No. 24-758

# In the Supreme Court of the United States

THE GEO GROUP, INC.,
*Petitioner*,

v.

ALEJANDRO MENOCAL, ET AL.,
*Respondents*.

On Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

## BRIEF FOR RESPONDENTS


DEEPAK GUPTA
GREGORY A. BECK
THOMAS SCOTT-RAILTON
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741

JENNIFER D. BENNETT
*Counsel of Record*
JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
Suite 625
San Francisco, CA 94111
(415) 573-0336
*jennifer@guptawessler.com*

*Counsel for Respondents*

(*Additional counsel listed on inside cover*)



September 15, 2025

JUNO TURNER
DAVID SELIGMAN
ALEXANDER HOOD
RACHEL DEMPSEY
TOWARDS JUSTICE
PO Box 371680
Denver, CO 80237
(720) 248-8426

HANS MEYER
MEYER LAW OFFICE
901 West 10th Avenue
Suite 2A
Denver, CO 80204
(303) 831-0817

BRANDT MILSTEIN
ANDREW HESS TURNER
MILSTEIN TURNER
1490 Lafayette Street
Suite 304
Denver, CO 80218
(303) 440-8780

MICHAEL SCIMONE
OUTTEN & GOLDEN LLP
685 Third Avenue
25th Floor
New York, NY 10017
(212) 658-0137

ADAM KOSHKIN
OUTTEN & GOLDEN LLP
One California Street
12th Floor
San Francisco, CA 94111
(415) 727-2237

## QUESTION PRESENTED

Whether an order denying a government contractor's claim of derivative sovereign immunity is immediately appealable under the collateral-order doctrine.

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**

**Other authorities**

## INTRODUCTION

Appellate jurisdiction is limited to "final decisions." 28 U.S.C. § 1291. That statutory limitation—which traces back to the founding—reflects Congress's judgment that letting litigants appeal any intermediate decision that doesn't go their way would have "a debilitating effect on judicial administration." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 471 (1978). Piecemeal appeals burden appellate courts, undermine district courts' ability to manage litigation, and enable litigants to saddle their opponents with unnecessary cost and delay.

Nevertheless, in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), this Court fashioned what it has alternately called an "exception to" or a "gloss on" Congress's "final decision language." *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 866, 875 (1994). The Court held that "final decisions" under section 1291 include a small class of orders that do not terminate the litigation but are so important and so collateral to the merits that they warrant immediate appeal anyway.

The Court has repeatedly stressed, however, that this "collateral order" doctrine "must remain narrow." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 113 (2009). That "admonition has acquired special force" since Congress designated "rulemaking," not "court decision" as the "preferred means" for identifying immediately appealable orders. *Id.* Rulemaking "draws on the collective experience of bench and bar," not just the briefing in one case; and it allows for more "measured, practical solutions" than the "blunt, categorical instrument of … collateral order appeal." *Id.* at 112, 114.

GEO nevertheless asks this Court to create via judicial decision a new category of interlocutory appeals for

federal contractors who assert a defense under *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), for conduct that was "authorized and directed" by the government. That would dramatically expand the scope of the collateral-order doctrine. In 2023 alone, the federal government entered six million contracts. Pet. Br. 46. According to GEO, every contractor—from tree cutters to janitorial companies to caterers—is entitled to an immediate appeal whenever they unsuccessfully assert the *Yearsley* defense.

GEO argues that this expansion is warranted because, it says, *Yearsley* is a "derivative" form of the government's sovereign immunity, which grants it the right not to stand trial. But this Court has already rejected that argument. *See Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016). More than a century of unbroken precedent establishes that the sovereign's "immunity does not extend to those that act[] in its name." *Sloan Shipyards Corp. v. U.S. Shipping Bd. Emergency Fleet Corp.*, 258 U.S. 549, 567-68 (1922). Indeed, on the same day *Yearsley* was decided, this Court held that government contractors "certainly" do "not share any governmental immunity." *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 105 (1940).

*Yearsley* is not a form of the sovereign's immunity from suit. It is an ordinary defense on the merits, rooted in traditional common-law agency principles. It provides only that government agents—like other agents—are not "*liable*" for conduct that was validly authorized and directed by their principal. *Yearsley*, 309 U.S. at 21-22 (emphasis added). The "essence" of *Yearsley* is not a right to avoid suit; it's a right to assert a defense in that suit. *Van Cauwenberghe v. Biard*, 486 U.S. 517, 524 (1988).

But even if *Yearsley* somehow granted contractors a right it never mentions, that would not be enough to merit collateral-order treatment. This Court has "distilled" the collateral-order doctrine into three "stringent" requirements. *Will v. Hallock*, 546 U.S. 345, 349-51 (2006). And to warrant immediate appeal, orders—including orders denying an immunity from suit—must satisfy all three. *Id. Yearsley* denials satisfy none.

First, *Yearsley* is not effectively unreviewable after final judgment. Requiring contractors to take a single post-judgment appeal does not "imperil" any "value of a high order." *Id.* at 352-53. GEO claims that the government will be burdened if its contractors don't get an immediate appeal. But the government itself has argued that *Yearsley* does not merit immediate appeal. And even where a *statute* grants government *employees* a right not to stand trial, this Court has held that "simply abbreviating litigation troublesome" to the government is not enough. *Id.* at 351-53.

Second, as the Tenth Circuit held, *Yearsley* is not completely separate from the merits. On the contrary, it requires courts to determine the most essential of merits questions: What did the defendant do, and did it have the legal right to do so?

And third, an interlocutory denial of the *Yearsley* defense often will not conclusively resolve the issue. At the heart of *Yearsley* is a factual issue—whether the government directed the defendant's conduct. A court's interlocutory *Yearsley* denial, therefore, will frequently rest on the court's conclusion that there are disputes of fact that must go to a jury about what the government directed and what the contractor actually did. If these inherently tentative decisions are immediately

appealable, appellate courts will need to revisit the same fact-intensive questions multiple times over multiple appeals.

Expanding the collateral-order doctrine to encompass *Yearsley* would require this Court to discard the doctrine's requirements, Congress's instructions, and more than a century of this Court's precedent—all to burden appellate courts with repetitive, fact-intensive appeals of decisions they are unlikely to overturn. This Court should affirm.

## STATEMENT

### A. Legal background

#### 1. Sovereign immunity

This Court has long held that the United States' sovereign "immunity does not extend to those that act[] in its name." *Sloan*, 258 U.S. at 567-68.[1]

**a.** Sovereign immunity has its roots in English law, which "ascribe[d] to the king the attribute of sovereignty, or pre-eminence." 1 William Blackstone, Commentaries on the Laws of England 241 (3d ed. 1765). By the time the American "Constitution was ratified, it was well established in" England "that the Crown could not be sued without consent." *Alden v. Maine*, 527 U.S. 706, 715 (1999). As Blackstone explained, "no suit or action can be brought against the king, even in civil matters, because no court can have jurisdiction over him." 1 Blackstone, Commentaries 242. "[J]urisdiction implies superiority of power," and there was no power superior to the king. *Id.*

[1] Unless otherwise noted, internal quotation marks, citations, and alterations have been omitted from quotations throughout this brief.

Because immunity from suit was an attribute of the sovereign—a "prerogative of the crown"—it did not extend to the king's agents. *Id.* at 230, 246. "From time immemorial many claims affecting the Crown could be pursued in the regular courts if they did not take the form of a suit against the Crown." Louis L. Jaffe, *Suits Against Governments and Officers: Sovereign Immunity*, 77 Harv. L. Rev. 1, 1 (1963). Thus, though the king could not be sued without consent, "damages … were recoverable against [a] wrongdoing officer." Edwin M. Borchard, *Government Liability in Tort*, 34 Yale L.J. 1, 7-8 & n.20 (1924) (collecting cases); *see, e.g.*, *Entick v. Carrington* (1765) 95 Eng. Rep. 807 (KB) (holding King's messengers liable for damages); *Feather v. The Queen* (1865) 122 Eng. Rep. 1191, 1205-06 (KB) (calling this principle "too well settled to admit of question").

Although the American people rejected its monarchical underpinnings, American law retained the doctrine of sovereign immunity. *Alden*, 527 U.S. at 715-16. The premise of sovereign immunity in the United States is not that the "king can do no wrong," but rather that "[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent." *Id.* at 716 (quoting Alexander Hamilton, The Federalist No. 81). Whether the sovereign is a king or the state, this Court has explained, "[t]he generation that designed and adopted our federal system considered immunity from private suits central to sovereign dignity." *Id.* at 715.

That dignity, however, is the sovereign's alone. Sovereign immunity is "a high attribute of sovereignty, []a prerogative of the state itself." *Hopkins v. Clemson Agric. Coll. of S.C.*, 221 U.S. 636, 642-43 (1911). It bars suit only

when the sovereign is the "real party in interest." *See, e.g.*, *Lewis v. Clarke*, 581 U.S. 155, 161-63 (2017) (citing cases).

Those who work for the government are not themselves sovereign. *See id.*; *Hopkins*, 221 U.S. at 642. Suits against government agents (in their personal capacity), therefore, do not implicate the dignitary interests that arise when the sovereign itself is subject " to the coercive process of judicial tribunals," *Alden*, 527 U.S. at 749.

