

IN THE SUPREME COURT OF THE UNITED STATES

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No. 24-758

THE GEO GROUP, INC., PETITIONER

v.

ALEJANDRO MENOCAL, ET AL.

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

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MOTION OF THE UNITED STATES  
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 21 and 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting respondents. We requested respondents' position on this motion one week ago, but respondents have not yet provided their position. If this motion were granted, the argument time would be divided as follows: 30 minutes for petitioner, 20 minutes for respondents, and 10 minutes for the United States.

This case presents the question whether a pretrial order

denying a federal contractor's "derivative sovereign immunity" defense is immediately appealable under the collateral-order doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). The court of appeals held (Pet. App. 9a-30a) that such an order is not immediately appealable because it does not resolve an issue "completely separate from the merits," Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867 (1994).

The United States has filed a brief as amicus curiae arguing that the judgment should be affirmed on the alternative ground that a denial of "derivative sovereign immunity" "is 'adequately vindicable' [and] 'effectively reviewable'" on appeal from a final judgment. Digital Equipment, 511 U.S. at 878. That is because "derivative sovereign immunity" is a misnomer; rather than an immunity from suit, it is a defense to liability that applies when the contractor acts within the bounds of lawfully conferred governmental authority. Accordingly, as with any other defense on the merits, appeal from a pretrial order denying a "derivative sovereign immunity" defense must await final judgment.

The United States has a substantial interest in the resolution of the question presented in this case. The federal government relies on contractors to perform a vast array of vital governmental functions, and the availability of the "derivative sovereign immunity" defense is critical to those efforts. The government also has an interest in the correct interpretation and application of

28 U.S.C. 1291, the federal statute conferring appellate jurisdiction over “final” orders of the district courts. In CACI Premier Technology, Inc. v. Al Shimari, 141 S. Ct. 2850 (2021) (No. 19-648), this Court invited the Solicitor General to express the United States’ views on the same question presented in this case.

The United States has previously presented oral argument in cases involving the collateral-order doctrine, both as amicus curiae, e.g., Plumhoff v. Rickard, 572 U.S. 765 (2014); Mohawk Industries, Inc. v. Carpenter, 558 U.S. 100 (2009); Swint v. Chambers County Commission, 514 U.S. 35 (1995), and as a party, e.g., Osborn v. Haley, 549 U.S. 225 (2007); Will v. Hallock, 546 U.S. 345 (2006). The United States also has presented oral argument as amicus curiae in cases addressing the “derivative sovereign immunity” defense. E.g., Campbell-Ewald Co. v. Gomez, 577 U.S. 153 (2016). And the invitation in CACI indicates the Court’s independent interest in the government’s views on the question presented. The participation of the United States in the oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

D. JOHN SAUER  
Solicitor General  
Counsel of Record

SEPTEMBER 2025