

No. 24-758

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IN THE  
**Supreme Court of the United States**

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THE GEO GROUP, INC.,

*Petitioner,*

*v.*

ALEJANDRO MENOCAL, *et al.*,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE TENTH CIRCUIT

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**BRIEF OF AMICUS CURIAE  
NEVADA HOSPITAL ASSOCIATION  
SUPPORTING PETITIONER**

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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Nevada Hospital Association (“NHA”) is a state-wide, IRC § 501(c)(6) not-for-profit organization. Its purpose is to serve as a statewide resource and leader in promoting public understanding of, and support for, the healthcare systems serving Nevada’s communities. The NHA represents 63 Nevada hospitals across the state. For over 60 years, it has served as a representative and advocate for its members before the Nevada legislature, administrative agencies, and the courts, addressing the social, economic, political, and legal issues affecting the delivery of high-quality health care in the State of Nevada.

In the course of rendering emergency care, NHA’s members often need to declare an emergency psychiatric hold to protect the safety of its emergency patients. In Nevada, as in most states, such a procedure is authorized by statute. See NRS 433A.160 (Procedure for placement on mental health hold) and NRS 433A.085 (Forms for detainment, evaluation, admission, treatment, and conditional release). This in turn often requires NHA’s member hospitals and health care providers to file petitions seeking a court-ordered admission under NRS 433A.200 (Filing of petition; certificate or statement concerning alleged mental health crisis).

As a result, at least one NHA member hospital has been sued under 42 U.S.C. § 1983 for such an involuntary,

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1. Pursuant to this Court’s Rule 37.6, Amicus states that no counsel for any party authored this brief in whole or in part, and that no entity or person, aside from Amicus, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

court-ordered admission under NRS 433A.200 on the theory that the NHA member and its physicians violated the patient’s constitutional rights while they were “state actors.” See *Wofford v. Renown Regional Medical Center and Earl Oki, M.D., et al.*, District Court of Nevada, Reno, 3:21-cv-00520-MMD-CLB, now on appeal to the Ninth Circuit Court of Appeals, Docket Nos. 24-6244 and 24-6245. In *Wofford*, Renown, an NHA member hospital, moved for summary judgment on the Section 1983 claims based upon the good-faith immunity defense suggested in *Wyatt v. Cole*, 504 U.S. 158, 169 (1992), and recognized in *Clement v. City of Glendale*, 518 F.3d 1090, 1096-97 (9th Cir. 2008). The district court denied the summary judgment motion, and Renown immediately filed an appeal relying on the collateral-order doctrine. On January 15, 2025, the Ninth Circuit ordered full briefing on all issues, including “whether this Court has jurisdiction over appeal Nos. 24-6244 and 24-6245 under the collateral-order doctrine.”

Unlike typical government contractors, NHA members and other emergency care providers subject to Section 1983 suits often have no choice in rendering services to their emergency room patients. See the Emergency Medical Treatment & Labor Act (EMTALA), 42 U.S.C. 1395dd; NRS 439B.410 (2024). But like government contractors, particularly medium to small contractors, the financial impact on hospitals having to defend such suits can be severe. Thus, NHA and its members have a profound interest in the appealability issue raised in this appeal, *i.e.*, whether an order denying a government contractor’s claim of derivative sovereign immunity is immediately appealable under the collateral-order doctrine. NHA believes that this Court’s resolution of this issue will guide courts in dealing with similar collateral-order doctrine

issues in Section 1983 suits against NHA's members and other similarly situated emergency care providers as well as numerous other entities sued as "state actors" in a myriad of different contexts.

## SUMMARY OF ARGUMENT

The derivative sovereign immunity at issue is an *immunity from suit* that is irrevocably lost to a government contractor who cannot take an immediate appeal from an order denying that immunity. Without a right of immediate appeal under the collateral-order doctrine, government contractors whose motions to dismiss on grounds of derivative sovereign immunity are denied must potentially face years of costly litigation—such that their immunity from suit can never be reinstated, no matter how the immunity issue is ultimately resolved. Furthermore, the impact of such a result is beyond added expense. To avoid the financial risk of becoming embroiled in costly litigation, many small and even medium-sized businesses may choose to forego seeking government contract work altogether, thereby frustrating Congress' intent and directive that a significant percentage of government contracts be awarded to small businesses.

## ARGUMENT

### **I. Immediate Appeal under the Collateral Order Doctrine Is Necessary so that Government Contractors Retain the Right To Protect Their Immunity from Suit Before It Is Lost.**

A government contractor's right to an immediate appeal from an order denying its right to derivative

sovereign immunity is not simply a procedural issue. The derivative sovereign immunity claimed here, like the qualified immunity asserted in *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), is an “*immunity from suit* rather than a mere defense to liability,” and thus, “it is effectively lost if a case is erroneously permitted to go to trial” before the issue can be appealed. (emphasis in original).

