers the Company operates in alternative facilities not operated by the Company. Implementation of the Proposal would therefore require intervening actions by ICE to inform the Company that there are adult immigrant detainees at Company operated immigration detention centers that have been separated from their child or children, to modify the terms of the existing contracts regarding the operation of immigration detention centers by the Company and to make any arrangements regarding the housing of adult immigrant detainees in alternative immigration detention centers that are not operated by the Company. The Company lacks the power and authority to compel ICE to adopt the requested changes.

The Staff has concurred in the past with the exclusion of proposals that could not be implemented without intervening actions by independent third parties. See *eBay Inc.* (March 26, 2008), involving a proposal requesting a policy prohibiting the sale of certain animals on an eBay-affiliated Chinese website, where the website was a joint venture and eBay did not control a majority of the ownership interests, board seats or operational control and as a result would have needed the other party's consent. See *Catellus Development Corp.* (March 3, 2005), involving a proposal requesting that the company stop development of a certain parcel of land and negotiate for its transfer, where the company only served as the development manager but no longer owned the parcel of land. See *SCEcorp* (December 20, 1995), involving a proposal requiring unaffiliated third parties to amend voting agreements and the company had no power to compel the third parties to amend the voting agreements.

The Company is not in a position to require ICE to amend its contracts or to change its policies regarding immigrant detainees. Additionally, the Company does not advocate for or against specific policies relating to immigrant detention. The Company expressly stated this during its conference call to discuss second quarter 2018 earnings results, by stating as follows, "As a three-decade long service provider to the Federal government, our focus has always been and remains on providing high-quality services and we have never advocated for or against immigration enforcement or detention policies." See Exhibit 99.2 filed with the Company's Form 8-K filed with the Securities and Exchange Commission on August 8, 2018.

**The Proposal may be excluded under Rule 14a-8(i)(7) because the subject matter of the Proposal relates to the Company's ordinary business operations.**

Rule 14a-8(i)(7) permits the exclusion of a shareholder proposal if it deals with a matter relating to the company's ordinary business operations. We believe the Proponent's Proposal is an attempt to inject the Company's shareholders into the role of management and the direct oversight of the Company's operations. In Release 34-40018, the Commission indicated:

> The general underlying policy of this exclusion is consistent with the policy of most state corporate laws: to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.
>
> The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. . .
>
> The second consideration relates to the degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. . .

The Proposal would require the Company to advocate against a specific immigrant detention policy which is a material departure from the Company's historical and current practice that it does not advocate for or against immigration enforcement and detention policies. Based on Release 34-40018, the Company believes that the Proponent's Proposal and supporting statement meet the Commission's reasoning for the ordinary business operations exclusion under Rule 14a-8(i)(7).

The Proposal relates to several fundamental aspects of the Company's business and management decisions, specifically: (i) the services the Company provides pursuant to its facility contracts relating to immigration detention centers; (ii) its relationship with ICE, the governmental entity that is a party to the contracts with GEO with respect to the immigration detention centers the Company operates; and (iii) the Company's role in advocating or not advocating for or against a specific immigrant detention policy. These aspects of the Proposal are "fundamental to management's ability to run a company on a day-to-day basis" and provides evidence that the Proponent seeks to "micro-manage" the Company.

**FUNDAMENTAL TO MANAGEMENT'S ABILITY TO RUN A COMPANY**

As previously discussed above, the Company is a REIT specializing in the ownership, leasing and management of correctional, detention and reentry facilities and the provision of community-based services and youth services in the United States, Australia, South Africa and the United Kingdom. The Company's management of each correctional, detention and re-entry facility and the Company's provision of community based services and youth services are the fundamental ordinary business operations of the Company. It is within the province of management and not the shareholders to determine at the outset and evaluate over time (i) the services the Company provides pursuant to its facility contracts relating to immigration detention centers; (ii) its relationship with ICE; and (iii) the Company's role in advocating or not advocating for or against a specific immigrant detention policy.

