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 OF *AMICUS CURIAE* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICUS CURIAE[1]

Amicus Curiae American Federation of State, County and Municipal Employees ("AFSCME") is a labor organization of approximately 1.4 million members serving the public in the United States. The vast majority of AFSCME members work in the public sector for state and local government employers in all manner of professions necessary to the provision of essential public services. Some 90,000 AFSCME members work in law enforcement, including as corrections officers and corrections staff. AFSCME also represents approximately 10,000 employees who work for the federal government.

AFSCME has a long history of opposing privatization of public services—including prison privatization[2]—because it is not an effective means of

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or its counsel made a monetary contribution to its preparation or submission.

[2] AFSCME, Resolution No. 44, *Opposing Prison Privatization*, in *Resolutions Adopted at the 33rd International Convention* (1998),

delivering public services and because it often replaces dignified careers with low-wage jobs overseen by employers with little to no ties to the affected communities.[3]

The public has a right "to expect honest, efficient public service workers, who are responsive to citizens' needs and provide services fairly, without

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https://www.afscme.org/about/governance/conventions/resolutionsamendments/1998/resolutions/44-opposing-prison-privatization; AFSCME, Resolution No. 89, *Opposing Prison Privatization*, in *Resolutions Adopted at the 34th International Convention* (2000), https://www.afscme.org/about/governance/conventions/resolutionsamendments/2000/resolutions/89-opposing-prison-privatization; AFSCME, Resolution No. 107, *Opposing Private Prisons and Budget Cuts*, in *Resolutions Adopted at the 36th International Convention* (2004), https://www.afscme.org/about/governance/conventions/resolutionsamendments/2004/resolutions/opposing-private-prisons-and-budget-cuts.

[3] AFSCME, Resolution No. 8, *Continuing the Fight Against Privatization,* in *Resolutions Adopted at the 35th International Convention* (2002), https://www.afscme.org/about/governance/conventions/resolutionsamendments/2002/resolutions/8-continuing-the-fight-against-privatization.

regard to profits, political goals, or personal gain."[4] Insulating private government contractors from liability to those they have harmed will only erode accountability and will contribute no incentive to provide quality public services.

Privatization also harms communities by replacing "jobs with fair wages and benefits with jobs of lower pay and diminished benefits."[5] AFSCME members' jobs are governed by union-negotiated contracts guaranteeing the members fair wages, health care, and safe working conditions. The privatization of government services threatens AFSCME bargaining unit jobs, and their attendant

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[4]AFSCME, Resolution No. 51, *Fighting Privatization of Government Services*, in *Resolutions Adopted at the 38th International Convention* (2008), https://www.afscme.org/about/governance/conventions/resolutions-amendments/2008/resolutions/fighting-privatization-ofgovernment-services.

[5]AFSCME, Resolution No. 39, *Privatization—Government for Sale,* in *Resolutions Adopted at the 37th International Convention* (2006), *https://www.afscme.org/about/governance/conventions/resolutionsamendments/2006/resolutions/privatization-government-for-sale.*

fair-workplace guarantees, across sectors, from corrections,[6] to custodial services,[7] to school food service,[8] to public water treatment.[9]

Accordingly, AFSCME has a significant interest in ensuring that private government contractors are held to account for their violations of the law, whether those violations be in the form of mistreatment of their wards, as alleged in this case, the mistreatment of their employees, or the failure to provide quality services to the community.

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[6] *"No Room for Profit": Corrections Officers, Staff Take a Stand Against Privatization,* AFSCME (Mar. 4, 2025), https://www.afscme.org/blog/no-room-for-profit-corrections-officers-staff-take-a-stand-against- privatization.

[7] *Massachusetts Custodians Mobilize to Defeat Privatization Effort,* AFSCME (May 6, 2024), https://www.afscme.org/blog/massachusetts-custodians-mobilize-to-defeat-privatization-effort.

[8] *Massachusetts Members Beat Privatization Push, Save Nearly 100 Jobs,* AFSCME (Apr. 14, 2025), https://www.afscme.org/blog/massachusettsmembersbeatprivatizationpushsavenearly100jobs.

[9] *Houston Public Employees Protect City Water by Defeating Privatization Proposal,* AFSCME (Mar. 7, 2024), https://www.afscme.org/blog/houston-public-employeesprotectcity water-by-defeating-privatization-proposal.