**A. Government Contractors Play a Crucial Role in Helping the U.S. Government Fill Its Responsibilities and Meet the Needs of the Public.**

Government contractors are essential to U.S. government operations at every level. Various studies estimate that over 50% of the “government” work force—approximately 3.7 million people—are contract workers employed by government contractors, and that there are approximately 205,500 government contractors in the United States. The government signs over 11,000,000 contracts a year. The contracts range from food provision and janitorial services to technology innovations, aerospace systems, and, as here, prison operations. The federal agencies who enter into the most government contracts are the Department of Veterans Affairs, the Department of Energy, the Department of Health and Human Services, General Services Administrations, the Department of Homeland Security, the National Air and Aerospace Administration, the Department of State, the Department of Agriculture, the Department of Treasury, the Navy, the Army, and the Air Force.<sup>2</sup>

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2. See <https://usafacts.org/articles/how-many-people-work-for-the-federal-government/>; <https://www.findrfp.com/>

There are government construction contractors who specialize in building infrastructure projects for the government. There are technology contractors who focus on providing IT solutions and services to government agencies. There are professional service contractors who offer specialized expertise in areas such as consulting, legal, and accounting services. There are research and development contractors who work on innovative projects and help the government in advancing technology and scientific discoveries. All of these different types of government contractors play a crucial role in supporting governmental operations and fulfilling the diverse needs of the public.<sup>3</sup>

The benefits in using government contractors are many and varied:

- Government contractors play a crucial role in helping the government fulfill its responsibilities and meet the needs of the public, by bringing specialized expertise, resources, and innovation essential to the delivery of high-quality and cost-effective solutions.
- Federal government projects often require a specific knowledge or expertise in areas like information technology, engineering, cybersecurity,

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Government-Contracting/Contract-Facts.aspx; <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2023-interactive-dashboard>; <https://verticaliq.com/product/government-contractors/> (last visited 7/28/2025).

3. <https://ingovcon.com/career-advice/understanding-the-role-of-government-contractors/> (last visited 7/28/2025).

and healthcare. Contractors are frequently hired to provide these specialized skills that the permanent workforce may not possess. In this way, the government is able to tap into a pool of highly qualified professionals or experts in their fields, without needing to permanently staff positions for skills that may be required only intermittently.

- Hiring government contractors is cost efficient because it can be more affordable than employing full-time federal workers, thereby reducing expenses related to benefits and pensions.
- Contractors are often hired because they can complete specific tasks within firm timelines—a particularly important consideration on matters pertaining to national defense and public health.
- The bidding process for government contracts promotes fairness and transparency in how contracts are allocated and taxpayer dollars are spent.
- Government contractors have the ability to quickly mobilize and deploy resources to immediately start projects, thereby leading to a more efficient project execution.
- Government contractors often have extensive networks and partnerships within their respective industries, allowing them to leverage additional resources and capabilities when needed.
- Government contractors serve as intermediaries between the government and private businesses, facilitating the procurement process and ensuring

that the necessary resources are available to support government initiatives.

- Government contractors contribute to economic growth by creating job opportunities and fostering innovations through collaboration with diverse industries.<sup>4</sup>

**B. The Vast Majority of Government Contractors Are Middle-Sized Businesses and a Significant Percentage Are Small Businesses.**

While the public often thinks of the largest government contractors in the defense and IT sectors, the fact is that 95% of government contractors are small to medium-sized businesses,<sup>5</sup> and a significant percentage of those contractors are small businesses—approximately 28% in 2023.<sup>6</sup>

Furthermore, each federal agency has an annual goal for awarding contract dollars to small businesses in order to meet the government’s overall goal of 23% for all small businesses, 5% for small-disadvantaged businesses, 5% for women-owned small businesses, 3% for service-disabled

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4. <https://ingovcon.com/career-advice/understanding-the-role-of-government-contractors/> (last visited 7/28/25); <https://triforce-inc.com/why-federal-government-uses-contractors/> (last visited 7/28/25).

5. <https://www.findrfp.com/government-contracting/contract-facts.aspx> (last visited 7/28/25).

6. <https://www.inc.com/melissa-angell/a-mixed-bag-for-small-businesses-seeking-federal-contracts-more-money-fewer-winners.html> (last visited 7/28/25).

veteran-owned businesses, and 3% for small businesses in HUBZone businesses (historically under-utilized business zones).<sup>7</sup> See Small Business Act 15 U.S.C. § 631 *et seq.*; 48 C.F.R. § 19.00 *et seq.* As stated in 48 C.F.R. § 19.201(a):

“(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.”