The Proposal encompasses matters relating to the Company's ordinary business operations, specifically the type of services it will provide at immigration detention centers pursuant to its contracts with governmental entities. There is strong precedent that shareholder proposals dealing with the sale of particular products or services are within the ambit of a company's ordinary business operations. The Staff has consistently agreed that the sale or distribution of a particular category of products and services is part of the Company's ordinary business operations, regardless of whether it is considered controversial or not. See *Marriott International, Inc.* (February 13, 2004), where the proposal at issue was aimed at prohibiting the sale of sexually explicit material at Marriott owned and managed properties. See *PetSmart, Inc.* (April 8, 2009), where the proposal at issue directed the company to produce a report on the feasibility of the company phasing out from its business the sale of live animals by a certain timeframe. See *Alliant Techsystems Inc.* (May 7, 1996), where the proposal at issue directed the company to end all research, development, production and sales of antipersonnel mines. See *Wells Fargo & Co.* (January 28, 2013), where the proposal at issue requested the company to prepare a report that discussed the adequacy of the bank's policies addressing the financial and social impacts of the bank's direct deposit advance lending service. See *The Home Depot, Inc.* (March 21, 2018), where the proposal at issue encouraged the company "to end its sale of glue traps, because they cause egregious suffering to mice, pose a danger to other wildlife and companion animals and are a human health hazard." The Proposal inappropriately seeks to intervene in the Company's day-to-day operations and restrict the types of services the Company provides its customers pursuant to its facility contracts, and, therefore, should be excluded from the 2019 Proxy Materials.

The Staff has also consistently permitted proposals to be excluded under Rule 14a-8(i)(7) where the proposals were targeted to direct the company to engage in a political or legislative process relating to an aspect of its business operations. See *Verizon Communications, Inc.* (January 31, 2006), where the proposal sought a board report on flat tax; *International Business Machines Corporation* (March 2, 2000), where the proposal sought establishment of a board committee to evaluate the impact of pension-related proposals being considered by national policymakers; and

*Pepsico, Inc.* (March 7, 1991), where the proposal called for an evaluation of the impact on the company of various federal health care proposals.

The Proposal is directed at engaging the Company in a political process regarding immigrant detention policies and such efforts are directly related to the aspect of its business operations that operates immigration detention centers. The Proposal inappropriately seeks to intervene in the Company's day-to-day operations in this area in order to advance a specific political objective, and, therefore, should be excluded from the 2019 Proxy Materials.

**"MICRO-MANAGE" THE COMPANY BY PROBING TOO DEEPLY**

The second consideration that is used to determine if a proposal should be subject to the ordinary business exclusion is the degree to which the proposal seeks to "micro-manage" the company. Under Staff Legal Bulletin No. 14J issued by the Staff on October 23, 2018, the Staff reiterated that "a proposal may probe too deeply into matters of a complex nature if it 'involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies'". The Proposal is requesting the adoption and implementation of its requested policy regarding immigrant detention at any facility owned or operated by the Company no later than December 31, 2019 so it is imposing a specific time-frame.

The Company believes that immigrant detention and the policy of whether to house any adult immigrant detainees who have been separated from their child or children in any facility is incredibly complex and the Company is not the proper party to address this policy. The Company believes that the U.S. federal government is the proper party to address policies regarding immigrant detention which would then be reflected and carried forward in ICE's contracts with any operator of immigration detention centers, including the Company. As discussed above, the Company does not advocate for or against immigration enforcement and detention policies. If the Company were to be required to implement the Proposal, its ability to modify its contracts to comply with the requested policies and to work to make arrangements to house immigrant detainees at other facilities that are not operated by the Company would be incredibly complex. As discussed above, it would not be within the Company's power or authority to implement the Proposal. It would not only require the involvement and input from the Company's management team, personnel from cross-functional teams, input from third-party experts and specialists but more importantly would require the agreement, input and direction by ICE.

The Staff has previously agreed to exclude proposals that imposed specific time-frames or methods for implementing complex policies. See *Apple Inc.* (December 5, 2016), in which the proposal to generate a plan to reach net-zero greenhouse gas emissions by the year 2030, was excludable on the basis of micro-management. See *JP Morgan Chase & Co.* (March 30, 2018), where the Staff concurred that a proposal that included consideration of a policy that would prohibit the company from financing tar sands projects could be excluded as it "micromanages the [c]ompany to impose specific methods for implementing complex policies."

