

# How Justices' GEO Ruling Resets Gov't Contractor Litigation

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The U.S. Supreme Court rarely weighs in on government contract issues. When it does, contractors must pay attention. On Feb. 25, the court issued a unanimous decision with separate concurring opinions in *GEO Group Inc. v. Menocal* that resolves a long-running circuit split over the scope of the Yearsley defense, a doctrine protecting contractors from liability for work performed under government direction.

The decision resets expectations for how contractors budget, staff and price risk on federal contracts. It also invites a closer look at how the court's reasoning might apply to other contractor defenses and immunities, including the Boyle government contractor defense and qualified immunity. We examine both below.

## The Yearsley Defense

In 1940, in *Yearsley v. W. A. Ross Construction Co.*, the Supreme Court held that a contractor building dikes along the Missouri River under a defense department contract was not liable when the project eroded a neighboring landowner's property. Because the contractor had done exactly what the government directed, within the scope of valid congressional authorization, the court reasoned that holding the contractor liable would effectively hold the government liable – and the government had not consented to be sued.

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Government Contracts

For decades, courts and practitioners read *Yearsley* as conferring something close to sovereign immunity on contractors, with many lower courts labeling the doctrine "derivative sovereign immunity," implying it bore the same procedural force as true government immunity. That characterization had important procedural consequences: If *Yearsley* was a true immunity from suit, a contractor denied its protection could immediately appeal under the collateral order doctrine, staying the case in the process.

Several circuits agreed with this interpretation, and others did not.

### **The Boyle Government Contractor Defense**

*Boyle v. United Technologies Corp.* arose when a Marine pilot died after his helicopter's escape hatch failed during a crash. His estate sued the manufacturer under Virginia tort law. The Supreme Court's 1987 decision held that state tort law is displaced, as a matter of federal common law, where it would conflict with the government's discretionary procurement decisions.

The Federal Tort Claims Act waives the government's sovereign immunity for most tort claims, but preserves it for claims "based upon the exercise or performance or the failure to exercise or perform a discretionary function." The court reasoned that where state tort law creates a significant conflict with uniquely federal interests – such as national defense, procurement or the FTCA discretionary function exception – state law will be displaced.

Deciding how a military helicopter escape hatch should be designed is precisely the kind of discretionary procurement judgment that the exception protects. If the government itself cannot be sued for that decision, it would be anomalous – and futile as a matter of policy – to allow plaintiffs to achieve the same result by suing the contractor that built to the government's specifications.

Courts have since extended the Boyle defense beyond its military equipment origins. The U.S. Court of Appeals for the Fourth Circuit applied Boyle-type reasoning to burn pit operations claims in its 2014 *In re: KBR Inc. Burn Pit Litigation* decision.

In 2009, the U.S. Court of Appeals for the District of Columbia Circuit held in *Saleh v. Titan Corp.* that claims against contractors integrated into combatant activities are preempted under a broad federal interest analysis, without requiring Boyle's traditional three-part showing.

The U.S. Court of Appeals for the Third Circuit, U.S. Court of Appeals for the Seventh Circuit and U.S. Court of Appeals for the Eleventh Circuit have applied Boyle to civilian contracts, reasoning that the federal interest in protecting discretionary government functions is not unique to defense procurement.

The U.S. Court of Appeals for the Ninth Circuit has generally declined to do this, limiting Boyle's reach to military equipment. Whether the Boyle defense extends to service contracts remains contested. Even in circuits that have extended the defense, the analysis tends to focus on the degree of government control over the contractor's specific conduct. A contractor implementing government direction has a stronger preemption argument than one exercising independent operational judgment.

Although *Yearsley* was decided on agency principles and *Boyle* relied on federal preemption, the animating logic was the same: A contractor that did what the government told it to do should not bear liability for following the government's directions.

### **The GEO Group Decision**

GEO Group, while operating an Immigration and Customs Enforcement detention facility in Colorado, was sued by a group of detainees under the Trafficking Victims Protection Act and Colorado's unjust enrichment law, alleging that GEO's sanitation policy requiring detainees to clean common areas under threat of solitary confinement and its \$1-per-day work program were unlawful.

In 2022, the U.S. District Court for the District of Colorado denied GEO's *Yearsley* motion, finding GEO had "far exceeded" ICE detention standards by independently developing its labor programs. GEO immediately appealed. In 2024, the U.S. Court of Appeals for the Tenth Circuit dismissed for lack of jurisdiction. The Supreme Court granted certiorari on June 2, 2025.

Justice Elena Kagan, writing for seven of the justices, drew a straightforward distinction: A merits defense is not an immunity from suit.

The collateral order doctrine permits immediate appeal only where the right at stake would be irretrievably lost if trial proceeds, which is true of genuine immunities, but not of the *Yearsley* defense. Because the *Yearsley* defense turns on whether the contractor's conduct was lawful, it can be reviewed after final judgment like any other merits defense.