SUMMARY OF ARGUMENT

GEO Group's argument that the Tenth Circuit had jurisdiction over its interlocutory appeal rests on the premise that *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), and like cases confer on it an immunity from suit, rather than a mere defense to liability. *See* Pet'r Br. 15-25. That premise appears to rest in turn on GEO Group's presumption that a contractor steps into the government's shoes when performing a function that the government sometimes performs itself but has decided to contract out to a private party. Specifically, GEO Group's brief relies largely on its contention that private contractors are entitled to qualified immunity, or something closely approaching qualified immunity, because contractors implicate the same concerns that motivated this Court to create and refine that doctrine for government actors.

But there are at least two fundamental flaws with that analogy. First, this Court has already held the concerns that led it to formulate the modern qualified immunity standard do not extend to companies like GEO Group or their employees. This

Court crafted the modern qualified immunity doctrine in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), to account for concerns specific to government employees—namely, that government employees not be overly timid in the exercise of their discretionary functions, that they not be distracted in the performance of such duties, and that talented candidates not be deterred from public employment for fear of incurring personal liability. Such concerns do not extend to private, for-profit companies or their employees, including in the private detention industry, as this Court held in *Richardson v. McKnight*, 521 U.S. 399 (1997). Private contractors need not fear that their employees will be overly timid in performing their jobs because market forces should disincentivize such behavior. Private companies can insure and indemnify employees and can adjust employee pay and benefits to account for any effects that potential liability has on recruitment or retention. And any risk of distraction from performing important governmental work posed by civil litigation cannot alone justify immunizing private contractors and their employees from suit. *Id.* at 408-12.

Second, *Yearsley* and qualified immunity are distinct in scope and purpose. Qualified immunity creates a protective sphere within which public employees exercise their discretionary duties and face liability only when they violate law that is clearly established. By contrast, *Yearsley* is meant to protect contractors from liability only when and only because they are following the government's directives. They are different doctrines and the considerations and reach that attend one do not automatically apply to the other.

In addition to the fact that GEO Group's argument rests on multiple faulty doctrinal premises that cannot withstand scrutiny, the practical effects of a decision adopting GEO Group's inapt analogy would be harmful as well. First, its requested relief would insulate private contractors like GEO Group from liability even in situations where the federal government itself is subject to suit. The Court should not incentivize the contracting out of detention services. Second, such a ruling would negatively impact the national workforce, as data from the Department of Labor shows that private government contractors under-compensate their employees

compared to government employers, despite their significant profits. The net result would serve to increase GEO Group's profits by shielding them from bearing the costs of violations of their legal duties. GEO Group provides no justification for such a contortion of the law with such wide-ranging negative impacts.

ARGUMENT

I. GEO Group's Suggestion that it Enjoys Qualified Immunity is Incorrect

The collateral order doctrine provides for appellate jurisdiction over a small category of interlocutory orders. *See Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867-68 (1994). To be treated as collateral, an interlocutory order must, "at a minimum," "[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." *Flanagan v. United States*, 465 U.S. 259, 265 (1984); *Will v. Hallock*, 546 U.S. 345, 349 (2006) (quoting *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993)).

Although not entirely conclusive, a "critical question" under the collateral order doctrine "is whether 'the essence' of the claimed right is a right not to stand trial." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 524 (1988) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985)); *see also Johnson v. Jones*, 515 U.S. 304, 313 (1995) (denying interlocutory qualified immunity appeal of fact-bound dispute).

Yearsley, whether considered an immunity from suit or a defense to liability, is a narrow doctrine, shielding the contractor only when the government has "validly conferred" authority to carry out a specific project, and when the contractor has acted within the authority granted to it by the relevant government contract. *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 20-21 (1940). When a contractor exceeds its delegated authority, including by acting negligently, or when such authority was not validly conferred, *Yearsley* does not shield the contractor. *Id.* at 21; *see also Brady v. Roosevelt S.S. Co.*, 317 U.S. 575, 430 (1943). *Yearsley* serves to assure government contractors that they will not be held liable for executing the government's will, but unlike governmental immunities, *Yearsley* does not

immunize discretionary conduct that falls outside the circumscribed bounds of governmental directives.