The Staff has consistently concurred with the exclusion of shareholder proposals that seek to micro-manage a company's ordinary business operations. See *Newmont Mining Corp.* (January 12, 2006), where the proposal urged management to review the company's operations in Indonesia in light of potential reputational and financial risks to the company and report its findings to shareholders; *The Allstate Corporation* (February 19, 2002), where the proposal recommended the company cease conducting operations in Mississippi; and *General Electric Company* (January 9, 2008), where the proposal related to the establishment of an independent committee to prepare a report on the potential for damage to the company's reputation and brand name as a result of the company sourcing products and services from the People's Republic of China. As previously discussed, the Proposal attempts to prohibit the Company from housing immigrant detainee children or parents who have been separated by any U.S. government entity by adopting a policy to that effect, requiring the Company to seek the modification or termination of Company contracts in order to comply with such a policy and diligently work to make the arrangements to safely house such immigrant detainees in facilities not owned or operated by the Company. The Proponent is attempting to insert shareholders deeply into the Company's business operations. Furthermore, the shareholders would not be in a position to understand how the Proposal's requested policy relates with the detailed contractual and regulatory requirements for the individual facility contracts. Shareholders would not be in a better position to understand immigrant detention requirements than the Company's experienced professional management team and the on-site contract monitors at all of the Company's ICE facilities.

The Company is aware of the Staff's position that shareholder proposals that relate to ordinary business matters may not be excluded if they focus on significant social policy issues that transcend the day-to-day business matters. The Company does not believe that the Proposal transcends the day-to-day business matters in the manner contemplated by Release 34-40018 and is properly excludable under Rule 14a-8(i)(7). The mere fact that the Proposal is tied to a social issue (the policy of immigrant detention and specifically the issue regarding the housing of immigrant detainee children or parents who have been separated by any U.S. government entity in an immigration detention center) does not overcome the fact that the Proposal's main focus relates to decisions that are fundamental to management's ability to run the Company on a day-to-day basis and seek to micro-manage the Company as discussed above. The Staff has determined that a proposal addressing both ordinary and non–ordinary business matters may be excluded in its entirety when the "thrust and focus of the proposal is on ordinary business matters." See *General Motors Corporation* (April 4, 2007). See also *Wal-Mart Stores, Inc.* (March 15, 1999), *Kmart Corporation* (March 12, 1999) and *The Warnaco Group, Inc.* (March 12, 1999), where the Staff held that the proposals were excludable in their entirety as they addressed both ordinary business matters (the retention of the companies' suppliers) and significant social policy issues (the human rights of the employees of the companies' suppliers). The Proposal does not fall within the significant social policy issue exception. Even if the Proposal arguably raises issues related to the significant social policy issue of immigrant detention, its main thrust and focus is to micro-manage management's decisions regarding its operations.

Accordingly, the Proposal may be excluded under Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

**The Proposal may be excluded under Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.**

Rule 14a-8(i)(10) permits the exclusion of a proposal that the Company has substantially implemented. The Company does not operate any facility that houses immigrant detainee children who have been separated from their parent or parents. During GEO's conference call to discuss second quarter 2018 earnings results, the Company addressed this issue by stating as follows:

> I would like to briefly address the recent coverage of immigration policies and separation of families. To be clear, our company does not manage any facility that house unaccompanied minors nor has our company ever provided transportation or any other services for that purpose.
>
> For the last three decades, our company has managed ICE processing centers providing services for adults in the care of federal authorities under both Democratic and Republican administrations. We have also managed the Karnes Family Residential Center, which has cared exclusively for mothers, together with their children, since 2014, when it was established by the Obama administration.

See Exhibit 99.2 filed with the Company's Form 8-K filed with the Securities and Exchange Commission on August 8, 2018. This was even expressly acknowledged by the Proponent in the Supporting Statement where he indicated, "While GEO Group currently does not house immigrant detainee children who have been separated from their parents, the Company may change its policy in the future."

