

24-924 HENCELY V. FLUOR CORP.

DECISION BELOW: 120 F.4th 412

LOWER COURT CASE NUMBER: 21-1994

QUESTION PRESENTED:

Former U.S. Army Specialist Winston T. Hencely was critically and permanently injured by a suicide bomber inside Bagram Airfield in Afghanistan. The bomber, Ahmad Nayeb, worked on base for a government contractor. An Army investigation found that the attack's primary contributing factor was the contractor's actions in breach of its Army contract and in violation of the military's instructions to supervise Nayeb. Hencely sued the government contractor for negligence under South Carolina law. He did not sue the military under the Federal Tort Claims Act.

Even so, the Fourth Circuit held that Hencely's state claims are preempted by unspoken "federal interests" emanating from an FTCA exception. Invoking *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), the court of appeals held that the FTCA's exception immunizing the *government* for "[a]ny claim arising out of the combatant activities of the military or naval forces ... during time of war," 28 U.S.C. §2680(j), barred Hencely's South Carolina claims against the *contractor*. The decision below reaffirmed a 3-1-1 split among the Second, Third, Fourth, Ninth and D.C. Circuits over *Boyle*'s reach when contractors defend against state tort claims by invoking §2680(j).

The question presented is:

Should *Boyle* be extended to allow federal interests emanating from the FTCA's combatant-activities exception to preempt state tort claims against a government contractor for conduct that breached its contract and violated military orders?

CERT. GRANTED 6/2/2025