**b.** Consistent with this understanding, government officers and agents have been subject to damages suits since the founding. *See, e.g.*, *Sloan*, 258 U.S. at 568 (collecting cases); *Hopkins*, 221 U.S. at 643-46; *Tanzin v. Tanvir*, 592 U.S. 43, 49-50 (2020) (collecting cases). And this Court has "uniformly denied" claims that they share in the sovereign's "immunity from suit." *Hopkins*, 221 U.S. at 643, 645 ("[T]he exemption of the United States from judicial process does not protect their officers and agents … from being personally liable.").

"[T]he government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work." *Keifer & Keifer v. Reconstruction Fin. Corp.*, 306 U.S. 381, 388-89 (1939); *see also Reconstruction Fin. Corp. v. J.G. Menihan Corp.*, 312 U.S. 81, 83 (1941) ("[T]he mere fact that it is a[] [corporate] agency of the government does not extend to it the immunity of the sovereign."); *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 686 (1949) (The "fact that the officer is an instrumentality of the sovereign does not … forbid a court from taking jurisdiction over a suit against him."); *United States v. California*, 507 U.S. 746, 754 (1993) (reaffirming principle that "[a]bsent congressional action," private corporations cannot obtain

"[i]mmunity from suit" because they contract with the government).

Because this rule rests on the nature of sovereignty itself, it is no different for "[c]orporate agents" than for "individual officers" working directly for the government. *See, e.g.*, *Hopkins*, 221 U.S. at 643-45. "[C]ertainly the contractor in [an] independent operation does not share any governmental immunity." *Sadrakula*, 309 U.S. at 105; *see James v. Dravo Contracting Co.*, 302 U.S. 134, 152-53 (1937); *Brady v. Roosevelt S.S. Co.*, 317 U.S. 575, 583-84 (1943).

Thus, over a century ago, this Court rejected a bid for immunity from a public corporation created to "purchase, construct[] and operat[e] … merchant vessels" on behalf of the federal government. *Sloan*, 258 U.S. at 564. The corporation argued that the "enormous powers" granted to it by Congress "so far put [it] in place of the sovereign as to share the immunity of the sovereign." *Id.* at 566. This Court disagreed. "[S]uch a notion," the Court explained, "is a very dangerous departure from one of the first principles of our system of law": "that any person within the jurisdiction always is amenable to the law." *Id.* at 566-67. "An instrumentality of Government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts." *Id.* at 567 (citing *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738, 842, 843 (1824); *United States v. Lee*, 106 U.S. 196, 213, 221 (1882)).

Similarly, in *Brady*, this Court held that a private contractor operating government-owned ships was not entitled to share the government's immunity. 317 U.S. at 583-84. The Court explained that even if a government contract indemnifies the contractor, meaning the

government will ultimately foot the bill, the contractor still is not entitled to the sovereign's immunity: A company does not obtain "immunity from suit" simply "by reason of concessions made by [government] contracting officers." *Id.* at 584. *Congress* may "grant immunity to private operators." *Id.* at 580. But absent a statute saying otherwise, "[i]mmunity from suit" cannot be obtained "by reason of a contract" with the government. *Id.* at 583.

That rule remains the same today: Sovereign immunity shields the sovereign, not its agents or officers. This Court recently reaffirmed that rule in *Lewis v. Clarke*. 581 U.S. at 161-63. Where relief is sought against "the sovereign itself," sovereign immunity applies. *Id.* at 162. But where a suit "seek[s] to impose *individual* liability upon a government officer" or agent—even "for actions taken under color of state law"—"the real party in interest is the individual." *Id.* at 162-63. So "sovereign immunity is not implicated." *Id.* at 158.

**2. The *Yearsley* defense**

Although government agents are not entitled to sovereign immunity, this Court has long recognized a defense to liability for officers and agents whose conduct is authorized and directed by the government. *See Yearsley*, 309 U.S. at 21 (citing cases). *Yearsley* is the seminal case. In *Yearsley*, the federal government had hired a contractor to build a dike on the Missouri River. *Id.* at 19. The company's work "was done pursuant to a contract with the United States Government, and under the direction of the Secretary of War and the supervision of the Chief of Engineers of the United States, … as authorized by an Act of Congress." *Id.*

Local landowners sued the contractor, alleging that it had washed away their land. *Id.* at 20. But this Court held

that the contractor could not be held liable for the "inevitable" consequences of following the government's orders. *Id.* at 20. The Court reasoned that the government has the legal right to take private property for public use. *Id.* at 21. And the contractor, as the government's "agent," was exercising that right as "directed by the Government." *Id.* at 20-22. Where the government has "validly conferred" its authority, the Court held, "there is no liability on the part of the contractor for executing its will." *Id.*

*Yearsley*'s rule reflects "settled agency principles." Pet. Br. 16-17. Agents are "not relieved from liability" for tortious or unlawful acts simply because they "acted at the command of the principal." Restatement (First) of Agency § 343 (1933); *see* Joseph Story, Commentaries on the Law of Agency §§ 311-12 (1882). But "[a]n agent is privileged to do what otherwise would constitute a tort if his principal is privileged to have an agent do it and has authorized the agent to do it." Restatement (First) of Agency § 345. In other words, if a principal has a right to perform an otherwise-unlawful act, it may delegate that right to its agent. And the agent then has a legal right to perform the act on the principal's behalf.

*Yearsley* refined these principles into two requirements. Government agents are not "liable" for the "inevitable consequences" of their work if: (1) the government "validly" authorized the work (i.e. had a legal right to engage in it and delegated that right to the agent); and (2) the government "directed" the agent to engage in the challenged conduct. *Yearsley*, 309 U.S. at 20-21; *see also Campbell-Ewald*, 577 U.S. at 167; *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 n.6 (2001) ("Where the government has directed a contractor to do the very thing

that is the subject of the claim, we have recognized this as a special circumstance where the contractor may assert a defense.").

**3. The collateral-order doctrine**

The collateral-order doctrine governs whether an interlocutory denial of a contractor's *Yearsley* defense may be immediately appealed.

**a. "**Finality as a condition of review is an historic characteristic of federal appellate procedure." *Cobbledick v. United States*, 309 U.S. 323, 324 (1940). Almost two millennia ago, Constantine the Great "prohibited appeals from interlocutory orders." Arthur Engelmann, History of Continental Civil Procedure 369 (1927). And it was a "well-settled and ancient rule of English" common law that appeal may only be taken after final judgment. *McLish v. Roff*, 141 U.S. 661, 665 (1891).

Congress enshrined this ancient rule into "the very foundation of our judicial system." *Id.* In the first Judiciary Act of 1789, Congress limited appellate jurisdiction to appeals from "final judgments or decrees," thus requiring "the whole case and every matter in controversy in it" to be "decided in a single appeal." *Id.*; *see* 1 Stat. 73 (1789). As Justice Story explained, "[i]t is of great importance to the due administration of justice" that cases not be reviewed "in fragments, upon successive appeals." *Canter v. Am. Ins. Co.*, 28 U.S. 307, 318 (1830). A single post-judgment appeal "preserves the proper balance between trial and appellate courts, minimizes the harassment and delay that would result from repeated interlocutory appeals, and promotes the efficient administration of justice." *Microsoft Corp. v. Baker*, 582 U.S. 23, 36-37 (2017).

Today, the final-judgment rule is codified in 28 U.S.C. § 1291, which grants the courts of appeals jurisdiction over appeals from "final decisions of the district courts."[2] "A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233 (1945).

**b.** Although on its face, section 1291 admits no exceptions, this Court in *Cohen v. Beneficial Industrial Loan Corp.* authorized the immediate appeal of a "small class" of interlocutory orders, "which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred." 337 U.S. at 546.

The Court has crystallized this "collateral-order doctrine" into three requirements: The order appealed from must (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment." *Will*, 546 U.S. at 349. Whether an order satisfies these requirements "is to be determined for the entire category to which [the order] belongs," not on a "case-by-case" basis. *Digit. Equip.*, 511 U.S. at 868.

---

[2] As this Court had long held when section 1291 was codified, the phrase "final decisions" "means the same thing" as "final judgments and decrees." *Crawford v. Haller*, 111 U.S. 796, 797 (1884); *see, e.g.*, *In re Tiffany*, 252 U.S. 32, 36-37 (1920). Judgments were issued at law, and decrees at equity. *See* Timothy Cunningham, *Decree*, A New and Complete Law Dictionary (3d ed. 1783). "Final decisions" captures both categories.

**c.** *Cohen* stressed the narrowness of its holding. *See* 337 U.S. at 547. That's because adhering to the final-judgment rule not only safeguards judicial efficiency, it reflects courts' fidelity to "the manifest intention of the legislature, in giving appellate jurisdiction … upon *final* decrees only." *Canter*, 28 U.S. at 318 (Story, J.).

Still, in subsequent years, the Court expanded the collateral-order doctrine's application, in ways that it later recognized may have reached "beyond the limits dictated by its internal logic and the strict application of the criteria set out in *Cohen*." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009); *see Mohawk*, 558 U.S. at 117 (Thomas, J., concurring) (describing the collateral-order doctrine as "a judicial policy that we for many years have criticized and struggled to limit"). That expansion "reached its apex" in *Mitchell v. Forsyth*, 472 U.S. 511 (1985), where this Court held that an interlocutory denial of qualified immunity was immediately appealable. Matthew R. Pikor, *The Collateral Order Doctrine in Disorder: Redefining Finality*, 92 Chi.-Kent L. Rev. 619, 633 (2017).