**C. Denying a Government Contractor’s Derivative Sovereign Immunity Claim Without the Right of Immediate Appeal Is Contrary to the Public’s Interest in a Stable Government Contracting Process.**

Recognizing that a governmental entity’s entitlement to qualified governmental immunity “is an *immunity from suit* rather than a mere defense to liability,” this

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7. <https://www.sba.gov/partners/contracting-officials/small-business-procurement> (last visited 7/28/25).

Court in *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) held that under the collateral order doctrine an order denying qualified immunity to a governmental entity constitutes an appealable “final decision” within the meaning of 28 U.S.C. § 1291, notwithstanding absence of a final judgment. *Id.* at 528-30. (emphasis in original). The same should be true for the denial of a government contractor’s entitlement to derivative sovereign immunity. See *ACT, Inc. v. Worldwide Interactive Network, Inc.*, 46 F.4th 489, 497 (6th Cir. 2022) (holding that the collateral-order doctrine permitted an immediate appeal of an order denying a government contractor’s claim to derivative sovereign immunity “since the relevant immunity is one from suit.”); *McMahon v. Presidential Airways, Inc.*, 502 F.3d 1331, 1339 (11th Cir. 2007) (noting that an assertion of derivative sovereign immunity is an immunity from suit “that would be irrevocably lost if the holder of the immunity were erroneously required to stand trial.”).

Subjecting government contractors, particularly small business contractors, to full trials before their denied claims of derivative sovereign immunity can be reviewed on appeal is contrary to the public’s interest in a stable government contracting process whereby government contractors act “with independence and without fear of consequences.” *Mitchell*, 472 U.S. at 525. (citation omitted). In *Mitchell*, this Court noted suits against government contractors distract them from their governmental duties, inhibit discretionary action, and deter people from entering into public service. *Id.* at 526. Government contractors forced to fully litigate cases through potentially years of discovery and trial before they can appeal the denial of their immunity claim may be compelled to charge higher prices to the government (*i.e.*,

taxpayers) for their critical services, or stop contracting with the government altogether—results clearly not in the public interest. This is particularly true for small business contractors, many of whom do not have the financial wherewithal or time to devote to their defense in protracted litigation.

In *Filarsky v. Delia*, 566 U.S. 377 (2012), this Court upheld qualified immunity for a private attorney retained by a city to investigate a firefighter’s potential wrongdoing, noting the serious consequences of holding otherwise:

- “To the extent such private individuals do not depend on the government for their livelihood, they have freedom to select other work—work that will not expose them to liability for government actions. This makes it more likely that the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts.” *Id.* at 390.
- “Because government employees will often be protected from suit by some form of immunity, those working alongside them could be left holding the bag—facing full liability for actions taken in connection with government employees who enjoy immunity for the same activity. Under such circumstances, any private individual with a choice might think twice before accepting a government assignment.” *Id.* at 391.
- “Not only will such individuals’ performance of any ongoing government responsibility suffer from the distraction of lawsuits, but such distractions will also often affect any public employees with

whom they work by embroiling those employees in litigation. . . . Allowing suit under § 1983 against private individuals assisting the government will substantially undermine an important reason immunity is accorded public employees in the first place.” *Id.* at 391.

- “The government’s need to attract talented individuals is not limited to full-time public employees” as often there is a “particular need for specialized knowledge or expertise” that forces the government to “look outside its permanent work force to secure the services of private individuals.” *Id.* at 390.
- “The public interest in ensuring performance of government duties free from the distractions that can accompany even routine lawsuits is also implicated when individuals other than permanent government employees discharge these duties.” *Id.* at 391. (all internal quotation marks omitted).

All of these reasons stated in *Filarsky* for granting immunity arose in the context of a final appealable summary judgment order granting qualified immunity to the private attorney-government contractor involved. But each of these reasons is equally applicable to the issue presented here. Denying government contractors the right to an immediate appeal from an order denying their claim of derivative sovereign immunity from suit subjects them (and the government employees with whom they work) to the distraction and cost of lengthy litigation before their immunity claim can be reviewed on appeal. Such a result will no doubt mean that many government contractors, particularly small businesses, will in the

future “decline public engagements” or at least “think twice before accepting a government assignment” or be distracted from the jobs for which they were engaged to assist the government—thereby “undermin[ing] an important reason” that derivative sovereign immunity is afforded “in the first place.”

Thus, for all the reasons this Court upheld a government contractor’s immunity claim in *Filarsky*, it should hold that an order denying a government contractor’s claim of derivative sovereign immunity is immediately appealable under the collateral-order doctrine.

### CONCLUSION

Amicus Nevada Hospital Association respectfully requests that this Court reverse the order of the Ninth Circuit Court of Appeals dismissing CEO Group, Inc.’s appeal for lack of appellate jurisdiction.

Respectfully submitted,

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August 6, 2025