In attempting to establish that *Yearsley* is an immunity from suit warranting collateral review, however, GEO Group journeys far outside the bounds of *Yearsley*, suggesting that contractors like GEO Group are instead entitled to step into the government's shoes when acting at its behest. GEO Group nods briefly, over the course of two paragraphs, to *Yearsley*'s narrow protections. Pet'r Br. at 24. But the balance of its argument that *Yearsley* is an immunity eligible for collateral review rests on the assumption that government contractors are entitled to qualified immunity. *See id.* at 14, 27, 29-31. GEO Group's *amici*, too, rely on analogy to qualified immunity. *See* Br. of Amicus Curiae Nevada Hosp. Ass'n at 10-12; Br. of Amicus Curiae Chamber of Comm. at 7-9, 21.

There are two flaws with GEO Group's reliance on qualified immunity. First, this Court has already declined to extend qualified immunity to employees of private, for-profit prison contractors based on its conclusion that such employees are not similarly

situated to public employees. And second, qualified immunity and *Yearsley* are distinct doctrines, animated by different concerns, with distinct scopes tailored to effectuating their unique purposes. GEO Group does not explain why qualified immunity is relevant to the *Yearsley* collateral-review analysis.

1. This Court has already held that private, for-profit contractors and their employees are not sufficiently similarly situated to public employees and therefore cannot invoke qualified immunity's protection.

Individual government actors faced with allegations that their conduct has violated an individual's Constitutional rights may assert qualified immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 819 (1982) (defining modern qualified-immunity test). In *Richardson v. McKnight*, 521 U.S. 399 (1997), however, this Court held that, unlike publicly employed corrections officers, guards working for for-profit prison contractors do not enjoy qualified immunity. In the Court's view, neither history nor purpose justified extending the doctrine that far. First, "[h]istory does *not* reveal a 'firmly

rooted' tradition of immunity applicable to privately employed prison guards." *Id.* at 404. Indeed, state governments had contracted prison management to private parties throughout the nation's history, but those private contractors were routinely held to account for their charge's injuries. *Id.* at 405-06 (collecting cases).

Turning to purpose, this Court rejected the argument that simply performing the same work as state corrections officers would entitle privately employed guards to a similar immunity. *Id.* at 408-09 (noting the Court "never has held that the mere performance of a governmental function could make the difference between unlimited § 1983 liability and qualified immunity"). "[I]mportant differences" between private and public actors precluded such a holding. *Id.* at 409. Unlike publicly employed corrections officers, there was no comparable danger that employees of private prison companies would be overly timid in performing their duties, as market pressures, passed down to employees through employment-related rewards and penalties, would mitigate potential timidity. *Id.* at 409-10. Talented applicants would not be unduly deterred from

working for private prison companies for fear of personal liability, given private firms' comprehensive insurance coverage and concomitant likelihood of employee-indemnification guarantees. *Id.* at 411. And private firms can adjust pay and benefits to "offset any increased employee liability risk." *Id.* Finally, any risk of distraction that litigation might pose could not alone justify extending qualified immunity to employees of such for-profit government contractors. *Id.* at 411-12.

Importantly, the considerations that the *Richardson* majority relied upon are not stray considerations. Instead, they are foundational to the modern qualified immunity doctrine. Originally, qualified immunity comprised both a subjective and an objective component. It protected government actors who performed their duties in "good faith." *Pierson v. Ray*, 386 U.S. 547, 555 (1967). If the official had a reasonable and good faith belief that their conduct was lawful, they could benefit from the affirmative defense. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). By contrast, an officer had no right to qualified immunity where "he knew or reasonably should have known that the action he took within his sphere of

official responsibility would violate . . . constitutional" or statutory rights. *Wood v. Strickland*, 420 U.S. 308, 322 (1975).

In 1982, however, the Supreme Court "completely reformulated qualified immunity along principles not at all embodied in the common law," eradicating the subjective component of qualified immunity in favor of an objective analysis. *Anderson v. Creighton*, 483 U.S. 635, 645 (1987). In *Harlow*, the Court determined that qualified immunity's subjective component was overly disruptive of government functions. 457 U.S. at 816-18. Because a subjective good-faith analysis often entails probing an official's "experiences, values, and emotions," it almost always requires a case to proceed past summary judgment, to discovery and often trial. *Id.* at 816. And, the Court said, such proceedings exacted too high a cost on government function—namely, "distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service." *Id.* Accordingly, the Court reformulated the qualified immunity inquiry to ask only objective questions: whether the official violated a constitutional or

statutory right, and whether that right was clearly established at the time the official acted. *Id.* at 818.