Since *Mitchell*, this Court has resisted further "efforts to stretch § 1291 to permit appeals of right that would erode the finality principle and disserve its objectives." *Microsoft*, 582 U.S. at 37. And the Court has hardly "mentioned applying the collateral order doctrine … without emphasizing its modest scope." *Will*, 546 U.S. at 350. "In case after case," this Court has "issued increasingly emphatic instructions that the class of cases capable of satisfying this 'stringent' test should be understood as 'small,' 'modest,' and 'narrow.'" *United States v. Wampler*, 624 F.3d 1330, 1334 (10th Cir. 2010) (Gorsuch, J.) (compiling cases). Otherwise, the "doctrine

will overpower the substantial finality interests § 1291 is meant to further." *Will*, 546 U.S. at 350.

Congress, too, has intervened, authorizing this Court to use its rulemaking authority to "define when a ruling … is final for the purposes of appeal under section 1291." 28 U.S.C. § 2072(c). Unlike the "blunt, categorical instrument" of the collateral-order doctrine, rulemaking "draws on the collective experience of bench and bar" to "facilitate[ ] the adoption of measured, practical solutions." *Mohawk*, 558 U.S. at 114. Congress's decision, this Court has explained, "warrant[s] the Judiciary's full respect." *Id.* So new additions to the list of immediately appealable orders "are to come from rulemaking, … not judicial decisions in particular controversies." *Microsoft*, 582 U.S. at 39.

**B. Factual background**

GEO is a publicly traded, for-profit company that operates private detention facilities. One of these facilities is the Aurora Immigration Processing Center, which houses people pending immigration proceedings. Pet. App. 4a.[3]

Managing a detention facility requires work: building maintenance, janitorial work, preparing meals for hundreds of people, and doing their laundry. 1 App. 34. The government pays GEO millions of dollars a year to perform that work. 3 Supp. App. 105. But GEO didn't perform the work itself: It required those detained in its facility to do it.

---

[3] References to App. and Supp. App. are to the appendices filed in the Tenth Circuit. References to Pet. App. are to the appendix filed with the petition for certiorari.

The company forced every person detained at Aurora to perform unpaid janitorial work, sending them to "the hole"—solitary confinement—if they refused. Pet. App. 5a. In the words of ICE's contracting officer, this was a "GEO policy, created by GEO," not "a requirement of the contract" with ICE. Pet. App. 49a. That contract, and ICE's national detention standards, prohibited GEO from forcing those detained at Aurora to do anything other than "personal housekeeping." 1 App. 144; *see* 1 Supp. App. 121 (Department of Homeland Security official warning that forced sanitation work "is in violation of ICE standards").

In addition to using solitary confinement to force people to work, GEO fulfilled its other staffing needs through a "Voluntary Work Program." Pet. App. 5a. Although technically voluntary, many people had little choice but to participate: GEO's meals were "inadequate," leaving those in its care "chronically hungry" unless they "voluntar[ily]" worked to buy more food. 2 Supp. App. 90, 183-85. GEO paid its workers just $1 a day. *Id.* at 140. That, too, was GEO's choice. ICE did not require GEO to pay so little. Pet. App. 69a.

### C. Procedural background

This lawsuit was filed over a decade ago. Alejandro Menocal, who had been detained at Aurora, sued GEO for violating the prohibition on forced labor in the federal Trafficking Victims Protection Act and Colorado's prohibition on unjust enrichment. Pet. App. 6a.

This appeal arises from the district court's nearly 100-page summary judgment order, which held that GEO is not entitled to the *Yearsley* defense. Pet. App. 69a-78a. After reviewing hundreds of pages of GEO's internal documents, numerous declarations, and hours of deposition testimony, the court concluded that ICE had

not directed GEO to force those detained in its facility to work, nor had it required GEO to pay detained workers only $1 a day. Pet. App. 32a-84a.

GEO tried to take an interlocutory appeal. But the Tenth Circuit dismissed for lack of jurisdiction. Pet. App. 3a. "[A]n order denying *Yearsley*'s applicability," the court held, "does not satisfy the collateral order doctrine." Pet. App. 10a. The court concluded that it need only look to the second prong of the collateral-order test: that an order must be "separate from the merits." Pet. App. 18a. As a category, the court held, *Yearsley* orders are too enmeshed in the merits to qualify. Pet. App. 19a-21a.

The court focused on *Yearsley*'s requirement that the contractor's conduct be directed by the government. Pet. App. 20a-21a. The same questions that are "at the heart" of that requirement are "also at the heart of the merits." Pet. App. 21a. For example, to determine whether a contractor complied with government directives requires determining what the company actually did, the key factual question on the merits. *See* Pet. App. 22a. And because *Yearsley* requires that the contractor "compl[y] with all relevant federal requirements," a contractor's entitlement to *Yearsley* will often depend on whether it complied with the law, the key legal question on the merits. Pet. App. 21a-25a.

Because *Yearsley* orders are intertwined with the merits, the court held, they cannot be collaterally appealed. Pet. App. 29a-30a.

## SUMMARY OF ARGUMENT

GEO asks this Court to grant every government contractor, hundreds of thousands of companies employing millions of people, an immediate appeal.

Companies that clean government buildings, staff government cafeterias, trim government trees—all, on GEO's view, are entitled to seek the government's sovereign immunity and immediately appeal if their request is denied. But there is no such thing as "derivative sovereign immunity." And the actual defense that GEO asserts—a defense under *Yearsley* for government agents whose conduct was authorized and directed by the government—does not satisfy any of the collateral-order requirements.

**I.A.** *Yearsley* orders are not "effectively unreviewable" after final judgment. A decision rejecting a defense to liability on the merits is the quintessential order that can and should be reviewed after judgment. And *Yearsley* is a defense to liability: Like other agents, those who work for the government may defend the lawfulness of their conduct by demonstrating that it was validly authorized and directed by their principal (the government).

GEO's effective-unreviewability argument rests entirely on its contention that *Yearsley* is a form of "derivative sovereign immunity," granting contractors who meet its requirements the government's immunity from suit. This Court has already rejected that contention. *Campbell-Ewald*, 577 U.S. at 156. As the Court has consistently held since the founding, the sovereign's immunity from suit belongs to the sovereign. The government is not a "conduit of its immunity" to those who "do its work." *Keifer*, 306 U.S. at 388-89. There are, of course, personal defenses available to officers and agents, such as qualified immunity or *Yearsley*, but those defenses have their own history and purpose. They are not a form of sovereign immunity. To determine whether *Yearsley*

provides immunity from suit, then, it must be evaluated in its own right.

Looking to *Yearsley* itself—and the historical tradition of litigation against government agents—it is clear that it does not provide immunity from suit. *Yearsley* held that if the government "validly conferred" authority to the contractor, "there is no *liability* … for executing its will." 309 U.S. at 20-21 (emphasis added). That accords with the longstanding rule both before and after *Yearsley*: Government agents may defend the lawfulness of their conduct by demonstrating that they were validly authorized to engage in it on the government's behalf. But that is a defense they must make in the suit, not a right to avoid suit entirely.

GEO argues that the policy reasons underlying qualified immunity justify reimagining *Yearsley* as an immunity from suit. But there is already a doctrine designed to accommodate the policy concerns animating qualified immunity: qualified immunity. That doctrine protects government officials from having to face suit when they act reasonably in light of clearly established law. That is not the purpose of *Yearsley*. *Yearsley* merely applies the same traditional agency-law principles that apply to private agents to public ones. If GEO believes the policy concerns animating qualified immunity justify providing GEO immunity from suit, it may try to satisfy the requirements for qualified immunity. But that is no basis for grafting immunity from suit onto an entirely different doctrine that vindicates different values.

**B.** Even if this Court were willing to transform *Yearsley* into an immunity from suit, there is no "value of a high order" served by immediate appeal of *Yearsley* decisions—let alone one that outweighs the interests

underlying the final-judgment rule. *Will*, 546 U.S. at 352. The only interest GEO cites is the desire to shield government contractors from the ordinary burdens of litigation. But the government itself has disclaimed any compelling interest in exempting its contractors from the final-judgment rule. And this Court has already held that the burdens of litigation, even when they fall directly on government employees, are insufficient to justify the costs of immediate appeal.

**C.** And the costs of immediate appeal of *Yearsley* orders are particularly high. *Yearsley* appeals will often hinge not on pure questions of law, but on record-intensive factual inquiries about what the government directed and what the contractor actually did. Appellate courts, therefore, will be burdened with repeated appeals that require them to dig through reams of documents and testimony. All for little gain: The typical interlocutory order denying *Yearsley* merely holds that there are sufficient disputes of fact to send to the jury, a conclusion an appellate court is unlikely to overturn. The inefficiency and delay this would cause is exactly what the final-judgment rule is meant to prevent.

If a particular *Yearsley* order raises an unsettled legal question or implicates an important public interest, a contractor can seek permission to file an interlocutory appeal under 28 U.S.C. § 1292(b). There is no need to burden the appellate courts with an immediate appeal in every case.

