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No Blanket Immunity on the Battlefield: Supreme Court Rejects Broad Preemption of State Tort Claims Against Military Contractors

***Hencely v. Fluor Corporation*, 608 U.S. ___ (April 22, 2026)**

For over a decade, federal contractors operating in combat zones have relied on a judicially created "battlefield preemption" doctrine to dismiss state-law negligence claims before trial. That shield is now gone. In *Hencely v. Fluor Corporation*, the U.S. Supreme Court vacated a decision by the U.S. Court of Appeals for the Fourth Circuit that held a wounded soldier's negligence claims against his base's military contractor were preempted by federal law. Writing for a six-justice majority, Justice Thomas held that no constitutional provision, federal statute, or judicial precedent supports a sweeping rule that immunizes government contractors from state-law tort liability merely because their work occurs in a wartime combat setting.

The decision abrogates the framework set in the Fourth Circuit's opinion in *In re KBR, Inc., Burn Pit Litigation*, 744 F.3d 236 (2014), and the D.C. Circuit's doctrine established in *Saleh v. Titan Corp.*, 580 F.3d 1 (2009), fundamentally reshaping the landscape for tort litigation against defense contractors. Combined with *GEO Group, Inc. v. Menocal*, 607 U.S. 438 (2026), decided just weeks earlier, this ruling signals that contractor defenses are contract-specific and fact-intensive — not categorical.

Background

Fluor Corporation, a major defense contractor, was engaged to provide base-support services at Bagram Airfield in Afghanistan. Under the U.S. military's "Afghan First" initiative — a program requiring contractors to hire Afghan nationals to stimulate the local economy and support the Afghan government — Fluor, through a

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subcontractor, hired Ahmad Nayeb as a "local-national" subcontractor. Under the "Afghan First" program, the military had screened and approved Nayeb for employment, despite discovery of his past involvement with the Taliban.

Nayeb, as it turns out, was a Taliban operative. On Veteran's Day 2016, he carried out a suicide-bomb attack at the base, killing five people and wounding 17. Former Army Specialist Winston T. Hencely, just 20 years old, confronted Nayeb before he could reach a larger crowd. The Army later concluded that Hencely's intervention "likely prevent[ed] a far greater tragedy." Hencely suffered a fractured skull and brain injuries and is now permanently disabled.

The Army's contract with Fluor made it "responsible for oversight of [its] personnel or Subcontractors," and required Fluor to comply with base-security policies, including escorting subcontractors like Nayeb in all areas of the base except at their work sites and maintaining "constant view" of them.

The Army's investigation found Fluor primarily responsible for the attack. According to the investigation, Fluor personnel had "a poor understanding" of who was responsible for Nayeb's supervision, showed "unreasonable complacency" in ensuring local-national employees were properly supervised, failed to impose adequate discipline on Nayeb (who slept on the job and was absent from his work area without justification), and allowed Nayeb to check out tools unrelated to his job — tools he used to construct the bomb. Fluor also relied on a sign-out system instead of personally escorting Nayeb as required by base badge policies, enabling him to go undetected for nearly an hour on the day of the attack.

Hencely sued Fluor in the U.S. District Court for the District of South Carolina, bringing claims under South Carolina law for negligent supervision, negligent entrustment of tools, and negligent retention of an employee. The District Court granted summary judgment for Fluor, and the Fourth Circuit affirmed under its "battlefield preemption" doctrine. Under that doctrine, state-law claims against military contractors under military command arising out of combatant activities during wartime are preempted. The Supreme Court granted certiorari.

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Supreme Court's Decision

In a 6–3 decision authored by Justice Thomas, the Supreme Court vacated and remanded, holding that the Fourth Circuit's preemption framework lacks support in the Constitution, in any federal statute, or in the Court's own precedents.

No express preemption: The Supreme Court began by observing that no constitutional provision or federal statute expressly preempts Hencely's state-law claims. The Federal Tort Claims Act's combatant-activities exception, 28 U.S.C. § 2680(j) — which bars tort claims against the government arising from combatant activities — does not by its terms apply to suits against private federal contractors.

No federal-interest preemption under *Boyle*: Without express constitutional or statutory support, the Fourth Circuit, like the D.C. Circuit before it, derived its battlefield preemption doctrine from *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988). There, a military helicopter manufacturer was sued under state law for a design defect that conformed to the specifications that the government had approved pursuant to a military procurement contract. The Supreme Court held that, in areas of "uniquely federal interest," state law is preempted when there is a "significant conflict" with federal policy or interest. *Id.* at 504, 505, 507. The Court distinguished *Boyle* on multiple grounds: it involved a procurement contract, not a performance or services contract; the combatant-activities exception was not at issue; and *Boyle* recognized displacement of state law only when there is a "significant conflict" between state law and "an identifiable federal policy or interest." Critically, *Boyle* protects a contractor only when the government directed the contractor to do the very thing challenged in the lawsuit. Here, Hencely sued Fluor for conduct that was not authorized by — and was even contrary to — government instructions.

Under the correct framework, a "significant conflict" supporting preemption exists only where the challenged conduct can reasonably be considered the military's own conduct or decision, and the operation of state law would conflict with that decision. The

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Fourth Circuit expressly concluded that resolving Hencely's claims would not require evaluating the reasonableness of military judgments — yet it found preemption simply because the suit arose in a wartime combat setting. *Boyle*'s rationale, the Supreme Court reasoned, does not support such blanket preemption.

No implicit constitutional preemption: Finally, the Supreme Court rejected the argument that the Constitution's structure implicitly bars this suit. While acknowledging that the federal government has "broad and sweeping" war powers, the Court explained that the Constitution's war powers have "never been understood to bar all war-related tort suits." Nor do federal contractors automatically share the government's immunity merely because they perform services for it. Rather, under *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), a federal contractor is shielded from liability only when it is being sued precisely for accomplishing what the federal government requested. Because Fluor is alleged to have acted outside the authority the military granted it, *Yearsley* does not apply.

The dissent: Justice Alito, joined by Chief Justice Roberts and Justice Kavanaugh, dissented, arguing that the Constitution's grant of war powers exclusively to the federal government preempts state-law tort claims that intrude on combat-related operations. The dissent warned that trial proceedings in the case would implicate military policy decisions, that Fluor would attempt to assign blame to the military, and that discovery of sensitive government documents and depositions of military commanders could follow.

Key Takeaways

- **Battlefield setting alone is not enough.** Preemption requires more than the fact that the contractor's work occurred in a combat zone or that the military retained command authority over the general mission. Courts must identify a specific federal decision or policy with which state law actually conflicts.

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- **The "specific conduct" test is now the law.** Both *Boyle* and *Yearsley* protect a contractor only when the government directed or authorized the specific conduct that the plaintiff challenges. Contractors cannot invoke a general delegation of authority to escape liability for their own negligence.
- **Expect increased litigation exposure.** Defense contractors operating in conflict zones should anticipate a wave of new tort filings now that the categorical preemption bar has been removed. Early investment in compliance documentation, supervision protocols, and training programs will be essential to mounting viable defenses.

The bottom line: After *Hencely* and *GEO Group*, government contractors can no longer count on a categorical defense — whether framed as battlefield preemption or derivative sovereign immunity — to dispose of negligence claims at the pleading or summary-judgment stages. Each case will turn on the specific terms of the contract and whether the government actually directed the challenged conduct. Contractors should work closely with counsel to audit existing contracts, strengthen compliance documentation, and prepare for a litigation environment in which state-law tort liability is very much back on the table.

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