A Shield, Not an Escape Hatch: Supreme Court Bars Immediate Appeal of *Yearsley* Denials

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Authors:

Griffin Terry Sumner

***GEO Group, Inc. v. Menocal*, 607 U.S. 438 (Feb. 25, 2026)**

Government contractors have long relied on *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), as a shield — a way to deflect liability for conduct the government told them to carry out. But if a trial court wrongly denies that shield, can a contractor appeal immediately — or must it endure a full trial first?

In *GEO Group, Inc. v. Menocal*, 607 U.S. 438 (2026), the U.S. Supreme Court said no. In a judgment unanimous as to result, the court — in an opinion by Justice Kagan for seven Justices — held that *Yearsley* provides a merits defense, not an immunity from suit, and that a pretrial order denying *Yearsley* protection is therefore not immediately appealable. Notably, the United States filed as amicus curiae supporting the detainee-respondents, not its own contractor — underscoring the government's view that *Yearsley* does not extend sovereign immunity to private parties. The bottom line: A contractor whose *Yearsley* defense is rejected must stay and litigate through final judgment.

Background

GEO Group operates a private immigration detention facility in Aurora, Colorado, under a contract with U.S. Immigration and Customs Enforcement (ICE). A former detainee filed a class action challenging two policies. The Sanitation Policy required detainees to clean common areas without pay, enforced by sanctions of up to 72 hours in solitary confinement. The Voluntary Work Program paid $1 per day for other tasks, such as preparing food and doing laundry.

The complaint alleged that the first policy violated the federal Trafficking Victims Protection Act's bar on forced labor and that the second policy breached Colorado's prohibition on unjust enrichment. GEO invoked *Yearsley*, arguing that ICE had contractually "authorized and directed" the challenged policies. The district court disagreed, finding that GEO had "independently develop[ed] and implement[ed]" the work rules and "far exceeded its contractual obligations." Rather than proceed to trial, GEO took an immediate appeal. The U.S. Court of Appeals for the Tenth Circuit dismissed for lack of jurisdiction, and the Supreme Court granted certiorari.

Supreme Court's Opinion

The appealability of the order turned on a single question: is *Yearsley* a merits defense or an immunity from suit? An immunity is an "entitlement not to stand trial" — a right irretrievably lost once trial begins, making denial of that right immediately appealable. A merits defense, by contrast, affords only the right to a finding of non-liability — fully vindicable after trial through reversal on appeal.

Under the *Cohen* "collateral-order doctrine," a pretrial order is immediately appealable only if it satisfies three conditions, among them that the order be "effectively unreviewable on appeal from a final judgment." The Tenth Circuit had dismissed on a different condition — that the order resolve an issue completely separate from the merits — but the Supreme Court affirmed on the third condition, where the defense-versus-immunity line does its work.

The Supreme Court held that the order at issue was not "effectively unreviewable" because *Yearsley* is a merits defense. *Yearsley*'s protection "runs out when the contractor may have violated the law — when the contractor either acted under an illegal authorization or exceeded the scope of a legal one." Because *Yearsley* shields a contractor "only when — and only because — it has acted lawfully," it is a defense, not an immunity from suit. The Supreme Court stressed that this determination applies categorically — no contractor can argue for immediate appeal based on case-specific hardship.

The Supreme Court also dispatched GEO's argument that *Yearsley* confers "derivative sovereign immunity." That theory, the court explained, would collide head-on with the longstanding rule that sovereign immunity "does not extend to those that act[] in its name" and "belongs alone to the Government." In other words, a private contractor cannot borrow the government's immunity "by reason of a contract" — no matter how tightly the contract ties the contractor to the government's mission.

The Supreme Court remanded the matter back to the district court, where the forced-labor and unjust-enrichment claims would proceed to trial. GEO can challenge the district court's *Yearsley* ruling on appeal from a final judgment.

Justice Thomas concurred in part, agreeing that *Yearsley* is a defense but declining to join the majority's *Cohen* framework. Justice Alito concurred in the judgment alone and faulted the majority's reasoning as oversimplified. The legality-of-conduct line cannot fully explain the case law, he argued, because qualified immunity also turns on whether the defendant broke the law, yet its denial is immediately appealable. The right test, in his view, asks whether postponing appellate review would "imperil important constitutional or public-policy interests" — and here, he concluded, it would not.

Key Takeaways

- **There are no early exits — and no exceptions.** *GEO Group* shuts the door on using *Yearsley* as an interlocutory-appeal off-ramp. A contractor who is denied *Yearsley* protection must go through discovery, trial, and — only then — appeal. The right *Yearsley* affords is a finding of non-liability, which is "fully vindicable on appeal from a final judgment." Because the collateral-order doctrine applies categorically, no contractor can argue that its particular *Yearsley* denial warrants special treatment. That means higher litigation costs, longer timelines, and greater settlement pressure. Contractors should factor full trial exposure into litigation reserves and settlement calculus.
- **Sovereign immunity is not transferable.** A private contractor cannot obtain immunity from suit "by reason of a contract" with the government — no matter how closely the work tracks

a federal directive. Arguments repackaging *Yearsley* as "derivative sovereign immunity" are foreclosed.

- **Qualified immunity is available, but with caveats.** Qualified immunity can get a contractor out of court early, because its denial is immediately appealable. But whether contractors may invoke qualified immunity is unsettled. The Supreme Court has held that for-profit private prison guards may not assert it in Section 1983 cases, *Richardson v. McKnight*, 521 U.S. 399 (1997), yet the Court has held that a privately retained attorney performing government work may invoke the doctrine, *Filarsky v. Delia*, 566 U.S. 377 (2012). The Supreme Court has never placed corporate contractors on that spectrum. Justice Alito flagged the gap, noting that if corporate contractors are categorically excluded, "the collateral-order analysis might be different" for *Yearsley* denials.
- **Consider Section 1292(b) certification.** District courts may certify an otherwise unappealable order for interlocutory review when the "special difficulty and importance" of the issue warrants it. Certification is discretionary and rarely granted — not a reliable substitute for appeal as of right, and the district court in *GEO Group* "saw no reason to act under § 1292(b)." But where a *Yearsley* denial presents a controlling question of law, a prompt motion is worth the effort.
- **The broader 2026 trend: narrowing contractor defenses.** *GEO Group* is one of several 2026 developments pointing in the same direction. In *Hencely v. Fluor Corp.* (April 22, 2026), the Supreme Court — 6-3, with Justice Thomas writing — rejected the U.S. Court of Appeals for the Fourth Circuit's "battlefield preemption" rule, holding that state tort law is not preempted where the government neither required nor authorized the specific conduct challenged in the suit. Read together, the two decisions confirm that contractor defenses — *Yearsley*, the *Boyle* government-contractor defense, and derivative-immunity theories generally — are contract- and fact-intensive. Each now turns on proving the government authorized the specific conduct challenged, not merely the mission. For products-liability and other defense-side

> counsel, the lesson is the same in both cases: build the record of government direction at the specification level, because that is where these defenses now live or die.

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