**II.A.** *Yearsley* orders also fail the titular requirement of the collateral-order doctrine: They are not collateral to the merits. The fundamental questions on the merits of any case are what did the defendant do, and was it legal? *Yearsley* also requires answering those questions. If a

contractor's conduct was validly authorized and directed by the government, under well-settled agency principles, that conduct was legal. And to determine whether the contractor's conduct was directed by the government, courts need to determine what the contractor actually did. In virtually every case, then, *Yearsley* will "substantially overlap" with the merits; in many cases, they are one and the same. *Biard*, 486 U.S. at 529.

**B.** GEO doesn't seriously contend otherwise. Instead, the company again rests on a misplaced analogy to qualified immunity. At the height of its expansive collateral-order jurisprudence, this Court held that government officials could take an immediate appeal of the legal question underlying qualified immunity: whether the right that the defendant allegedly violated was clearly established at the time. This question, the Court emphasized, is both purely legal and conceptually distinct from the question on the merits—what the defendant did and whether that violated the law.

Neither is true of *Yearsley*. At the heart of *Yearsley* is a purely factual question: Did the government direct the contractor's conduct? And rather than being conceptually distinct from the merits, *Yearsley* resolves the merits. Again, the upshot of the government validly authorizing and directing the contractor's conduct is that the conduct was legal.

**III.** Because *Yearsley* ordinarily turns on the resolution of factual disputes, interlocutory *Yearsley* orders will frequently be inconclusive, holding only that there is a sufficient dispute of fact to go to the jury. An order tentatively denying a defense pending the jury's factual findings is not a "final decision," 28 U.S.C. § 1291.

## ARGUMENT

In recent years, this Court has repeatedly cautioned that expansions of the collateral-order doctrine "are to come from rulemaking, … not judicial decisions in particular controversies." *Microsoft*, 582 U.S. at 39. Yet GEO asks the Court to authorize an immediate appeal in every case involving a government contractor—whether they provide military equipment or janitorial services. At the very least, if this Court is going to use case-by-case adjudication to dramatically expand the collateral-order doctrine in this way, the three "stringent" collateral-order requirements must be met. *Will*, 546 U.S. at 349. *Yearsley* orders do not satisfy any.

Presumably for this reason, GEO's lead argument (at 11) is that its claim to immunity from suit absolves it from independently satisfying the collateral-order requirements. But this Court has already held otherwise—repeatedly. *See, e.g.*, *id.* at 351-52; *Johnson v. Jones*, 515 U.S. 304, 314-16 (1995). GEO's argument thus fails several times over: GEO bases its plea for collateral-order treatment on "derivative sovereign immunity," an immunity that does not exist. Case-by-case adjudication is the wrong forum for creating new categories of immediately appealable orders. And *Yearsley* does not satisfy the collateral-order requirements regardless.

### I. *Yearsley* is not effectively unreviewable on appeal.

This Court's inquiry can start and end with the third collateral-order requirement: that the decision resolve an "important question" that is "effectively unreviewable upon final judgment." *Digit. Equip.*, 511 U.S. at 869. An order rejecting a defense to liability is the quintessential example of an order that *can* be effectively reviewed after final judgment. *See, e.g.*, *Swint v. Chambers Cnty.*

*Comm'n*, 514 U.S. 35, 43 (1995). If the district court gets it wrong, the court of appeals can simply reverse; the right to avoid liability remains intact.

GEO contends that *Yearsley* is not merely a defense to liability, but a right not to be sued at all. That claim, in turn, rests entirely on its assertion that *Yearsley* is derivative of the sovereign's own immunity from suit. But centuries of unbroken precedent—and the nature of sovereign immunity itself—make clear that sovereign immunity belongs to the sovereign alone. Those who work for the government do not share its immunity, derivatively or otherwise. As *Yearsley* itself says, it is a defense to "liability," 309 U.S. at 21, not a right to avoid suit entirely.

Moreover, even immunities from suit are not effectively unreviewable unless they serve "some particular value of a high order" beyond just avoiding the burdens of litigation. *Will*, 546 U.S. at 352. GEO identifies no such value, let alone one "weightier than the societal interests advanced by the ordinary operation of final judgment principles." *Digit. Equip.*, 511 U.S. at 879. Instead, the company rehashes the same complaints about the burdens of litigation that this Court has already held are insufficient to justify immediate appeal, even for actual government employees—complaints the government itself has said do not warrant granting its contractors an immediate appeal.

**A. *Yearsley* is not an immunity from suit.**

Section "1291 requires courts … to view claims of a right not to be tried with skepticism, if not a jaundiced eye." *Digit. Equip.*, 511 U.S. at 873. After all, "virtually every right that could be enforced appropriately by pretrial dismissal might loosely be described as conferring a right not to stand trial." *Id.* at 874. A right to avoid

*judgment*—or "a right whose remedy" merely "requires … dismissal" of the suit—does not count. *Id.* A true immunity from suit is a "guarantee that trial will not occur," an "entitlement to avoid suit altogether." *Id.* *Yearsley* provides no such guarantee.

### 1. There is no such thing as "derivative sovereign immunity."

GEO's immunity-from-suit argument fails at the outset. It rests entirely on the premise that "those who perform[] work at the behest of the sovereign derive[] the same immunity the sovereign itself would enjoy." Pet. Br. 18. But it's well established that the sovereign's "immunity does *not* extend to those that act[] in its name." *Sloan*, 258 U.S. at 567-68 (emphasis added).

By definition, the sovereign's "immunity from suit is a high attribute of sovereignty—a prerogative of the state itself—which cannot be availed of by public agents." *Hopkins*, 221 U.S. at 642-43. This Court has therefore "uniformly denied" the "many claims" it has faced over the years from government agents attempting to share in the government's immunity. *Id.* at 643. Regardless of whether the agent is an officer or a private contractor, the rule is the same: The government is not a "conduit of its immunity" to those who do its work. *Keifer*, 306 U.S. at 388-89; *see, e.g.*, *Hopkins*, 221 U.S. at 644 (collecting cases); *Lewis*, 581 U.S. at 161 (individual officer); *Sloan*, 258 U.S. at 566-67 (public corporation); *Brady*, 317 U.S. at 576 (private corporation).

In arguing to the contrary, GEO cites (at 17-24) two kinds of cases: cases involving official immunities, such as qualified or judicial immunity (or their predecessors), and cases involving a defense for government agents whose conduct was validly authorized and directed by the

government. But none of these cases afforded a government officer or agent any form of sovereign immunity.

As this Court has explained, official immunities are "personal" defenses—each with its own historical tradition and policy rationale—"distinct from sovereign immunity." *Lewis*, 581 U.S. at 164 n.2; *see United States v. James*, 478 U.S. 597, 610 n.10 (1986), *abrogated on other grounds by Cent. Green Co. v. United States*, 531 U.S. 425 (2001) (cases about official immunities, such as qualified immunity, "relate to personal immunity, not to the Federal Government's sovereign immunity"); *Larson*, 337 U.S. at 687 n.7 (distinguishing between "limitations on the right to recover damages from public officers" and sovereign immunity from suit). When officers are sued in their individual capacity, sovereign immunity "is simply not in play." *Lewis*, 581 U.S. at 163-64 & n.2.

GEO fares no better arguing that sovereign immunity underpins the defense for contractors whose conduct is authorized and directed by the government. That defense is rooted in traditional agency principles, not sovereign immunity. It's blackletter law that while a principal may ordinarily delegate its privilege to commit an otherwise-unlawful act, it may not delegate its "personal" immunities. Restatement (First) of Agency § 347 cmt. a (identifying sovereign immunity as an example); Restatement (Second) of Agency § 217 cmt. b (1958) ("Immunities, unlike privileges, are not delegable and are available as a defense only to persons who have them."). Put differently, if a principal has the right to engage in otherwise-unlawful conduct, its agent may exercise that right on the principal's behalf; but if the principal's

"status"—as, for example, a sovereign—provides it immunity from suit, that immunity is non-delegable. *Id.*

That rule, not "derivative sovereign immunity," underlies the government-agent cases that GEO cites. The *posse comitatus* cases, for example, rest on the principle that citizens conscripted by the sheriff could exercise the delegated privileges of the sheriff (their principal)—and defend themselves from liability by arguing that these privileges rendered their conduct lawful. *See, e.g.*, *Reed v. Rice*, 25 Ky. 44, 47 (1829) ("[I]f he acts under the command of another, and that other, in cases of the kind, may have lawful authority to command him, then we think he ought not to be responsible."). That's agency law. *See* Restatement (Second) of Agency § 217 cmt. a (sheriff may delegate privilege to make an arrest); *see also id.* § 343 cmt. d (absent a privilege, both sheriff and agents are liable). It has nothing to do with sovereign immunity.

The same is true of the cases in which government agents seized private property or contractors were sued for injuries caused by public works projects. *See, e.g.*, *Lamar v. Browne*, 92 U.S. 187, 199-200 (1875) (government agents "cannot be made liable" because they acted under the "authority" and "specific" instructions of the government).

