No. 24-683

In the Supreme Court of the United States

ENERGETIC TANK, INC., AS OWNER OF THE M/V ALNIC MC, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the United States has sovereign immunity against servicemember tort claims arising in admiralty in the same manner that it is immune, under *Feres* v. *United States*, 340 U.S. 135 (1950), from such claims arising on land.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Statutes and rules:

Statutes and rules—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-47a) is reported at 110 F.4th 131. The opinion of the district court (Pet. App. 48a-60a) is available at 2022 WL 7059134. A prior opinion of the district court (Pet. App. 61a-140a) is reported at 607 F. Supp. 3d 328.

JURISDICTION

The judgment of the court of appeals was entered on July 26, 2024. On October 15, 2024, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including December 23, 2024, and the petition was filed on December 20, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Limitation of Liability Act, 46 U.S.C. 30501-30502, 30521-30530, generally allows a shipowner to limit its liability for any "injury by collision" occurring "without the [shipowner's] privity or knowledge" to "the value of the vessel and pending freight." 46 U.S.C. 30523(a) and (b).[1] The shipowner may avail itself of that procedure by filing suit in a United States district court within six months of receiving notice of a claim related to the collision. 46 U.S.C. 30529(a). It must deposit with the court an amount of money (or approved security) equal to its interest in the vessel and the pending freight, and that fund is used to pay claimants in proportion to their losses. 46 U.S.C. 30525(1), 30529(b). The shipowner may obtain an order ceasing all other proceedings against it and requiring that all claims arising from the collision be brought in the limitation proceeding. 46 U.S.C. 30529(c).

In two other statutes originally enacted about a century ago, the United States waived its sovereign immunity for certain admiralty suits. See *United States* v. *United Cont'l Tuna Corp.*, 425 U.S. 164, 170-171 (1976). In its current form, the Suits in Admiralty Act (SIAA), 46 U.S.C. 30901 *et seq.*, provides in relevant part that "a civil action in admiralty in personam may be brought against the United States" "[i]n a case in which, if a vessel were privately owned or operated * * * a civil action in admiralty could be maintained." 46 U.S.C. 30903(a). The Public Vessels Act (PVA), 46 U.S.C. 31101 *et seq.*, similarly provides in relevant part that "[a] civil action in personam in admiralty may be brought * * * against the United States" for "damages

[1] All references to provisions of the Limitation of Liability Act are to Supplement IV (2022) of the United States Code.

caused by a public vessel of the United States." 46 U.S.C. 31102(a)(1). Both statutes also generally provide that if the United States brings an admiralty action against the owner of a private vessel, the private owner can bring a counterclaim or claim a setoff (*i.e.*, a reduction in liability to reflect damages incurred by the private owner) against the United States. 46 U.S.C. 30903(a), 31102(b).

2. a. This case arises from a collision in the Singapore Strait, "one of the world's busiest shipping corridors," between the M/V *Alnic*, a Liberian-flagged oil-and-chemical tanker, and the U.S.S. *John S. McCain*, a Navy destroyer. Pet. App. 7a; see *id.* at 5a. Although the ships' "crews knew that navigating the Strait required special precautions," "neither vessel was well prepared." *Id.* at 7a.

Alnic's problems stemmed from chronic understaffing and incompetence that "were no secret and no surprise" to the ship's management. Pet. App. 8a. Of 70 ships that *Alnic*'s management company had audited, *Alnic*'s "performance was among the two worst." *Ibid.* *Alnic* repeatedly sailed in the Singapore Strait understaffed, and even after being reminded of appropriate staffing levels, "failed to correct the understaffed bridge for months before the collision." *Id.* at 136a.

McCain's "problems related primarily to the crew's use of a new steering system." Pet. App. 9a. This military system "encompassed several steering stations on the bridge and elsewhere" that were operated using both touchscreens and manual buttons, and the crew was not yet fully familiar with this method of controlling steering and power. *Ibid.* The system itself was "unreliable" and had "crashed several times." *Id.* at 10a. When the steering system malfunctioned, *McCain*'s

commander would operate the ship in "backup manual mode," which affected *McCain*'s performance in ways that were not known to the commander or crew. *Ibid.*

b. One morning in 2017, *McCain* and *Alnic* were both sailing west, toward Singapore, in "the same 'lane'" of the Strait. Pet. App. 11a. As she was overtaking *Alnic*, *McCain* lost steering control, causing her to turn to port into *Alnic*'s path. *Id.* at 11a-12a. *McCain* quickly displayed a red-over-red signal to warn other ships that the destroyer was "'not under command' and, hence, at risk of collision." *Id.* at 12a. *Alnic* was operating with only three of the five mariners required for a Strait crossing present on the bridge; it lacked an anti-collision officer, and the lookout was serving simultaneously as the helmsman. *Id.* at 8a. When *Alnic*'s collision alarm blared out on the bridge, the understaffed crew turned off the alarm without slowing down, changing course, or turning off the autopilot. *Id.* at 12a-13a.