Shortly after *Harlow*, the Court held that denials of qualified immunity are immediately appealable, even in the absence of a final judgment. *See Mitchell v. Forsyth*, 472 U.S. 511 (1985). In declaring the denial of qualified immunity an immediately appealable order, the Court relied again on the *Harlow* considerations—avoiding "distraction of officials from their governmental duties, inhibition of discretionary action, and deterrence of able people from public service" through the quick resolution of unmeritorious suits. *Id.* at 526 (quoting *Harlow*, 457 U.S. at 816). Both *Harlow* and *Mitchell* aimed to mold qualified immunity into an issue that could theoretically be decided as a matter of law, and relatively quickly, striking "a balance between compensating those who have been injured by official conduct and protecting government's ability to perform its traditional functions." *Wyatt v. Cole*, 504 U.S. 158, 167 (1992).

The modern formulation of qualified immunity—both its substantive protections and its

immediate appealability—does not extend to private actors, even in the limited circumstances where their conduct constitutes state action. *See id.* at 159; *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019) (describing extremely limited circumstances in which private party will be considered state actor and therefore accountable to the Constitution). That is because, as in *Richardson*, "the special policy concerns involved in suing government officials . . . are not applicable to private parties." *Wyatt*, 504 U.S at 167-68; *see also Richardson*, 521 U.S. at 408-412.

The Court reiterated this distinction in *Filarsky v. Delia,* 566 U.S. 377 (2012), on which GEO Group relies, but which has no applicability to operations of a private, for-profit company like GEO Group. In *Filarsky*, the city of Rialto, California, hired a local employment lawyer, Steve Filarsky, to assist with its investigation of a city firefighter suspected of abusing his sick leave. 566 U.S. at 380-81. During the investigation, Filarsky and city employees allegedly violated the firefighter's constitutional rights. The firefighter sued and all individual defendants asserted, and were granted, qualified immunity. The

Ninth Circuit reversed as to Filarsky, holding that he was not entitled to qualified immunity because he was not a city employee. *Id.* at 382-83.

The Supreme Court disagreed, holding that Filarsky, by virtue of his temporary government position, was entitled to assert qualified immunity. *Id.* at 388-89. The Court rested its conclusion on historical considerations and practical concerns. As to history, the Court explained that, in 1871, when 42 U.S.C. § 1983 was passed, it was not unusual for individuals to hold dual appointments as part-time public servants and part-time private employees. *Id.* at 384-85. Accordingly, "[t]he protections provided by the common law did not turn on whether someone we today would call a police officer worked for the government full time or instead for both public and private employers." *Id.* at 387-88.

The Court went on to hold that Filarsky also satisfied the practical considerations that inform the Court's qualified immunity doctrine. Namely, subjecting individuals who work for the government on an ad-hoc or part-time basis to full liability for their actions would result in "unwarranted timidity"

in the performance of the governmental duties, would hinder the government's recruitment abilities, and would distract such individuals from their work. *Id.* at 389-91.

The Court was careful to distinguish employees of private, for-profit contractors, as in *Richardson*, from the context of a private individual hired directly by the government on a part-time basis to perform a governmental task under its supervision, as in *Filarsky*. *See id.* at 393; *see also Richardson*, 521 U.S. at 407, 413. Filarsky, "an individual hired by the government . . . on something other than a permanent or full-time basis," gave rise to entirely different considerations than an employee backed by a "large, multistate private prison management firm" responsive to market pressures. 566 U.S. at 380 (first quotation); 521 U.S. at 409-410 (second quotation). Moreover, although there was a common law tradition of providing a kind of immunity to individuals who "performed services at the behest of the sovereign," there was no basis to extend immunity "to private individuals working for profit." *Richardson*, 521 U.S. at 407.