GEO suggests (at 16-17) that *Yearsley* itself "extend[ed]" "the United States' sovereign immunity … to private contractors performing work for the government." It couldn't have. The government had waived its sovereign immunity. 309 U.S. at 21.[4] *Yearsley*

---

[4] That's also true of the cases *Yearsley* relied on. *See United States v. The Paquete Habana*, 189 U.S. 453, 465 (1903) (explaining

doesn't purport to bestow on the contractor immunity the government itself did not have. Indeed, on the same day that this Court decided *Yearsley*, it held in another case that "certainly" government contractors do "not share any governmental immunity." *Sadrakula*, 309 U.S. at 105.

*Yearsley* simply applies the ordinary rules of agency to government agents. Government agents, it holds, have a defense to liability for otherwise tortious or unlawful acts if the government: (1) validly authorized those acts; and (2) directed the agent to perform them. *Yearsley*, 309 U.S. at 20.[5]

This is not the first time a contractor has tried to lump together a hodgepodge of cases involving different defenses and claim that they demonstrate a long tradition of something called "derivative sovereign immunity." In *Campbell-Ewald*, a government contractor made virtually the same argument that GEO makes here. Pet. Br., *Campbell-Ewald*, 2015 WL 4397132, at *36 (No. 14-857). This Court rejected that argument: Those who perform work for the government, this Court held, do not thereby acquire "derivative sovereign immunity." *Campbell-*

---

that a "decree properly may be entered against the United States," and that the agent's defense existed "whatever the immunities of the sovereign"); *Lamar*, 92 U.S. at 199 (plaintiff could "look to the United States for redress" because Congress authorized suits in the Court of Claims); *Murray v. Hoboken Land & Imp. Co.*, 59 U.S. 272, 283-85 (1855) (Congress consented to suit against the United States "to try the question whether the collector be indebted"). In none of these cases could an agent's defense have been "derivative" of the United States' (nonexistent) immunity.

[5] Decades after *Yearsley* was decided, some lower courts began characterizing it as "derivative sovereign immunity" but as explained, that's a misnomer. *Yearsley* did not purport to grant contractors any form of sovereign immunity, derivative or otherwise.

*Ewald*, 577 U.S. at 156 (scare quotes in original). The Court should do the same here.[6]

### 2. *Yearsley* is a defense to liability, not an immunity from suit.

Shorn of the premise that all those who work for the government are entitled to share in its immunity, GEO's argument collapses. It offers no basis in history or precedent for the idea that the "essence" of the *Yearsley* doctrine is "a right not to stand trial," *Biard*, 486 U.S. at 524. Nor could it. The unbroken rule since the founding has been that absent a statute providing otherwise, companies are not entitled to immunity from suit simply because they contract with the government. *See, e.g.*, *Brady*, 317 U.S. at 583-84.

**a.** *Yearsley* did not alter that rule. *Yearsley* holds that if a government agent's conduct was validly authorized, "there is no *liability* on the part of the contractor for executing [the government's] will." 309 U.S. at 20-21 (emphasis added). It never even suggests that the contractor cannot be sued at all. *See, e.g.*, *id.* at 22 (defense "excludes liability of the Government's representatives"); *id.* ("[T]here is no ground for holding its agent liable."); *id.* at 23 (contractor was not "subject to the asserted liability").

In arguing otherwise, GEO seizes on a single sentence in this Court's subsequent decision in *Brady v. Roosevelt S.S. Co.*, 317 U.S. 575 (1943). *Brady* notes that, under

---

[6] GEO contends (at 24) that the contractor in *Campbell-Ewald* sought an "unconditional" version of the government's sovereign immunity. Not so. The contractor explicitly argued that "derivative sovereign immunity" is a "qualified"—or conditional—version of the sovereign's immunity. Reply Br., *Campbell-Ewald*, 2015 WL 5607601, at *14.

*Yearsley*, "government contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertaking with the United States." *Id.* at 583. But "immunity" is a word of many meanings. "Sometimes the word connotes a right not to be tried." *Pullman Constr. Indus., Inc. v. United States*, 23 F.3d 1166, 1169 (7th Cir. 1994). "Sometimes [it] means only a right to prevail at trial—a right to win, indistinguishable from all the other reasons why a party may not have to pay damages." *Id.*

Courts have loosely used the word "immunity" and even the phrase "immunity from suit" to refer to all sorts of defenses that do not provide a right not to stand trial. *See, e.g.*, *Biard*, 486 U.S. at 524 (civil process); *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 428-29 (1965) (statute of limitations); *Mercantile Nat'l Bank v. Langdeau*, 371 U.S. 555, 556 (1963) (personal jurisdiction). After all, "virtually every right that could be enforced appropriately by pretrial dismissal might loosely be described as conferring a right not to stand trial." *Digit. Equip.*, 511 U.S. at 873.

*Brady* says exactly what it means by "immunity": "[T]he contractor was not *liable*." 317 U.S. at 583 (emphasis added). *Brady* expressly rejects the contention that government contractors have "immunity from suit." *Id.* And it does not stand alone. This Court has repeatedly held that government agents acting under government orders may "successfully defend" a lawsuit "by exhibiting the … lawful authority under which they acted." *Hopkins*, 221 U.S. at 643 (citing cases). But they are not "exempt from suit." *Id.*

GEO similarly pulls snippets out of context from other cases to suggest that they granted a government officer or agent immunity from suit, but none actually did.

In *Paquete Habana*, for example, the Court held that a "decree" could not "be entered against" the officers, not that they were immune from suit. 189 U.S. at 464-65. In *Lamar*, the Court held that the government agents were not "liable to suit." 92 U.S. at 199. But the archaic phrase "liable to suit" (or "liable to action") just means "[l]iable to *judgment* in [a] given action." *Liable to Action*, Black's Law Dictionary (4th ed. 1968) (emphasis added); *see Action*, *id.* ("suit" is synonymous with "action"). That's clear from context: The Court didn't just say that agents are not "liable to suit," it said that they are not "liable to suit *at common law for the trespass*." *Lamar*, 92 U.S. at 197. That is, they could not be found liable for the common-law tort of trespass.

And in *Murray's Lessee*, the Court explicitly distinguished between an agent who "cannot be *made responsible* in a judicial tribunal for obeying the lawful command," and "the government itself, [which] *cannot be sued* without its own consent." 59 U.S. at 283 (emphasis added). Thus, a "suit *may* be brought against the [agent]" and "he may be put to show his justification" by demonstrating that he was acting under a "lawful command of the government." *Id.* at 283-85 (emphasis added).

The other cases that GEO and its amici cite are of a piece. *See, e.g.*, *Salliotte v. King Bridge Co.*, 122 F. 378, 383 (6th Cir. 1903) (contractor entitled to "exemption from *liability*" (emphasis added)); *Newman v. Bradley Constr. Co.*, 100 Misc. 1, 6 (1917) (contractor "did not become *liable* for consequential damages" (emphasis added)). It is true, as GEO's amicus notes, that one may occasionally "come[] across not only the term 'immunity,' but also the stronger term 'immunity from suit'" in state-court

decisions applying state law. Volokh Br. at 3. But "an examination of the[se] cases … will show that they involve questions of *liability* in a suit, rather than *immunity* from suit." *Faust v. Richland Cnty.*, 109 S.E. 151, 152 (S.C. 1921) (emphasis added). While agents of the state may "have a *defense* which relieves them from responsibility," "they must at least make that defense." *Id.* (quoting *Hopkins*, 221 U.S. at 645); *see, e.g.*, *Engler v. Aldridge*, 75 P.2d 290, 293 (Kan. 1938) (contractor "*not liable for damages*" (emphasis added)). State agents, like federal agents, are "exempt from *liability*"—not from suit. *De Baker v. S. Cal. Ry. Co.*, 39 P. 610, 616 (Cal. 1895) (emphasis added); *see also, e.g.*, *Burt v. Henderson*, 238 S.W. 626, 627 (Ark. 1922) (state agents "exempt from liability").

These cases only reinforce what this Court has long held: Government agents are entitled to a defense to liability where they act at the valid authority and direction of their principal. But they are not entitled to "immunity from suit." *See Brady*, 317 U.S. at 583.

**b.** GEO argues that private contractors should be treated no differently than government officials—and, for some reason, that makes *Yearsley* an immunity from suit. This Court has already rejected this argument. *See Campbell-Ewald*, 577 U.S. at 168; Pet. Br., *Campbell-Ewald*, 2015 WL 4397132, at *35-39.

And with good reason. As an initial matter, this Court has long rejected the notion that companies that contract with the government—whether they sell the government military equipment or staplers—are always entitled to the same protections as government officials. *See, e.g.*, *Richardson v. McKnight*, 521 U.S. 399, 404-12 (1997) (recognizing "important differences that, from an

immunity perspective, are critical" between individuals working directly for the government and "private industry"); *United States v. New Mexico*, 455 U.S. 720, 740-41 (1982); *Dravo*, 302 U.S. at 155, 159.

But even if they were, *Yearsley* treats all those who work for the government equally. Whether they are private contractors or "officer[s] of the Government," government agents have "no liability" for acting as validly authorized and directed by the government. 309 U.S. at 20 (citing cases). Rewriting *Yearsley* to provide immunity from suit to private contractors would give contractors *more* immunity than government officials.

GEO's contrary argument rests on the notion that *Yearsley* is essentially qualified immunity for contractors. But, as GEO itself repeatedly emphasizes, qualified immunity is *already* qualified immunity for contractors. *See Filarsky v. Delia*, 566 U.S. 377, 380 (2012); *Campbell-Ewald*, 577 U.S. at 167. *Yearsley* is an entirely different defense.