The Staff has previously stated that Rule 14a-8(i)(10) was designed to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management. . . . " *Exchange Act Release No. 12598* (July 7, 1976). The Commission has made it clear that a proposal need not be "fully effected" by a company in order to meet the "substantially implemented" standard under Rule 14a-8(i)(10). See *Exchange Act Release No. 34-40018* (May 21, 1998) (confirming the Commission's position in *Exchange Act Release No. 34-20091* (August 16, 1983). The Staff has stated that whether a shareholder proposal has been substantially implemented by a company under Rule 14a-8(i)(10) "depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." See *Medtronic, Inc.* (June 13, 2013) and *Texaco, Inc.* (March 28, 1991). An evaluation of "substantial implementation" is dependent upon whether the actions of a company address the essential objective and underlying concerns of the proposal. See *The Procter & Gamble Company* (August 4, 2010); *Exelon Corporation* (February 26, 2010); *Anheuser-Busch Companies, Inc.* (January 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); and *Johnson & Johnson* (February 17, 2006). Furthermore, the Staff has taken the position that if a major portion of a stockholder's

proposal may be omitted pursuant to Rule 14a-8(i)(10), the entire proposal may be omitted. See *American Brands, Inc.* (February 3, 1993). Additionally, a shareholder proposal need not be implemented precisely or in full in order for it to be excluded under Rule 14a-8(i)(10). See *The Gap Inc.* (March 16, 2001). We believe the essential objective and underlying concern of the Proposal is the housing of immigrant detainee children who have been separated from their parents in immigration detention centers. Because the Company does not operate any facility that houses immigrant detainee children who have been separated from their parent or parents, the Proposal has been substantially implemented by the Company.

**CONCLUSION**

For the reasons stated above, we respectfully request that the Staff agree that we may omit the Proposal from our 2019 Proxy Materials.

Should you have any questions or would like additional information regarding the foregoing, please do not hesitate to contact the undersigned at 305-982-5519 or esther.moreno@akerman.com.

Sincerely,

Esther L. Moreno

cc: John J. Bulfin, Esq., The GEO Group, Inc.
Joe Negron, Esq., The GEO Group, Inc.
Pablo E. Paez, The GEO Group, Inc.
Louis V. Carrillo, Esq., The GEO Group, Inc.
Alex Friedmann
Jeffrey Lowenthal, Esq., Stroock & Stroock & Lavan LLP
Stephen K. Roddenberry, Esq., Akerman LLP
Larry W. Ross, II, Esq., Akerman LLP

**Exhibit A**

# *PRISON LEGAL NEWS*

**Dedicated to Protecting Human Rights**



www.prisonlegalnews.org

*Please Reply To*:

afriedmann@prisonlegalnews.org

Direct Dial: 615-495-6568
5331 Mt. View Rd. #130
Antioch, TN 37013


November 9, 2018

**SENT VIA EMAIL AND U.S. POSTAL MAIL**

The GEO Group, Inc.
Attn: Secretary
One Park Place, Suite 700
621 Northwest 53rd Street
Boca Raton, FL 33487

**Re: Shareholder Proposal for 2019 Proxy Statement**

Dear Secretary:

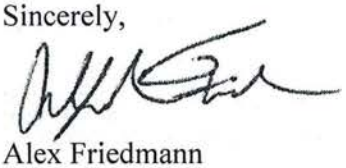
As a beneficial owner of common stock of The GEO Group, Inc. ("GEO"), I am submitting the enclosed shareholder resolution for inclusion in the proxy statement for GEO's 2019 annual meeting of shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations under the Securities Exchange Act of 1934 (the "Act").

I am the beneficial owner of at least $2,000 in market value of GEO common stock. I have held these securities for more than one year as of the date hereof and will continue to hold at least the requisite number of shares for a resolution through the date of the annual meeting of shareholders. I have enclosed a letter evidencing proof of stock ownership from TD Ameritrade.

I or a representative will attend the annual meeting to move the resolution as required.