Just as *McCain*'s crew regained control of thrust and steering and started to turn away, *Alnic* made her "first and only pre-collision adjustment" and "slowed the engine." Pet. App. 14a. But that action, taken only 14 seconds before the collision, did not "appreciably reduce" *Alnic*'s speed before it hit *McCain*. *Ibid.*

Alnic was still under power and on autopilot when the ships collided. *Alnic*'s "continued propulsion and automatic navigation exacerbated the collision." Pet. App. 15a. Her automated steering system tried to correct the tanker's course while she was still ploughing forward, with her bow embedded in *McCain*'s hull. *Ibid.* The "combination of the vessels' momentum and *Alnic*'s automated maneuver caused *Alnic*'s bow to sweep over 45 degrees to starboard, tearing through more of *McCain*'s hull." *Ibid.* (formatting altered).

"The damage was terrible." Pet. App. 15a. Ten sailors aboard *McCain* died, many more were injured, and "[s]till more destruction—and potential death—was averted only through the swift and decisive action of *McCain*'s crew." *Ibid.* (formatting altered).

After the accident, the *Alnic* crew falsified its logbooks to inflate the number of crewmembers who had manned the bridge and to misrepresent that *Alnic*'s engine had been stopped and manual steering had been activated earlier than they actually had been. Pet. App. 15a-16a. *Alnic*'s captain also later lied to investigators and in depositions for this case. *Id.* at 16a.

3. a. Petitioner, *Alnic*'s owner, filed this admiralty action in the United States District Court for the Southern District of New York, invoking the protections of the Limitation of Liability Act. Pet. App. 16a. Petitioner sought exoneration from liability for the *McCain* collision or, in the alternative, limitation of its liability to the value of *Alnic* and its freight. *Id.* at 62a.

Forty-one claimants—*McCain* sailors and their survivors—filed claims against petitioner for wrongful death and personal injury. Pet. App. 62a. They did not file suit against the United States, which has made, and continues to make, benefits and compensation payments to eligible sailors and survivors under various statutory programs. *Id.* at 58a & n.6.

The United States filed a claim against petitioner for physical damage to *McCain*. Pet. App. 62a. Petitioner counterclaimed against the United States, seeking damages for physical damage to *Alnic*. *Id.* at 62a-63a. It invoked the waivers of the United States' sovereign immunity in the SIAA and PVA. *Id.* at 55a-56a; see pp. 2-3, *supra*. Petitioner also filed a claim for contribution or indemnification from the United States if any sailor

claimant were to recover against petitioner on a tort claim. Pet. App. 62a-63a.

b. The district court bifurcated the proceedings into a Phase I trial to determine liability for damage to the vessels and Phase II trials to resolve the sailor-claimants' personal-injury and wrongful-death claims. Pet. App. 18a. After the Phase I trial, the court, applying Singapore law, made factual findings based on the trial testimony and the extensive documentary record. See *id.* at 63a-107a. The court found *McCain* "primarily—80%—at fault for creating a scenario where collision between the vessels was either inevitable, or all-but inevitable." *Id.* at 111a. But it found that *Alnic* also bore "significant blame—20%—for its failure to take any meaningful action to minimize the carnage caused by the collision." *Ibid.*

The district court also dismissed petitioner's claim against the United States for contribution and indemnification for damages that might later be awarded to the sailor claimants against petitioner in Phase II. Pet. App. 59a. In *Feres* v. *United States*, 340 U.S. 135 (1950), this Court held that the United States' sovereign immunity bars claims under the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.*, by servicemembers for injuries incident to military service. 340 U.S. at 146. The Court subsequently held that *Feres* also bars "third parties' claims against the United States for contribution or indemnity when those third parties are sued by servicemembers seeking to recover for injuries arising from their service." Pet. App. 56a-57a (discussing *Stencel Aero Eng'g Corp.* v. *United States*, 431 U.S. 666 (1977)). Applying Second Circuit precedent holding *Feres* applicable to suits under the SIAA and PVA, the district court concluded that it lacked jurisdiction over

petitioner's contribution and indemnification claims against the United States. *Id.* at 57a-59a; see *Cusanelli* v. *Klaver*, 698 F.2d 82, 85 (2d Cir. 1983).