Qualified immunity shields "individuals engaged in public service" who act reasonably in the face of law that was not "clearly established." *Campbell-Ewald*, 577 U.S. at 167-68. Its purpose is to prevent "unwarranted timidity on the part of public officials" and "to ensure that talented candidates are not deterred by the threat of damages suits from entering public service." *Richardson*, 521 U.S. at 408. In that context, "the burden of trial is unjustified in the face of a colorable claim that the law on point was not clear …, and the action was reasonable in light of the law as it was." *Will*, 546 U.S. at 353.

*Yearsley*, on the other hand, is not justified by these "special government immunity-producing concern[s]." *Filarsky*, 566 U.S. at 390; *Richardson*, 521 U.S. at 404.

*Yearsley* merely extends a traditional agency defense to agents of the government. There is, therefore, no reason to treat *Yearsley* any differently than any of the other defenses government employees and agents may assert that do not warrant immediate appeal. *See Will*, 546 U.S. at 354.

To be sure, unlike *Yearsley*, qualified immunity does not apply to *everyone* who works for the government. *See, e.g.*, *Richardson*, 521 U.S. at 404-12. It applies only where there is a "firmly rooted tradition of immunity" and when "the special policy concerns" underlying qualified immunity justify its application. *Id.* at 404; *see Filarsky*, 566 U.S. at 383-84. But that only further counsels against relying on the rationale underlying qualified immunity to fashion a novel immunity from suit out of *Yearsley*. Either the history and purpose underlying qualified immunity apply, in which case a contractor may seek qualified immunity. Or they don't, in which case there's no justification for relying on them to create a new immunity from suit.

### B. There's no substantial public interest in shielding a private corporation from ordinary litigation.

Even if *Yearsley* could be described as a right to avoid trial, that's not enough to render it effectively unreviewable. "[I]t is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest, that counts." *Will*, 546 U.S. at 353.

**1.** Only the most "compelling public ends" satisfy this requirement. *See id.* at 352. Double jeopardy, for example, qualifies. The Framers recognized that it "is intolerable for the State, with all its resources to make repeated attempts to convict an individual defendant, thereby

subjecting him to embarrassment, expense and ordeal"—and inscribed a written guarantee against it into our Constitution. *Digit. Equip.*, 511 U.S. at 870. State sovereign immunity, too, implicates a "value of a high order": Requiring a state to stand trial subjects it to the very indignity that the Eleventh Amendment was enacted to prevent. *See Will*, 546 U.S. at 352.

Ordinarily, if a right not to stand trial is important enough to overcome Congress's historic commitment to the final-judgment rule, it will be found in a statute or in the Constitution. *See Digit. Equip.*, 511 U.S. at 879; *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 801 (1989) ("A right not to be tried in the sense relevant to the *Cohen* exception rests upon an explicit statutory or constitutional guarantee that trial will not occur.").[7]

But even a statutory right is not always enough. *Will*, 546 U.S. at 353. In *Will*, for example, this Court considered whether government employees may immediately appeal decisions declining to apply the judgment bar in the Federal Tort Claims Act—which, by its terms, "constitute[s] a complete bar to any action." *Id.* at 348. Although the Act provides a statutory right to

---

[7] Admittedly, qualified immunity—decided decades ago, before this Court began to rein in its expansive approach to the collateral-order doctrine—is a notable exception. *See Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985). The Court has since justified this exception by citing a "good pedigree in public law" for shielding government officials from having to stand trial for actions reasonably taken in the face of law that was not clearly established—and the strong public interest in ensuring that they do not have to. *Digit. Equip.*, 511 U.S. at 875; *Will*, 546 U.S. at 352. There is neither a "pedigree in public law"—strong or otherwise—for using agency principles to shield private companies from litigation, nor a strong public interest in doing so.

avoid suit, the Court held that is not enough. *Id.* at 352-54. That right must serve a "value of a high order" beyond "simply abbreviating litigation troublesome" to the government. *Id.* at 353.

The government employees tried to analogize the judgment bar to qualified immunity, arguing that if litigation was allowed to continue, "the efficiency of Government will be compromised and the officials burdened and distracted." *Id.* But, this Court explained, those are the ordinary burdens of litigation against government employees. *See id.*

Qualified immunity is not immediately appealable "simply to save trouble for the Government and its employees." *Id.* It's immediately appealable to induce government "officials to show reasonable initiative when the relevant law is not clearly established." *Id.* Absent a similar overriding public interest, the Court held, even a statutory right for government officials to avoid suit is not enough to overcome the final-judgment rule. *Id.*

**2.** GEO does not identify any "compelling public ends" that could justify elevating *Yearsley*, a common-law agency doctrine, above the statutory final-judgment rule. *Id.* Rather, GEO makes virtually the same argument that this Court rejected in *Will*. Litigation against government contractors, it complains, will burden not only the contractors but the government itself. Pet. Br. 46-48. But if that's not enough to justify immediate appeal of a statutory immunity from suit protecting actual government employees, it is certainly not enough to warrant immediate appeal of a common-law defense for contractors.

And though GEO claims to be looking out for the government's interest, the United States, across multiple

administrations, has consistently taken the position that *Yearsley* orders "do not, as a category, implicate [the] sort of substantial, effectively irreparable interest" that merits collateral-order treatment. United States Br., *CACI Premier Tech., Inc. v. Abdulla Al Shimari*, 2020 WL 5094136, at *6 (2020); *see* United States Br., *Childs v. San Diego Fam. Hous. LLC*, 2021 WL 1897312, at *13 (9th Cir. 2022); United States Br., *Posada v. Cultural Care, Inc.*, 2022 WL 17413928, at *10 (1st Cir. 2022).

This lack of concern is unsurprising. It defies common sense that a company's decision about whether to contract with the government would depend on whether *Yearsley* is immediately appealable. GEO has identified no example of any contractor that has ever based its contracting decisions on whether *Yearsley* orders are subject to the collateral-order doctrine. As the government has explained, "government contractors [can] price litigation risks into their contracts," United States Br., *CACI*, 2020 WL 5094136, at *1—or as this Court has explained, buy insurance, *Richardson*, 521 U.S. at 411. GEO itself proves the point: The company not only continues to sell its detention services to the federal government, but is actively seeking to expand its operations in circuits that have expressly held that *Yearsley* denials are not immediately appealable.[8]

Without evidence, GEO asserts that absent a right to immediate appeal, government contractors may act with "unwarranted timidity." Pet. Br. 30. Again, it's difficult to imagine that a company's performance hinges on whether it can immediately appeal *Yearsley*. And neither GEO nor any of its amici claim that they are currently

[8] *See, e.g.*, *Earnings Call Transcript*, Investing.com (Aug. 6, 2025), https://perma.cc/P87W-SX9Z.

underperforming their contracts because the law does not permit an immediate appeal. As this Court has explained, "competitive market pressures" help discipline government contractors to ensure satisfactory performance. *Richardson*, 521 U.S. at 409.

**3.** In a last-ditch effort to identify some "value of a high order" necessitating immediate appeal, GEO argues that subjecting it to the ordinary course of litigation somehow implicates the separation of powers. But if the separation of powers was implicated in every case related to government work, every case involving the government, its employees, or its contractors would require an immediate appeal. This Court has already rejected that notion. *See Will*, 546 U.S. at 348.

That said, GEO's request to dramatically expand the collateral-order doctrine does implicate the separation of powers: It would require this Court to bestow on contractors the government's immunity from suit, absent any authority from Congress. *Cf. Brady*, 317 U.S. at 580-81 (explaining that "such a basic change in one of the fundamentals of the law of agency" must come from Congress). And then, based on that new judge-made immunity, the Court would have to fashion a new exception to the final-judgment rule outside the rulemaking process that Congress identified for doing so. *Cf. Mohawk*, 558 U.S. at 114-15 (Thomas, J., concurring) ("The scope of federal appellate jurisdiction is a matter the Constitution expressly commits to Congress."). This Court should do neither.

GEO suggests that the immigration context is special. According to GEO, Congress "prefers contractors to government employees … in the context of detention for non-citizens awaiting" immigration proceedings. Pet.

Br. 1. But the statute that GEO cites does not say that. It says that "[p]rior to initiating any project for the construction of any new detention facility," the government "shall consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility." 8 U.S.C. § 1231(g)(2). In other words, the government should not build new facilities when it can buy or lease existing ones. That says nothing about whether the government should hire contractors to operate those facilities.

In any event, the applicability of the collateral-order doctrine "is to be determined for the entire category to which a claim belongs, without regard to" any interests that might be specific to "the litigation at hand." *Digit. Equip.*, 511 U.S. at 868. The question is whether *Yearsley* orders, as a category, should be immediately appealable. And most *Yearsley* orders arise in cases that have nothing to do with immigration detention. *See, e.g.*, *Campbell-Ewald*, 577 U.S. at 166 (Telephone Consumer Protection Act case against telemarketing contractor for sending unwanted text messages); *Johnson-Howard v. AECOM Special Missions Servs., Inc.*, 2023 WL 6216604 (D. Md. 2023) (slip-and-fall case against janitorial company); *Sunrise Farms, Inc. v. Sabre Energy Servs., LLC*, 2020 WL 13589214, at *7 (N.D. Iowa 2020) (negligence and breach of contract claim against fumigation company).

