

**In the Supreme Court of the United States**

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ENERGETIC TANK, INC., *as Owner of the M/V ALNIC MC,*  
*Applicant,*

*v.*

UNITED STATES OF AMERICA, ET AL.

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Second Circuit:

1. Pursuant to Supreme Court Rule 13.5, Applicant Energetic Tank, Inc. respectfully requests a 60-day extension of time, to and including December 23, 2024, within which to file a petition for a writ of certiorari. The U.S. Court of Appeals for the Second Circuit issued an opinion on July 26, 2024. A copy of that opinion is attached as Exhibit A. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

2. Absent an extension, the petition for a writ of certiorari would be due on October 24, 2024. This application is being filed more than 10 days in advance of that date, and no prior application has been made in this case.

3. This case arises out of the collision between the U.S.S. JOHN S. MCCAIN (a U.S. Navy guided-missile destroyer) and the M/V ALNIC MC (a tanker), which occurred in

the Singapore Strait in August 2017. The district court below properly recognized that MCCAIN's negligence—its unsafe speed, untrained crew, and understaffed bridge, together with numerous critical errors in judgment—was overwhelmingly (80%) responsible for the collision. But the district court concluded that ALNIC was also partially (20%) responsible and owed the United States nearly \$45,000,000 for damage to MCCAIN. The court further held that the United States was immune to a counterclaim for contribution, setoff, or indemnity brought by ALNIC's owner (Applicant Energetic Tank, Inc.) for damages to MCCAIN's sailors.

4. The Second Circuit affirmed. Although the court of appeals held that the district court had properly allocated fault between MCCAIN and ALNIC, the court of appeals held that the doctrine established by *United States v. Feres*, 340 U.S. 135 (1950)—which prohibits service members from suing the United States for service-related injuries under the Federal Tort Claims Act (FTCA)—required holding the United States immune here under an entirely *different* statutory regime. The court of appeals thus excused the United States from any responsibility for its share of liability for damages that ALNIC pays to MCCAIN's sailors, even though the United States was found to be overwhelmingly responsible for the collision, and despite the fact that the United States received an award of tens of millions of dollars on its own damages claim against ALNIC's owner.

5. The Second Circuit's decision on contribution is not only highly inequitable, it also ignores the plain language of the Public Vessels Act (PVA) and the Suits in Admiralty Act (SIAA), which expressly waive sovereign immunity for *counter-claims* against the United States. See 46 U.S.C. §§ 30903, 31102. These statutes reflect a longstanding

admiralty rule that sovereign immunity does not bar counterclaims when the United States asserts affirmative damages claims, as it did here. In fact, even following enactment of the PVA and SIAA, federal courts have continued to hold that sovereign immunity is categorically inapplicable when a party seeks to recoup losses from the United States after it affirmatively seeks damages.

6. There was no precedent that required the court of appeals to extend the *Feres* doctrine to this case. Neither *Feres* nor any decision by this Court applying *Feres* involved a contribution *counterclaim* asserted in response to an affirmative damages claim by the United States. And, on first principles, it makes little sense under those circumstances to apply the doctrine, which this Court has described as following from the FTCA's text. The PVA and SIAA are different statutes with different waivers of sovereign immunity that do not support the sort of exception this Court found in the FTCA.

7. Nor do this Court's practical justifications for *Feres*—supporting military discipline and combat readiness—counsel in favor of extending the doctrine to this case. Here, the United States *itself* called MCCAIN's commanding officer and crew as witnesses in service of its claim against ALNIC and its request for damages. Having decided to prosecute its own claim in this manner (and having prevailed in part), the United States cannot plausibly assert that allowing ALNIC's contribution counterclaim—which will require no additional testimony from MCCAIN's officers and crew, and which will entail only a straightforward application of the district court's apportionment of liability—will in any way harm military discipline and readiness. The practical realities of this case therefore

align perfectly with the express waiver of sovereign immunity that Congress specified under the PVA and SIAA for cases just like this one.

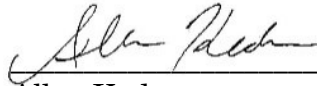
8. This case raises an exceptionally important question warranting this Court's review: whether the Second Circuit erred in extending the *Feres* doctrine despite the PVA's and SIAA's express waivers of sovereign immunity. As members of this Court have long recognized, *Feres* was wrongly decided. See, e.g., *Clendenning v. United States*, 143 S. Ct. 11 (2022) (Thomas, J., dissenting from denial of certiorari). But even if the Court were to leave the holding of *Feres* intact, the court of appeals erred by extending the doctrine beyond its current bounds. Granting review in this case would also present the Court with an opportunity to clarify the scope of the United States' immunity to counterclaims in particular, to prevent the obvious injustice of cases like this one, in which the United States has used its sovereign status both as a sword and as a shield—at once suing for damages it suffered, while simultaneously asserting immunity to the damages it caused.

9. Applicant Energetic Tank, Inc. respectfully requests an extension of time to file a petition for a writ of certiorari. A 60-day extension would allow counsel sufficient time to fully examine the decision's consequences, research and analyze the issues presented, and prepare the petition for filing. Additionally, the undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on or before October 24, 2024.

*Wherefore*, Applicant Energetic Tank, Inc. respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to and including December 23, 2024.

Dated: October 10, 2024

Respectfully submitted,



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