4. The court of appeals affirmed. Pet. App. 1a-47a.

The court of appeals first determined that it had jurisdiction to review the district court's vessel-damage liability ruling and its dismissal of petitioner's contribution and indemnification claim, even though the Phase II trials had not occurred. The district court had certified the former ruling as a partial final judgment under Federal Rule of Civil Procedure 54(b), enabling appeal under 28 U.S.C. 1291. Pet. App. 25a. The contribution decision, by contrast, was "interlocutory" because it "left other issues," such as petitioner's liability to the sailor claimants, "for later resolution." *Id.* at 26a. But the court of appeals concluded that it had jurisdiction under 28 U.S.C. 1292(a)(3), which grants courts of appeals jurisdiction over appeals of "[i]nterlocutory decrees * * * determining the rights and liabilities of the parties" in admiralty cases. Pet. App. 27a (citation omitted).

On the merits, the court of appeals upheld the district court's allocation of responsibility for the vessel damages. Pet. App. 33a-43a. Among other things, it noted that petitioner did not dispute *Alnic*'s negligence in failing "to properly staff her bridge and to assess the risk of collision" in the Singapore Strait, and it upheld the district court's finding that *Alnic* negligently failed to mitigate the collision damage. *Id.* at 34a, 40a-42a.

The court of appeals further agreed that *Feres* barred petitioner's contribution and indemnification claims against the United States. Pet. App. 43a-47a. It rejected petitioner's efforts to "create an aberrant exception to *Feres*'s ordinary sweep" for injuries to ser-

vicemembers sustained at sea. *Id.* at 46a. The court also noted that petitioner had not sought to pursue a "recoupment-counterclaim" or setoff against the United States, and denied petitioner's request for a remand for consideration of those remedies. *Id.* at 46a n.20.

ARGUMENT

Petitioner contends (Pet. 17-27) that the lower courts erred in applying the sovereign-immunity doctrine of *Feres* v. *United States*, 340 U.S. 135 (1950), to service-member claims under the Suits in Admiralty Act and the Public Vessels Act. But there is no sound basis for distinguishing *Feres* in the SIAA and PVA context, as this Court and every court of appeals to consider the question have concluded. This case would also be an unsuitable vehicle for considering the question presented. The Court has repeatedly denied petitions for writs of certiorari urging that *Feres* be overruled, reexamined, or limited, and it should take the same course here.[2]

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[2] See, *e.g.*, *Carter* v. *United States*, 145 S. Ct. 519 (2025) (No. 23-1281); *Doe* v. *United States*, 141 S. Ct. 1498 (2021) (No. 20-559); *Siddiqui* v. *United States*, 140 S. Ct. 2512 (2020) (No. 19-913); *Jones* v. *United States*, 587 U.S. 1022 (2019) (No. 18-981); *Daniel* v. *United States*, 587 U.S. 1020 (2019) (No. 18-460); *Buch* v. *United States*, 583 U.S. 1092 (2018) (No. 17-744); *Futrell* v. *United States*, 583 U.S. 973 (2017) (No. 17-391); *Ford* v. *Artiga*, 582 U.S. 932 (2017) (No. 16-1338); *Davidson* v. *United States*, 580 U.S. 988 (2016) (No. 16-375); *Ritchie* v. *United States*, 572 U.S. 1100 (2014) (No. 13-893); *Read* v. *United States*, 571 U.S. 1095 (2013) (No. 13-505); *Lanus* v. *United States*, 570 U.S. 932 (2013) (No. 12-862); *Purcell* v. *United States*, 565 U.S. 1261 (2012) (No. 11-929); *Witt* v. *United States*, 564 U.S. 1037 (2011) (No. 10-885); *Zmysly* v. *United States*, 560 U.S. 925 (2010) (No. 09-1108); *Matthew* v. *Department of the Army,* 558 U.S. 821 (2009) (No. 08-1451); *McConnell* v. *United States*, 552 U.S. 1038 (2007) (No. 07-240); *Costo* v. *United States,* 534 U.S. 1078 (2002) (No. 01-526); *Richards* v. *United States*, 528 U.S. 1136 (2000) (No. 99-