### C. The interests underlying the final-judgment rule weigh against permitting interlocutory appeals of *Yearsley* orders.

GEO's failure to identify *any* "value of a high order" necessitating immediate appeal of *Yearsley* orders is dispositive. *Will*, 546 U.S. at 352. And that is before weighing that non-existent value against the "competing

considerations that underlie" the final-judgment rule. *Johnson*, 515 U.S. at 315. Allowing immediate appeal of *Yearsley* denials would result in precisely the kind of "harassment," "delay," and inefficiency the final-judgment rule was designed to prevent. *Microsoft*, 582 U.S. at 36-37.

Central to *Yearsley* is a purely factual question: Was the plaintiff's injury caused by acts that the government directed the contractor to perform? Answering that question will often "require reading a vast pretrial record, with numerous conflicting affidavits, depositions, and other discovery materials." *Johnson*, 515 U.S. at 316. The government's direction may be reflected in contracts, letters, emails, the course of dealing between the government and the contractor, testimony about what was and was not approved. *See, e.g.*, Pet. App. 35a-54a; *In re KBR, Inc., Burn Pit Litig.*, 744 F.3d 326, 332 (4th Cir. 2014).

Similarly, a court will frequently have to wade into factual disputes about what the contractor actually did. *See, e.g.*, *Campbell-Ewald*, 577 U.S. at 168; *Sunrise Farms*, 2020 WL 13589214, at *7 (denying summary judgment because of "disputed evidence that the defendant deviated from the government's instructions"); *Rhoads Indus., Inc. v. Shoreline Found., Inc.*, 2022 WL 742486, at *15 (E.D. Pa. 2022) (denying summary judgment because of disputed facts related to whether the work "exceeded the scope of [the contractor's] authorized performance").

This kind of record-heavy inquiry "is the kind of issue that trial judges, not appellate judges, confront almost daily." *Johnson*, 515 U.S. at 316. And, if immediately appealable, it "can consume inordinate amounts of

appellate time," burdening appellate courts and delaying final resolution. *Id.* Moreover, "in the many instances in which [an appellate court] upholds a district court's decision," it will often face "the same factual issue again, after trial, with just enough change brought about by the trial testimony to require it, once again, to canvass the record." *Id.* at 316-17. That's yet more burden and more delay.

And after all that, not much will be gained. Because a complaint will rarely contain detailed allegations about the contractor's relationship with the government, *Yearsley* typically will not be amenable to resolution on a motion to dismiss—or even on summary judgment, unless there's no material dispute of fact about what the contractor did and what the government directed. So in the mine run of cases, an immediate appeal will serve only to delay litigation, not end it. And, of course, interlocutory appeal only brings "error-correcting benefits" where the district court got it wrong—which is less likely when the question is simply whether there's a sufficient dispute of fact to send the defense to the jury. *Id.* at 316.

That doesn't mean that *Yearsley* denials can never be immediately appealed. When a "ruling involves a new legal question or is of special consequence," district courts can "certify an interlocutory appeal." *Mohawk*, 558 U.S. at 111. And if the district court's decision "works a manifest injustice," a contractor may seek a writ of mandamus. *Id.* Unlike "the blunt, categorical" tool of the collateral-order doctrine, these avenues allow immediate appeals in cases that warrant them, without burdening the appellate courts with a host of piecemeal appeals in cases that do not. *Id.* at 112.

## II. *Yearsley* orders are not completely separate from the merits.

To satisfy the collateral-order doctrine, an order must not only be effectively unreviewable; it must be collateral. *See Cohen*, 337 U.S. at 546. Orders raising issues that "substantially overlap factual and legal issues of the underlying dispute" are "unsuited for immediate appeal as of right." *Biard*, 486 U.S. at 529. As the Tenth Circuit correctly held, *Yearsley* fails this separateness requirement. *Yearsley* requires the court to determine what the contractor did and whether it had the legal right to do it. That not only "substantially overlaps" with the merits; it *is* the merits.

### A. *Yearsley* substantially overlaps with the merits.

**1.** The requirement that a collateral order be "completely separate from the merits" is a "distillation of the principle that there should not be piecemeal review of steps towards final judgment in which they will merge." *Biard*, 486 U.S. at 522, 527. If an order is intertwined with the merits, allowing interlocutory appeal "would waste judicial resources by requiring repetitive appellate review of substantive questions in the case." *Id.* at 527-28. An appellate court could be forced to consider the same question on the allegations in the complaint, again on the summary judgment record, and then yet again on the facts found by the jury. *See Johnson*, 515 U.S. at 311. And because the order is not "truly collateral" to the merits, the trial court proceedings will likely need to be stayed each time, delaying the litigation potentially for years. *Id.*; *see Microsoft*, 582 U.S. at 36-37. Then, after all that, the jury's verdict—or the judge's decision on another issue—could obviate the need to have decided the issue in the first

place. *Johnson*, 515 U.S. at 309. This is precisely the kind of piecemeal review that the final-judgment rule is intended to prevent.

For that reason, even a "brush with [the] factual and legal issues of the underlying dispute" may foreclose collateral-order review. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432-33 (2007). This Court has held, for example, that *forum non conveniens* decisions—which determine whether to dismiss a case in favor of a more convenient forum—are not sufficiently separate from the merits. *Biard*, 486 U.S. at 528. In evaluating a forum's convenience, a court considers factors such as "the relative ease of access to sources of proof," "the availability of witnesses," and the interest in having the case decided in the forum where it was filed. *Id.* at 528. These factors are more about convenience than the merits. But evaluating them may require the court to consider what evidence and witnesses the parties might need or to review the plaintiff's claims to determine the forum-state's interest. *Id.* Although that "inquiry does not necessarily require extensive investigation," this brush with the merits is enough to foreclose an immediate appeal. *Id.* at 529.

Similarly, this Court held that discovery-sanctions orders are not sufficiently separate from the merits because determining the propriety of sanctions may "require the reviewing court to inquire into the importance of the information sought or the adequacy or truthfulness of a response." *Cunningham v. Hamilton Cnty.*, 527 U.S. 198, 205 (1999). Numerous orders that are peripheral to the merits have suffered the same fate. *See, e.g.*, *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 439 (1985) (orders disqualifying counsel); *United States v.*

*MacDonald*, 435 U.S. 850, 859-60 (1978) (speedy trial violations).

**2.** *Yearsley* decisions are far more enmeshed with the merits than decisions concerning *forum non conveniens* or discovery sanctions. If the government validly authorized and directed the contractor's conduct, by definition, that means the contractor had a legal right to perform it. *See Yearsley*, 309 U.S. at 21. And whether a defendant's conduct was legal is the ultimate merits question in every case.

If that weren't enough, each *Yearsley* requirement *itself* overlaps "substantially"—and in many cases, completely—with the merits. *Biard*, 486 U.S. at 527. Start with the first requirement, whether the contractor's authority "was validly conferred." *Campbell-Ewald*, 577 U.S. at 167. A government contracting officer cannot "validly" confer authority to violate the Constitution or federal law, so a conclusion that the contractor's conduct was illegal on the merits will often necessarily mean that any authority conferred to perform it was invalid. *See, e.g.*, *id.*

The second *Yearsley* requirement will also "substantially overlap" with the merits in virtually every case. Whether the contractor's conduct was directed by the government requires determining what that conduct was. That question—what the contractor actually did—is "*precisely* the question for trial." *Johnson*, 515 U.S. at 314.

And since an agent can't "escape liability for a negligent exercise of [the government's] delegated power," a court must also determine whether the agent acted negligently—a quintessential merits issue. *Brady*, 317 U.S. at 583-84; *see, e.g.*, *Contango Operators, Inc. v. United States*, 9 F. Supp. 3d 735, 753 (S.D. Tex. 2014)

(rejecting *Yearsley* defense because finding of negligence on the merits also invalidated the defense); *Pritt v. John Crane Inc.*, 636 F. Supp. 3d 253, 259 (D. Mass. 2022) ("Without resolving the negligence claim, the Court cannot enter summary judgment for defendant under [the *Yearsley*] defense.").

To take just one more example, many government contracts direct the contractor to comply with federal, state, or local laws. *See, e.g.*, Pet. App. 25a; *In re KBR*, 744 F.3d at 345; *In re Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 69 (D.C. Cir. 2019). As a result, the merits question—whether the contractor complied with the law—and the *Yearsley* question—whether the contractor was following the government's orders—are one and the same. *See Campbell-Ewald*, 577 U.S. at 166.

The list could go on. If the *Yearsley* defense is sufficiently separate from the merits, so too is the defense of every employee who argues they're not liable because they were just following their boss's orders, and every agent who contends they were acting at the principal's direction.

A category of cases that "in the main" will "substantially overlap" with the merits is not "collateral" within the meaning of the collateral-order doctrine. *Biard*, 486 U.S. at 529. Here, it is difficult to imagine—and GEO does not identify—*any* cases in which the *Yearsley* inquiry will not "substantially overlap" with the merits.

