Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GENERAL DYNAMICS CORP. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 09–1298. Argued January 18, 2011—Decided May 23, 2011*

After petitioners fell behind schedule in developing a stealth aircraft (A–12) for the Navy, the contracting officer terminated their $4.8 billion fixed-price contract for default and ordered petitioners to repay approximately $1.35 billion in progress payments for work the Government never accepted. Petitioners filed suit in the Court of Federal Claims (CFC), challenging the termination decision under the Contract Disputes Act of 1978. They argued that Federal Circuit precedent permitted their default to be excused because the Government had failed to share its "superior knowledge" about how to design and manufacture stealth aircraft. Uncovering the extent of such knowledge proved difficult because the design, materials, and manufacturing process for prior stealth aircraft, operated by the Air Force, are closely guarded military secrets. After military secrets were disclosed during discovery, the Acting Secretary of the Air Force warned the CFC that further discovery into the extent of the Government's superior knowledge would risk disclosing classified information. The CFC terminated such discovery and found the superior-knowledge question nonjusticiable. The CFC subsequently converted the termination into a less-Government-friendly termination for convenience and awarded petitioners $1.2 billion. The Federal Circuit reversed. On remand, the CFC sustained the default termination and reaffirmed that petitioners' superior-knowledge affirmative defense could not be litigated. The Federal Circuit again reversed, but it found that the state-secrets privilege prevented adjudicating petitioners' superior-knowledge defense. On remand, the CFC again found peti-

---

*Together with No. 09–1302, *Boeing Co., Successor to McDonnell Douglas Corp.* v. *United States,* also on certiorari to the same court.

Syllabus

tioners had defaulted, and the Federal Circuit affirmed.

Held: When, to protect state secrets, a court dismisses a Government contractor's prima facie valid affirmative defense to the Government's allegations of contractual breach, the proper remedy is to leave the parties where they were on the day they filed suit. Pp. 5–14.

(a) The CFC held that, since invocation of the state-secrets privilege obscured too many of the facts relevant to the superior-knowledge defense, the issue of that defense was nonjusticiable, even though petitioners had brought forward enough unprivileged evidence for a prima facie showing. In this situation, the Court must exercise its common-law authority to fashion contractual remedies in Government-contracting disputes. The relevant state-secrets jurisprudence comes not from *United States* v. *Reynolds*, 345 U. S. 1, which deals with the Government's evidentiary privilege against court-ordered disclosure of state and military secrets, but from *Totten* v. *United States*, 92 U. S. 105, and *Tenet* v. *Doe*, 544 U. S. 1, two cases dealing with alleged contracts to spy.

Where liability depends on the validity of a plausible superior-knowledge defense, and when full litigation of that defense "would inevitably lead to the disclosure of" state secrets, *Totten*, *supra*, at 107, neither party can obtain judicial relief. It seems unrealistic to separate the claim from the defense, allowing the former to proceed while barring the latter. Claims and defenses together establish the justification, or lack of justification, for judicial relief; and when public policy precludes judicial intervention for the one it should also preclude judicial intervention for the other. Suit on the contract, or for performance rendered or funds paid under the contract, will not lie, and courts should leave the parties to the agreement where they stood on the day they filed suit. The Government suggests that at the time of suit, petitioners had been held in default by the contracting officer and were liable for the ensuing consequences. But that was merely one step in the parties' contractual regime. The "position of the parties" at the time of suit is not their position with regard to legal burdens and the legal consequences of contract-related determinations, but their position with regard to possession of funds and property. Pp. 5–10.

(b) Neither side will be entirely happy with this resolution. General Dynamics (but not Boeing) wants to turn the termination into one for convenience and reinstate the CFC's $1.2 billion award, but that is not an option under the A–12 agreement. Moreover, state secrets would make it impossible to calculate petitioners' damages. The Government wants a return of the $1.35 billion it paid petitioners for work never accepted, but the validity of that claim depends on

Syllabus

the nonjusticiable issue whether petitioners are in default. As in *Totten*, see 92 U. S., at 106, the Court's refusal to enforce this contract captures what the *ex ante* expectations of the parties were or reasonably ought to have been. They must have assumed the risk that state secrets would prevent the adjudication of inadequate performance claims. Moreover, this ruling's impact here is likely much more significant than its impact in future cases, except to the extent that it renders the law more predictable and hence more subject to accommodation by contracting parties. Whether the Government had an obligation to share its superior knowledge about stealth technology is left for the Federal Circuit to address on remand. Pp. 10–13.

567 F. 3d 1340, vacated and remanded.

SCALIA, J., delivered the opinion for a unanimous Court.