1. The court of appeals correctly held that sovereign immunity barred petitioner's contribution and indemnification claims against the United States. Pet. App. 43a-47a.

a. In *Feres*, this Court held that the Federal Tort Claims Act does not waive the United States' sovereign immunity from claims for injuries to military servicemembers that "arise out of or are in the course of activity incident to service." 340 U.S. at 146. Since then, this Court has repeatedly reaffirmed *Feres*. See *United States* v. *Stanley*, 483 U.S. 669 (1987); *United States* v. *Johnson*, 481 U.S. 681 (1987); *United States* v. *Shearer*, 473 U.S. 52 (1985); *Chappell* v. *Wallace*, 462 U.S. 296 (1983); *United States* v. *Muniz*, 374 U.S. 150 (1963); *United States* v. *Brown*, 348 U.S. 110 (1954). The Court has also made clear that the doctrine covers claims, like petitioner's here, for contribution or indemnification in relation to service-connected claims. See *Stencel Aero Eng'g Corp.* v. *United States*, 431 U.S. 666 (1977).

"This Court has emphasized three broad rationales underlying the *Feres* decision," *Johnson*, 481 U.S. at 688, two of which relate to the longstanding availability of special compensation schemes for servicemembers who suffer disability or death. First, because the military operates around the country and the world, it is appropriate to apply those uniform federal remedies rather than "permit the fortuity of the situs of the alleged negligence" to govern the United States' liability. *Id.* at

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731); *O'Neill* v. *United States*, 525 U.S. 962 (1998) (No. 98-194); *George* v. *United St*ates, 522 U.S. 1116 (1998) (No. 97-1084); *Schoemer* v. *United States*, 516 U.S. 814 (1995) (No. 95-528); *Hayes* v. *United States*, 516 U.S. 814 (1995) (No. 94-1957); *Forgette* v. *United States*, 513 U.S. 1113 (1995) (No. 94-985); *Sonnenberg* v. *United States*, 498 U.S. 1067 (1991) (No. 90-539).

689 (citation omitted). Second, the existence of those federal remedies suggests Congress did not "contemplat[e] recovery for service-related injuries under the FTCA." *Id.* at 690. Third, servicemember tort claims "would involve the judiciary in sensitive military affairs at the expense of military discipline and effectiveness." *Ibid.* (citation omitted).

All of those rationales apply equally to servicemember claims in admiralty. Indeed, this Court has already recognized that *Feres*'s reasoning concerning the exclusiveness and uniformity of special compensation systems applies to the admiralty statutes at issue here. Just two years after *Feres* was decided, in *Johansen* v. *United States*, 343 U.S. 427 (1952), the Court invoked *Feres* in concluding that a civilian crewmember of an Army vessel could not sue the United States under the PVA in light of the remedies available under the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.* See 343 U.S. at 432, 440-441. A key part of the Court's reasoning was that it would make no sense to treat civilians differently from "military members of the crew of a public vessel," who are limited under *Feres* to the federal "general compensation system for injuries." *Id.* at 440. The Court also favorably cited a Second Circuit decision that anticipated *Feres* in the PVA context. *Id.* at 440 n.9; see *Dobson* v. *United States*, 27 F.2d 807, 808-809 (1928), cert. denied, 278 U.S. 653 (1929); see also *Brooks* v. *United States*, 337 U.S. 49, 52 (1949) (citing *Dobson*). *Johansen* thus made clear that the *Feres* principle applies to the PVA. And this Court later applied *Johansen* to the SIAA as well, in *Patterson* v. *United States*, 359 U.S. 495, 496-497 (1959) (per curiam). See *United States* v. *Demko*, 385 U.S. 149, 151-152 (1966) (discussing *Johansen* and *Patterson*); *id.* at

151 n.4 (noting lower courts' "uniform[]" view "that persons for whom the Government has supplied an administrative compensation remedy are precluded from seeking recovery against the United States for injuries received in the course of their work under the Federal Tort Claims Act, the Jones Act, the Suits in Admiralty Act, or the Public Vessels Act").