### B. This Court should decline GEO's request to vitiate the separability requirement.

GEO never disputes that *Yearsley* "substantially overlaps" with the merits. Instead, it argues that it doesn't matter. According to GEO, *Yearsley* is an immunity from

suit no different than qualified immunity. And because orders denying qualified immunity based on the existence of "clearly established law" are sufficiently separate from the merits, GEO contends, *Yearsley* orders must be too. This argument fails at every step.

**1.** As an initial matter, it rests on a false premise: Again, unlike qualified immunity, *Yearsley* isn't a right to avoid suit. It's a defense to liability when sued. GEO's appeal to a special separability rule for immunities from suit therefore fails at the outset.

But even if *Yearsley* were an immunity from suit, it is far more enmeshed in the merits than the immunities this Court has previously held satisfy the separability requirement. Speech and Debate Clause immunity, for example, can ordinarily be resolved by looking to whether the challenged statements were made in "committee reports," "in a session of the House," or "at legislative committee hearings." *Gravel v. United States*, 408 U.S. 606, 624-27 (1972). And if further inquiry were required, that inquiry would relate to whether the actions were "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings." *Id.* This inquiry will rarely, if ever, be relevant to the merits of the plaintiff's claim.

Or, to take another example, double jeopardy requires a court to determine whether the same crime has been charged twice. The merits of the case—whether the defendant actually engaged in the conduct charged and whether that conduct violates the law—are irrelevant. *Abney v. United States*, 431 U.S. 651, 659 (1977).

*Yearsley*, on the other hand, requires an answer to exactly those questions. To hold that *Yearsley* determinations are immediately appealable, therefore,

"would more than relax the separability requirement—it would in many cases simply abandon it." *Johnson*, 515 U.S. at 315.

**2.** GEO again seeks refuge in this Court's qualified immunity cases, but those cases offer little support. In *Mitchell*, the Court held that government officials may immediately appeal a denial of qualified immunity that rests on whether the legal right asserted was "clearly established" at the time. 472 U.S. at 530. The Court recognized that this inquiry "involves some factual overlap" with the merits: A court must review a plaintiff's allegations to determine what "legal norms" the plaintiff alleges were violated before it can determine whether those norms were clearly established. *Id.* at 528-29 & n.10. But, the Court reasoned, whether those norms were clearly established is a "purely legal issue" that is "conceptually distinct from the merits of the plaintiff's claim." *Id.* at 527-28 & n.10.

*Mitchell* represents the high-water mark of this Court's collateral-order jurisprudence. Although the immediate appealability of qualified immunity is now "well established," this Court has suggested that it "may have expanded" the collateral-order doctrine "beyond the limits dictated by its internal logic and the strict application of the criteria set out in *Cohen*." *Ashcroft*, 556 U.S. at 672. And it has refused to "generalize" from its qualified immunity cases to other asserted immunities from suit. *Will*, 546 U.S. at 350. Indeed, the Court has cabined *Mitchell* itself, holding that even qualified immunity denials are not immediately appealable if they

rest on factual questions, rather than legal ones. *Johnson*, 515 U.S. at 314.[9]

And since *Mitchell*, Congress has made clear that any additional expansions "are to come from rulemaking, … not judicial decisions in particular controversies." *Microsoft*, 582 U.S. at 39. But even if this Court were willing to consider expanding the doctrine outside that process, *Mitchell* offers little support for doing so here.

Unlike the question of whether a right was clearly established, *Yearsley* is neither "purely legal" nor "conceptually distinct from the merits." *Mitchell*, 472 U.S. at 527-28; *see Johnson*, 515 U.S. at 313-14 (denying collateral-order treatment to qualified immunity orders that do not satisfy these requirements). The core of *Yearsley* is *factual*. It hinges on whether, as a matter of fact, the contractor acted as directed by the government. And rather than being distinct from the merits, *Yearsley*, again, answers the ultimate merits questions: What did the contractor do, and was it legal?

Citing *Johnson*, GEO argues (at 36) that this Court has blessed the immediate appeal of fact-bound merits

---

[9] Unlike *Yearsley*, qualified immunity can typically be granted based solely on a legal question—the existence of clearly established law—that does not overlap with the merits. Still, this fact/law distinction has proven notoriously difficult to apply in the qualified immunity context. *See, e.g.*, *Clark v. Louisville-Jefferson Cnty. Metro Gov't*, 130 F.4th 571, 579-80 (6th Cir. 2025). And this Court has declined to expand it to other doctrines. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 147 (1993). In any event, GEO has not argued that this Court should adopt the same distinction for *Yearsley*. And any attempt to do so now would come "far too late." *Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 112 (2011).

questions if they can be decided on "given facts." That would mean that *any* issue decided on a motion to dismiss (where the complaint is taken as true) or summary judgment (where the facts are taken in the light most favorable to the non-moving party) is separable from the merits. Of course, this Court has never held that. To the contrary, the record in *Johnson was* given, yet the Court held that the separability requirement was not satisfied. 515 U.S. at 307. The issue in *Johnson* was not a dispute about what was in the record, but about whether that given record "was sufficient to show a genuine issue of fact for trial." *Id.* That issue, the Court held, is neither "purely legal," nor "significantly different from the fact-related legal issues that likely underlie the ... merits." *Id.* at 313-14. *Mitchell* therefore did not apply. *See id.* The same is true of *Yearsley.*

**3.** GEO argues (at 37-39) that the *Yearsley* order in this case was "conceptually distinct" from the merits and required no inquiry into "disputed facts." In addition to being irrelevant—the collateral-order doctrine applies to categories of orders, not individual cases—it's also wrong.

As an initial matter, GEO's *Yearsley* defense could not have been "conceptually distinct" from the merits because, again, if GEO succeeds on *Yearsley*, that means its conduct was lawful—and therefore it wins on the merits. Moreover, GEO's contract required it to comply with the law, so if it violated the law, it necessarily also violated the government's directions. Pet. App. 25a; 3 Supp. App. 239, 250.

And contrary to GEO's contention (at 37), *both* its *Yearsley* defense *and* its substantive defense on the merits relied on the assertion that the government directed its conduct. For example, GEO argued that it

could not be held liable for forced labor because forced labor requires an intentional "threat of serious harm." 2 App. 497, 499, 508-09, 513, 518-21. And GEO's threat to send workers to solitary confinement, it contended, was not a threat of serious harm because it was a "warning" about "legitimate consequences" "mandated" by ICE. *Id.* (arguing that threats of solitary confinement were "to fulfill a contractual obligation to ICE"). In other words, GEO contended that its conduct did not violate the law because ICE directed it.

GEO's assertion (at 38-39) that its appeal would not have required a "fact-bound" inquiry is belied by its Tenth Circuit briefing, which is riddled with claims that the district court erred in denying it summary judgment because it got the facts wrong. *See, e.g.*, Opening Br. 40 (arguing that court's finding that GEO policies were "independently developed" was "inconsistent with the evidence"); *id.* at 35, 38, 42-44 (similar); Reply Br. 20 (arguing that ICE officer's statement that forced labor was "GEO policy created by GEO" was insufficient to demonstrate that the government did not direct GEO's conduct); *id.* at 22-23 (arguing that Homeland Security official's statement does not "create a genuine dispute [of] fact"); *id.* at 22 n.4 (disputing the plaintiffs' view of its conduct).

By its nature, *Yearsley* substantially overlaps with the merits. This case is no different.

**III. *Yearsley* orders are often inconclusive.**

Finally, particularly because they are so fact-bound, interlocutory orders denying the *Yearsley* defense often will not conclusively resolve the issue. *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 278 (1988). Although district courts will occasionally be able to

decide *Yearsley* at summary judgment, in many cases, interlocutory *Yearsley* orders will be able to conclude only that there is a genuine dispute of fact about whether the government directed the challenged conduct. *See supra* 37-38. A category of orders that will commonly include these kinds of "inherently tentative" decisions is not suitable for interlocutory appeal. *Gulfstream*, 485 U.S. at 278; *see Johnson*, 515 U.S. at 316.

* * *

Although this Court "has been asked many times to expand the small class of collaterally appealable orders, [it has] instead kept it narrow and selective in its membership." *Will*, 546 U.S. at 350. *Yearsley* does not fit within that selective membership.

## CONCLUSION

This Court should affirm.

September 15, 2025

Respectfully submitted,

JENNIFER D. BENNETT
*Counsel of Record*
JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
Suite 625
San Francisco, CA 94111
(415) 573-0336
*jennifer@guptawessler.com*

DEEPAK GUPTA
GREGORY A. BECK
THOMAS SCOTT-RAILTON
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741

JUNO TURNER
DAVID SELIGMAN
ALEXANDER HOOD
RACHEL DEMPSEY
TOWARDS JUSTICE
PO Box 371680
Denver, CO 80237
(720) 248-8426

MICHAEL SCIMONE
OUTTEN & GOLDEN LLP
685 Third Avenue
25th Floor
New York, NY 10017
(212) 658-0137

ADAM KOSHKIN
OUTTEN & GOLDEN LLP
One California Street
12th Floor
San Francisco, CA 94111
(415) 727-2237

HANS MEYER
MEYER LAW OFFICE
901 West 10th Avenue
Suite 2A
Denver, CO 80204
(303) 831-0817

BRANDT MILSTEIN
ANDREW HESS TURNER
MILSTEIN TURNER
1490 Lafayette Street
Suite 304
Denver, CO 80218
(303) 440-8780

*Counsel for Respondents*