GEO Group clearly falls on the *Richardson* side of this dividing line, as it is itself a large, multi-state private prison management firm that profits tremendously from its government contracts.[10]

2. Moreover, qualified immunity and *Yearsley* are not similar doctrines, despite GEO Group's insistence otherwise. Qualified immunity creates a liability buffer for government actors who exercise their discretion in ways that may violate the law, but where the reasons the conduct is unlawful remain as-yet undefined. *Yearsley*, by contrast, creates no such buffer for *ultra vires* conduct: It shields a contractor only when the government has "validly conferred" authority to carry out a specific project, and when the contractor has acted within the authority granted to it by the relevant government contract. *Yearsley*, 309 U.S. at 20-21.

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[10] The GEO Group, *The GEO Group Reports Second Quarter 2025 Results and Announces Million Stock Repurchase Program* (Aug. 16, 2025), https://investors.geogroup.com/news-releases/news-release-details/geo-group-reports-second-quarter-2025-results-and-announces-300.

Qualified immunity protects government officials only when two important criteria are met: the government actor is "performing discretionary functions" and the allegedly violated right at issue is not "clearly established." *Harlow*, 457 U.S. at 816, 818. Each element is necessary to justify the fact that qualified immunity sometimes shields government actors from liability even when they are acting unlawfully. *See Mitchell*, 472 U.S. at 525-26.

By contrast, *Yearsley* protects federal contractors only when they act within the bounds of authority lawfully conferred upon them by the government through contract, not when they are exercising their own discretion and not when they step outside the bounds of their delegated authority. *See Yearsley*, 309 U.S. at 21. *Yearsley's* protection is lost the moment a contractor steps outside the government's control and exceeds the authority delegated to it. *See Campbell-Ewald v. Gomez*, 577 U.S. 153, 166-67 (2016) (discussing *Yearsley*, 309 U.S. at 21); *Brady*, 317 U.S. at 430 (*Yearsley* would not shield a contractor who exercised delegated governmental duties negligently); *Boyle v. United Techs. Corp.*, 487 U.S. 500, 525 (1988) (Brennan, J.,

dissenting) ("*Yearsley*. . . has never been read to immunize the discretionary acts of those who perform service contracts for the Government.").

The difference in scope between the two doctrines tracks each implicated party's accountability and motivations. Public employees, who generally take an oath to follow and defend the law when assuming office, are "principally concerned with enhancing the public good," and are accountable to the public either directly, if they are elected officials, or through their politically accountable supervisors and employing agencies. *Wyatt*, 504 U.S. at 168. By contrast, private, for-profit contractors "hold no office requiring them to exercise discretion," *id.*, and are not "principally concerned with enhancing the public good," *id.*, but instead have a profit motive. There is no policy interest in allowing government contractors leeway to operate outside the bounds of their contract without fear of liability.

In short, the two doctrines are different in scope and purpose: one provides a buffer to public employees in which to exercise their discretion to protect against unwarranted timidity by government

officials; the other provides a strictly defined defense to those who work to carry out the government's specified instructions to ensure that those who act according to the government's specifications do not incur liability for doing so. GEO Group's attempts to call upon qualified immunity and the concerns animating both that doctrine's modern formulation and its immediate appealability are misguided and incorrect.

II. Adopting GEO Group's Claimed Immunity Would Unduly Impede Accountability

Adopting GEO Group's premise that government contractors are entitled to qualified immunity would unduly impede government contractors' accountability, and would arguably elevate GEO Group above the federal government itself, insulating GEO Group from suit where even the federal government could be held accountable in court.

GEO Group argues that, "[i]f ICE employees directly operated the AIPC, Respondents

unquestionably could not have stated a claim against the federal government." Pet'r Br. at 49. That is far from unquestionably true, however.

Government actors are accountable for violations of federal rights through various mechanisms, including, for federal officials, actions pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). *See Carlson v. Green*, 446 U.S. 14, 23 (1980) (recognizing a *Bivens* action against federal prison officials). The federal government has also waived its sovereign immunity through various statutes, allowing harmed individuals, including federal detainees and prisoners, to sue the government directly for violation of constitutional and other rights. For instance, Congress has waived sovereign immunity by way of the Federal Tort Claims Act, under which federal detainees can challenge the unlawful withholding of their wages. *See* Federal Tort Claims Act, 28 U.S.C. § 2674; *see also Douglas v. United States*, 814 F.3d 1268, 1276 (11th Cir. 2016) (failure to pay wages fell outside FTCA's discretionary function exception). Congress has also waived its sovereign immunity through the Administrative Procedure Act, which is

available to federal detainees to challenge agency rules that adversely affect them. *See* 5 U.S.C. § 706(2)(B) (directing courts to "set aside [unlawful] agency action"); *Richmond v. Scibana*, 387 F.3d 602, 605 (7th Cir. 2004) (discussing APA challenge as the appropriate vehicle to challenge agency rule that would determine plaintiff's placement within federal confinement). State and municipal officials are also accountable to the Constitution through various causes of action. *See* 42 U.S.C. § 1983; *Ex parte Young*, 209 U.S. 123 (1908).