Please communicate with my counsel, Jeffrey Lowenthal, Esq. of Stroock & Stroock & Lavan LLP, should you need any further information. If GEO will attempt to exclude any portion of my proposal under Rule 14a-8, please advise my counsel of this intention within 14 days of your receipt of this proposal. Mr. Lowenthal may be reached at Stroock & Stroock & Lavan LLP, by telephone at 212-806-5509 or by e-mail at jlowenthal@stroock.com.

Sincerely,



Alex Friedmann

Enclosures

# RESOLUTION

**RESOLVED**: That the stockholders of the Company (GEO Group) request that the Board of Directors adopt the following policy, to be implemented no later than December 31, 2019:

1. GEO Group shall adopt a policy of not accepting immigrant detainee children (persons under the age of 18), who have been separated from their parent or parents by any U.S. government entity, for housing at any facility owned or operated by the Company.

2. GEO Group shall adopt a policy of not accepting adult immigrant detainees (persons over the age of 18), who have been separated from their child or children by any U.S. government entity, for housing at any facility owned or operated by the Company.

3. If GEO Group houses at any of its facilities any immigrant detainee children or adults described in sections 1 or 2 above at the time the policies set forth in sections 1 and 2 are implemented, the Company shall: a) immediately move to modify all such contracts to comply with the above policies or, if such modification is not possible within a six-month period, seek to withdraw from or terminate such contracts as soon as possible, including invoking any early termination options or clauses in such contracts, and b) diligently work to make arrangements to safely house such immigrant detainees that do not involve housing them at any of the Company's facilities.

## Supporting Statement

The controversial issue of separating immigrant detainee children from their parents in the United States has made headlines across the country.[1] As of October 2018, news reports indicated that hundreds of immigrant detainee children remain separated from their parents, and the U.S. government "is considering a policy that could again separate parents and their children at the U.S.-Mexico border."[2]

While GEO Group currently does not house immigrant detainee children who have been separated from their parents, the Company may change its policy in the future.

The Company has had a controversial history with respect to housing immigrant detainees. Of the five immigrant detention facilities with the highest number of sexual abuse complaints, three are operated by GEO Group.[3] Immigrant detainees have staged hunger strikes at GEO Group detention centers.[4] Of the 18 detainee deaths in ICE

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[1] www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border
[2] https://fox4kc.com/2018/10/14/thousands-of-children-still-separated-from-parents-at-the-border
[3] www.nbcnews.com/news/us-news/sexual-assaults-immigration-detention-centers-don-t-get-investigated-says-n745616; www.cnn.com/2014/10/03/justice/texas-immigrant-detention-allegations/index.html
[4] www.bloomberg.com/news/articles/2018-08-02/immigrants-in-texas-detention-center-said-to-mount-hunger-strike

custody in FY 2016 and 2017, nine occurred at GEO-run facilities.[5] The Company is currently facing lawsuits for using immigrant detainees to perform work for wages as low as $1.00 per day.[6]

These incidents pose risks to GEO Group's reputation and raise liability concerns. Should the Company decide in the future to house immigrant children or parents who have been separated, that also would create reputational harm.

Accordingly, this resolution requires GEO Group to enact policies that prohibit it from housing immigrant detainee children or parents who have been separated, in order to reduce reputational and liability risks to the Company and to protect shareholder value.

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[5] www.thedailybeast.com/immigrant-deaths-in-private-prisons-explode-under-trump

[6] www.prisonlegalnews.org/news/2018/jun/7/lawsuits-filed-against-geo-group-wage-violations-detention-facilities; https://shadowproof.com/2018/08/06/judge-certifies-class-action-lawsuit-geo-groups-forced-immigrant-labor-washington

TD Ameritrade

11/09/2018

Alex Friedmann
5331 Mount View Rd Apt 130
Antioch, TN 37013

Re: Your Request for Shareholder Verification

To Whom It May Concern,

Pursuant to your request, this letter is to confirm that as of date of this letter, Alex Friedmann held, and has held continuously since February 6, 2015, 195 shares of GEO Group, Inc. (GEO) common stock (Cusip 36162J106) in his TD Ameritrade Account Ending in *** . The DTC clearing house number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

Benjamin Wilson
Resource Specialist
TD Ameritrade