Petitioner does not acknowledge *Johansen* and *Patterson*, much less seek to reconcile its position with those decisions, including *Johansen*'s reliance on *Feres*. Consistent with those decisions, every court of appeals to consider the issue has concluded that "[t]he rationale supporting the ruling in *Feres* limiting the waiver of sovereign immunity applies with equal force in the context of government liability in admiralty." *Charland* v. *United States*, 615 F.2d 508, 509 (9th Cir. 1980); see *Blakey* v. *U.S.S. Iowa*, 991 F.2d 148, 151-152 (4th Cir. 1993); *Potts* v. *United States*, 723 F.2d 20, 21-22 (6th Cir. 1983) (per curiam), cert. denied, 466 U.S. 959 (1984); *Cusanelli* v. *Klaver*, 698 F.2d 82, 85 (2d Cir. 1983); *Beaucoudray* v. *United States*, 490 F.2d 86, 86 (5th Cir. 1974) (per curiam); see also Pet. App. 45a n.19; *Vulcan Materials Co.* v. *Massiah*, 645 F.3d 249, 267 (4th Cir. 2011) (applying *Feres* and *Stencel* to a third-party claim in admiralty); *Hillier* v. *Southern Towing Co.*, 714 F.2d 714, 724 (7th Cir. 1983) (same).

Petitioner, however, would have the United States' liability to injured servicemembers turn on the tort law of jurisdictions around the world—such as Singapore, see Pet. App. 52a—rather than being channeled into the uniform statutory benefits programs designed for the purpose of compensating military personnel. See *Johnson*, 481 U.S. at 689. If Congress had intended in the SIAA and PVA to waive the United States' sovereign

immunity for that purpose, it would have spoken more clearly. See *id.* at 690. Indeed, the United States has made and continues to make statutory payments for the sailors injured in the *Alnic-McCain* collision and for the representatives of those who were killed. See Pet. App. 58a & n.6.

Most importantly, admiralty cases like this plainly "implicate[] the military judgments and decisions that are inextricably intertwined with the conduct of the military mission." *Johnson*, 481 U.S. at 691. The claims here concern active-duty Navy personnel injured or killed at sea aboard a deployed naval destroyer, in fast-moving and high-pressure conditions that involved new military technology. See pp. 3-5, *supra*. Adjudication of the Navy servicemembers' claims in federal court "strikes at the core of the[] concerns" that animate the *Feres* doctrine. *Shearer*, 473 U.S. at 58.

b. Petitioner's arguments to the contrary lack merit.

Petitioner faults (Pet. 17-19, 21-22) the court of appeals and its sister circuits for applying *Feres*'s logic to other laws rather than confining it to the FTCA. But this Court itself has done the same thing, contra Pet. 8, and in cases involving the very admiralty statutes at issue here, because the rationales underlying *Feres* are not FTCA-specific. See pp. 9-11, *supra*; cf. *Stanley*, 483 U.S. at 681-684 (applying *Feres* to *Bivens* claims); *Chappell*, 462 U.S. at 299 (same). It would be arbitrary to apply the *Feres* rule to servicemember tort claims arising on land but not to claims arising in admiralty because the servicemembers' claims happened to arise at sea. See *Vulcan Materials*, 645 F.3d at 261; Pet. App. 46a.

That *Feres* itself construed the FTCA, see Pet. 18-19, does not show that the principles and concerns that

drove *Feres*'s construction of the FTCA are inapplicable in analogous contexts. See *Cummings* v. *Department of the Navy*, 279 F.3d 1051, 1060-1061 (D.C. Cir. 2002) (Williams, J., dissenting); cf., *e.g.*, *Biden* v. *Nebraska*, 600 U.S. 477, 508-509 (2023) (Barrett, J., concurring) (discussing "substantive canons" of statutory construction). Petitioner thus errs in treating *Feres* and its progeny as resting upon "ad hoc improvisations" rather than "general principles." *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 470 (2017) (Gorsuch, J., concurring in part) (quoting *Elk Grove Unified Sch. Dist.* v. *Newdow*, 542 U.S. 1, 25 (2004) (Rehnquist, C.J., concurring in the judgment)).

Much of petitioner's remaining analysis (Pet. 3-4, 19-21, 30-32) is simply criticism of *Feres* itself. But petitioner does not seek *Feres*'s overruling (Pet. 4, 17), and as we recently explained, that step would be unjustified in any event. See Br. in Opp. at 14-20, *Carter* v. *United States*, 145 S. Ct. 519 (2025) (No. 23-1281). Among other things, *Feres*'s precedential force as a matter of stare decisis is exceedingly strong: it is a statutory decision that involves the United States' sovereign immunity and that has been repeatedly reaffirmed by this Court and undisturbed by Congress over decades. See *id.* at 15-16.