GEO Group's claim that it should be "immune from suit" for its work on behalf of the government would therefore elevate it above the government itself, rendering any accountability to individuals GEO Group and its staff directly harm nearly impossible. The effects of such a ruling would be widespread, given the ubiquity of federal government contracting highlighted by GEO Group and its amici. Pet'r Br. at 46; Br. of Amicus Curiae Professional Servs. Council at 6; Br. of Amicus Curiae Chamber of Comm. at 11. And rendering private prison companies like GEO Group immune where the federal government is not would create a significant, and

highly unnatural, incentive to contract out carceral services to contractors precisely because the cost of their services would be artificially lower due to their unaccountability for illegal acts.

III. Granting GEO Group the Extensive Protections It Seeks Would Hurt Working People

Insulating GEO Group and its private for-profit contracting peers from liability and suit even where the federal government can be held to account would incentivize privatizing even more government services, leaving the American worker worse off.

Despite the Supreme Court's recognition that private, for-profit contractors—including those who operate in the corrections sphere like GEO Group—are well-situated to recruit talented candidates through competitive pay and benefits, data from the Bureau of Labor Statistics' office of Occupational Employment and Wage Statistics suggests that employees of private, for-profit government contractors in the corrections industry make an average of about $25,000 less than their federal peers

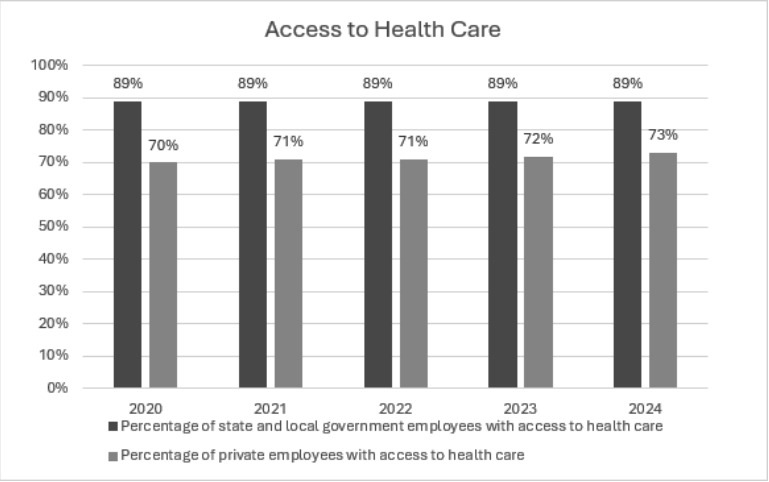
annually, and $9,000 less than their state and local counterparts.[11]

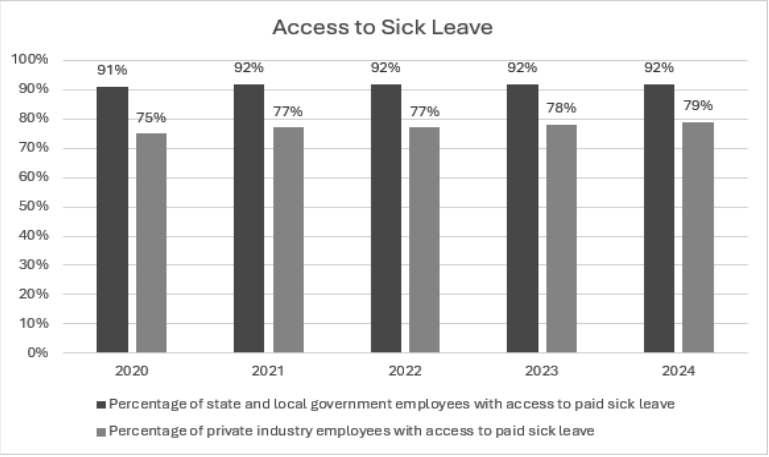
See also Suzanne M. Kirchhoff, Cong. Research Serv., *Economic Impacts of Prison Growth* 13, (Apr. 13, 2010) ("Wages are significantly higher for workers in government-run prisons than for those in facilities managed by private prison companies.").

