

**09-1302 BOEING COMPANY V. UNITED STATES**

DECISION BELOW: 567 F.3d 1340

LOWER COURT CASE NUMBER: 2007-5111, 2007-5131

**QUESTION PRESENTED:**

1. Whether the Due Process Clause of the Fifth Amendment permits an appellate court to adopt a new legal rule, inconsistent with its own prior ruling in the same case, and then apply it retroactively to the record established in the trial court pursuant to the prior ruling, without remanding to afford the parties the opportunity to prove their case under the new rule.

2. Whether the Due Process Clause of the Fifth Amendment permits the Government to maintain a claim while simultaneously asserting the state secrets privilege to bar presentation of a prima facie valid defense to that claim.

3. Whether the Government may terminate a government contract for default on the ground that a contractor has failed to make adequate progress toward timely completion of that contract where the Government has not set a valid deadline for completing the contract.

CONSOLIDATED WITH 09-1298 FOR ONE HOUR ORAL ARGUMENT

09-1298 LIMITED TO QUESTION 1

09-1302 LIMITED TO QUESTION 2

CERT. GRANTED 9/28/2010