The court also rejected the "derivative sovereign immunity" label outright, holding that sovereign immunity belongs to the government alone.

Justice Samuel Alito concurred but questioned the majority's reasoning. He argued that a rule treating defenses that depend on the lawfulness of a defendant's conduct as categorically nonimmunities is difficult to reconcile with qualified immunity.

Qualified immunity also turns on whether a defendant's conduct violated clearly established law, yet denials of qualified immunity are immediately appealable under *Mitchell v. Forsyth*, a 1985 decision in which the Supreme Court held that a former attorney general could immediately appeal the denial of qualified immunity because it is an immunity from suit, rather than a defense to liability.

Justice Alito also noted that the court has not decided whether contractors can invoke qualified immunity at all, a question the majority left open in a footnote.

### **Takeaways for Government Contractors**

After *GEO Group*, the *Yearsley* path to early review is gone.

Of course, one potential avenue for early *Yearsley* review remains: District courts have discretion to certify a *Yearsley* denial for interlocutory appeal under Title 28 of the U.S. Code, Section 1292(b), which permits appeal of nonfinal orders presenting controlling questions of law, if immediate review materially advances the litigation.

But Section 1292(b) certification is discretionary and rarely granted. And many questions about contractor immunity or immunity-type defenses remain.

### *Boyle*

The natural question is: How does GEO Group affect the Boyle defense? The answer: Likely not significantly.

Boyle was generally not characterized as an immunity from suit before the GEO Group decision. The court's recent decision does not change that.

Some courts applying Boyle, including the Fourth Circuit, had already held that Boyle denials are not immediately appealable. GEO Group's framework appears to reinforce that conclusion.

The Boyle defense turns on whether the contractor complied with government specifications, a merits question, placing it squarely in the "defense to liability" category. And the court's rejection of derivative sovereign immunity forecloses future arguments that Boyle-based defenses share sovereign immunity's procedural force.

That said, the GEO Group decision does not address when a Boyle defense succeeds or fails on the merits, so the substantive defense is unchanged.

The more significant development for the Boyle holding may come from Winston Tyler *Hencely v. Fluor Corp.*, argued at the Supreme Court in November 2025, in which a decision is expected by June.

The Hencely case asks whether Boyle-type preemption protects a contractor that breached its own contract in a combat zone. The court's decision could have broad implications for the Boyle defense's scope.

### *Qualified Immunity*

Justice Alito's concurrence and the majority opinion's footnote 2 both flag an unresolved question worth watching: Can government contractors ever claim qualified immunity? The implications of this decision could be outsized, as qualified immunity is a true immunity from suit – meaning denials are immediately appealable under *Mitchell v. Forsyth*.

But the answer is uncertain. Under the Supreme Court's 1997 decision in *Richardson v. McKnight*, private prison guards at for-profit firms are not entitled to qualified immunity in actions brought under Title 42 of the U.S. Code, Section 1983, the federal statute that allows individuals to sue state actors for constitutional violations.

However, under the Supreme Court's 2012 decision in *Filarsky v. Delia*, a privately retained attorney temporarily performing government functions is entitled to qualified immunity.

The court has never squarely addressed where government contractors as a class fall on that spectrum. If government contractors cannot access qualified immunity, the true-immunity pathway to interlocutory appeal is entirely unavailable. Justice Alito's concurrence suggests this gap is worth watching.

The practical stakes are real. Government contractors performing work closely tied to governmental functions may face increased exposure to civil rights and other litigation arising from government-directed activity. For those contractors, the GEO Group decision compounded the problem. *Yearsley* is now confirmed as a not-immediately-appealable defense.

If qualified immunity is also unavailable to government contractors, they are left without any mechanism for early exit from civil rights litigation, regardless of the merits. Contractors with elevated litigation exposure may want to consider revisiting their risk-pricing assumptions, considering this new state of affairs.

## **Conclusion**

Although GEO Group is a procedural decision, it carries meaningful substantive consequences. Contractors can no longer rely on immediate interlocutory appeals under the court's *Yearsley* decision, altering the cost and strategy of defending these cases. More potential plaintiffs may sue, knowing that contractors cannot immediately exit cases via interlocutory appeals. And, once in court, more disputes are likely to proceed through discovery and potentially trial before appellate review.

This shift may increase litigation costs for contractors in sectors with higher exposure, while strengthening plaintiffs' leverage in settlement negotiations. The GEO Group decision may also affect the government's ability to attract contractors for high-risk or sensitive projects or otherwise increase the government's costs as contractors price the additional risk.

Despite some additional clarity, significant questions remain unresolved about the scope of contractor defenses and immunities. Luckily, we should be hearing from the Supreme Court again in June. Stay tuned.