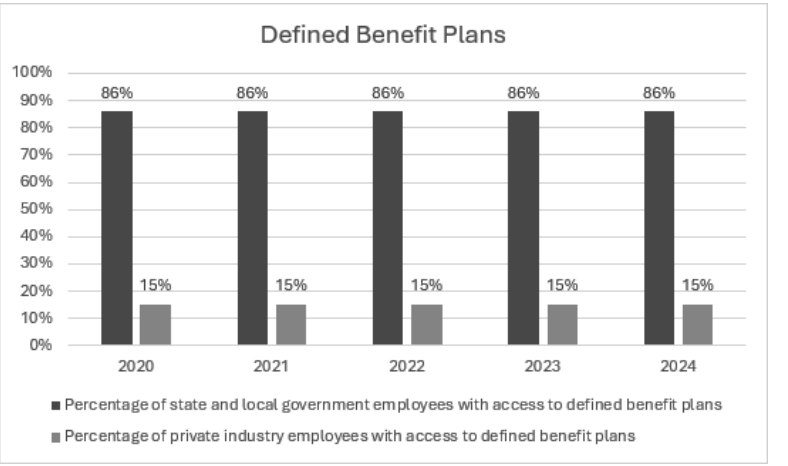
This disparity in compensation extends to benefits as well. Government contractors across sectors have less access to health care, sick leave, and

[11] The following representative charts were produced in-house at AFSCME. The underlying data comes from the May 2024 national data published by the U.S. Bureau of Labor Statistics, https://www.bls.gov/oes/tables.htm.

retirement benefits than their public-servant comparators.







And private government contractors—specifically private prison contractors—have failed their workers when it comes to workplace safety. For instance, employees of private prisons are exposed to more safety and security-related incidents per capita than employees of the Federal Bureau of Prisons. *See* U.S. Dep't of Justice, Office of the Inspector Gen., *Review of the Federal Bureau of Prisons' Monitoring of Contracts Prisons* 14 (Aug. 2016). They have also failed the community when it comes to safety: Studies show that private prisons have higher rates of recidivism than their publicly run peers.[12]

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[12] Grant Duwe & Valerie Clark, *The Effects of Private Prison Confinement on Offender Recidivism: Evidence from Minnesota,*

A proliferation of for-profit government contractors is objectively bad for the American worker, as an employee of a private, for-profit government contractor stands to be paid significantly less and enjoy less generous benefits and more dangerous working conditions than public employee comparators. GEO Group could begin to remediate this gap by leveraging the net income of $48.6 million that it reported for just the first six months of 2025.[13] Increasing its employee pay, benefits, and working conditions could also address GEO Group's apparent concern that being required to await final judgment before appealing the denial of a *Yearsley* defense could hamper its ability to recruit "talented and honest people who could instead pursue other ventures." Pet'r Br. at 46. Unless and until it does so, however, further proliferation of privatization of

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38 Crim. Just. Rev. 375, 375-394 (2013), https://doi.org/10.1177/0734016813478823.

[13] The GEO Group, *The GEO Group Reports Second Quarter 2025 Results and Announces $300 Million Stock Repurchase Program* (Aug. 16, 2025), https://investors.geogroup.com/news-releases/news-release-details/geo-group-reports-second-quarter-2025-results-and-announces-300.

government services will objectively harm working people.

CONCLUSION

GEO Group's argument that it is entitled to interlocutory review in *Yearsley* cases is based on the unsupported and faulty premise that for-profit contractors like GEO Group are entitled to qualified immunity. The Court has already held that is not the case, and GEO Group does not justify revisiting that conclusion nor does it explain why the two doctrines should be conflated to GEO Group's benefit. The consequences of adopting GEO Group's proposed extension of the law would be to insulate private contractors from liability in circumstances in which the federal government itself faces civil liability, thus unnaturally incentivizing privatization. Siding with GEO Group in this case would also negatively impact American workers, who face distinctly worse working conditions when employed by private, for-profit government contractors.

Respectfully submitted,

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