Petitioner emphasizes (Pet. 27-29) that the SIAA and PVA waive sovereign immunity as to counterclaims, see p. 3, *supra*, consistent with historical admiralty law, and that its claim arises in that posture—which petitioner views as undermining *Feres*'s concern about judicial inquiries into military affairs. Those contentions are misplaced. *Feres* and sovereign immunity in general do not depend on the procedural form of a claim against the United States. See *Stencel*, 431 U.S. at 673-674 (apply-

ing *Feres* to a cross-claim for indemnification); *Nassau Smelting & Refin. Works, Ltd.* v. *United States*, 266 U.S. 101, 106 (1924). Nor does *Feres*'s applicability turn on whether the "particular suit[]" at issue "would call into question military discipline and decisionmaking." *Stanley*, 483 U.S. at 682; see *Shearer*, 473 U.S. at 59; Pet. App. 47a.

Petitioner relatedly deems it unfair (Pet. 30-31) for the United States to file a claim against petitioner for vessel damages but enjoy immunity from petitioner's contribution claim, despite the allocation of 80 percent of responsibility for the collision to the United States. That objection is misdirected as well. Petitioner initiated this case in U.S. court by choosing to avail itself of the Limitation of Liability Act. The government's obligations to the public fisc compelled it to file a claim for vessel damages, and it has no *Feres* immunity to petitioner's counterclaim for damages to the vessel. Pet. App. 20a. Given the government's statutory obligation to pay compensation and benefits for the sailor victims, it was hardly unfair to maintain immunity against petitioner's contribution claim involving the sailors' personal injuries; that, in large part, is the point of this Court's *Feres* jurisprudence. Furthermore, the district court's apportionment of fault may well have changed if the United States had lacked *Feres* immunity and responsibility for the sailors' injuries had been at issue in the Phase I trial. See *id.* at 42a (noting that "*Alnic*'s inaction" "exacerbated the gash in *McCain*'s hull") (formatting altered). The court of appeals' decision is thus correct.

2. This case does not warrant this Court's review for other reasons as well. As noted above, p. 11, *supra*, there is no disagreement in the courts of appeals on the ques-

tion presented—even though, as petitioner notes (Pet. 26), courts of appeals have found *Feres* inapplicable to a few other statutes where *Feres*'s rationales may be less clearly applicable. Petitioner offers no sound reason for the Court to deviate from its traditional certiorari criteria in this case. See Sup. Ct. R. 10.

Furthermore, as the court of appeals noted, its decision is interlocutory. The court affirmed a district-court ruling that "dismissed [petitioner's] contribution and indemnity claims against the United States as barred by sovereign immunity but left other issues," such as the Phase II trials on the sailors' personal-injury claims, "for later resolution." Pet. App. 26a; see 28 U.S.C. 1292(a)(3). Although petitioner has reached agreements to settle most of those claims, the settlements remain to be finalized and the claims to be dismissed; and at any rate, one claim remains and is scheduled to go to trial in June 2025. D. Ct. Doc. 731 (Feb. 3, 2025); see D. Ct. Doc. 735 (Feb. 18, 2025) (pretrial scheduling order).[3]

The interlocutory posture of the case "alone furnishe[s] sufficient ground for the denial of the application." *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see, *e.g.*, *National Football League* v. *Ninth Inning, Inc.*, 141 S. Ct. 56, 57 (2020) (statement of Kavanaugh, J., respecting the denial of certiorari). That practice promotes judicial efficiency, because proceedings on remand may affect the consid-

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[3] The United States did not participate in those settlement negotiations because, as discussed herein, it has sovereign immunity against petitioner's contribution claim under settled law. Petitioner's entry into settlement agreements with the sailor claimants, while seeking to render the United States, an absent party, responsible for paying 80 percent of those settlements, counsels further against certiorari.

eration of issues presented in a petition for a writ of certiorari. It also enables issues raised at different stages of a lower-court proceeding to be consolidated in a single petition. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) ("[W]e have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals.").

Finally, the court of appeals also noted petitioner's failure to preserve any claim against the United States for "recoupment" or "'setoff.'" Pet. App. 46a n.20 (citations omitted); see C.A. App. 320-321 (lodging only a "counterclaim" against the United States). That forfeiture of any argument concerning another possible path to pursue recovery would complicate this Court's review of the question presented, and further militates against granting certiorari in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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