No. 11-652

In the Supreme Court of the United States

SID-MAR'S RESTAURANT & LOUNGE, INC., PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly applied *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957), to the facts of this case when it concluded that the district court had permissibly stayed petitioner's state-court inverse-condemnation suit to prevent that suit from interfering with eminent-domain proceedings brought by the United States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-53a) is reported at 644 F.3d 270. The supplemental opinion of the court of appeals (Pet. App. 54a-64a) is reported at 654 F.3d 521. The order of the district court (Pet. App. 65a-68a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 2011. Pet. App. 1a. A petition for rehearing was denied on August 29, 2011 (Pet. App. 54a). The petition for a writ of certiorari was filed on November 23, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a corporation that operated a restaurant in Metairie, Louisiana, just outside of the Lake Ponchartrain Hurricane Protection Levee System. Pet. App. 2a. The restaurant was destroyed by Hurricane Katrina in August 2005. *Ibid.* Shortly after the hurricane, the Orleans Levee District agreed to provide the federal Department of the Army with a right of entry to all lands required for various rehabilitation projects. *Ibid.* One of those projects involved constructing "interim gated closure structures and integrated pumping capacity" on two parcels of land, totaling roughly a quarter of an acre, on the former site of petitioner's restaurant. *Id.* at 2a-3a. The agreement between the United States and the levee district contemplated that state authorities would commandeer the property and "indicated the federal government would later acquire full ownership rights in the property." *Id.* at 16a-18a.

In February 2006, the governor of Louisiana issued an executive order commandeering the use of the parcels (along with other land) "to provide the United States with 'right of entry to all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas' as needed for the repairs" to the nearby canal. Pet. App. 2a, 16a. The commandeering order "specifically reserved to the private owners 'all such rights and privileges in said land as may be used without interfering with or abridging the rights hereby acquired' by the commandeering." *Id.* at 16a. The United States has continuously occupied the parcels since March 2006. *Id.* at 2a.

2. Petitioner became unhappy with what it perceived to be the government's "slow pace" in "identifying and paying owners of the commandeered property." Pet.

App. 13a, 55a. It sought to address that issue in June 2006 by filing a suit seeking just compensation. *Ibid.*; see *id.* at 2a. It did not, however, file suit in federal court against the United States, but instead filed a state-court suit against the State of Louisiana, without naming the United States as a defendant. *Ibid.*

In June 2009, the State for the first time sought leave in the state-court action to file a cross-complaint against the U.S. Army Corps of Engineers. Pet. App. 13a. The federal government then "almost immediately" removed the suit to federal court. *Ibid.* The case was quickly remanded, however, and the federal government was not made a party. *Ibid.*

3. On June 3, 2009, the day after the brief removal of the state-court action, the United States initiated the present suit by filing two complaints in federal district court exercising the government's eminent-domain authority to take title to the two parcels. Pet. App. 3a, 13a. The complaints named, *inter alia*, petitioner and the State as entities with a potential interest in the parcels. *Id.* at 3a. The United States simultaneously filed a declaration of taking and deposited in the registry of the court the sum it estimated to be just compensation. *Ibid.* The declaration and deposit vested title in the United States to the parcels under the Declaration of Taking Act, 40 U.S.C. 3114(b). See Pet. App. 3a.

Two days after that, petitioner filed for partial summary judgment in the state case, arguing that it had acquired title to the property by adverse possession and seeking compensation from the State for the commandeering. Pet. App. 3a. The day before a scheduled July 21 hearing on that motion, the United States filed a motion in federal court to stay the state-court proceedings. *Ibid.* The government contended that the two sets of

proceedings conflicted and that a stay was necessary to preserve the federal court's ability to decide the issues before it. *Ibid.*

The United States served the motion and a request for an expedited hearing on petitioner's counsel, as well as counsel for the State. 09-cv-03714 Docket entry Nos. 20, 21 (E.D. La. July 20, 2009). The State consented to the motion. Pet. App. 65a. Petitioner indicated that it opposed the motion, but did not enter an appearance in the federal case or inform the district court of the basis for its opposition. *Id.* at 65a n.2.

The district court granted the government's motion. Pet. App. 65a-68a. The district court determined that the case was "sufficiently analogous to the factual situation in" *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957), "where the Supreme Court held that a stay of state court proceedings was appropriate." Pet. App. 66a. "*Leiter*," the district court explained, "concerned a state court action where the United States was not a named defendant, although defendants alleged that the United States was an indispensable party," and the "United States brought a quiet title action in federal court seeking to stay and enjoin the state court proceedings." *Id.* at 66a-67a (citing *Leiter Minerals*, 352 U.S. at 222). The district court reasoned that this case was "[s]imilar to *Leiter*" because "the suit in federal court is 'the only one that [can] finally determine the basic issue in the litigation,' in this case the amount of compensation due and to whom." *Id.* at 67a (quoting *Leiter Minerals*, 352 U.S. at 226) (brackets in original).

The district court observed that, in the state-court case, petitioner was seeking an "order declaring [it] the rightful owner[] of property currently at issue in this federal matter." Pet. App. 67a. "Such a finding by the

state court," the district court reasoned, "specifically undermines this Court's ability to determine to whom compensation should be paid as part of the federal takings procedure." *Ibid.* Accordingly, while "mindful that * * * it is rare that a federal court will enjoin and stay a state court proceeding," the district court determined that "the government's motion fits squarely within clearly established law on when such a stay is appropriate." *Ibid.*

Petitioner later entered an appearance in the federal case and filed a motion to lift the injunction. Pet. App. 69a. Following a hearing, the district court issued a minute order leaving the injunction in place. *Ibid.*

4. a. The court of appeals affirmed. Pet. App. 1a-53a. It stated that it typically reviews the grant or denial of an injunction of state-court proceedings for abuse of discretion, and that "[r]egardless of the precise articulation of our appellate task, we must answer whether the stay was proper considering the facts of the particular case." *Id.* at 6a.

The court of appeals recognized that the judicially crafted prior-exclusive-jurisdiction doctrine generally provides that "when a state or federal court of competent jurisdiction has obtained possession, custody, or control of particular property, that authority and power over the property may not be disturbed by any other court." Pet. App. 8a-9a (quoting 13F Charles Alan Wright et al., *Federal Practice and Procedure* § 3631 (3d ed. 2009)). But the court observed that "*Leiter Minerals* squarely addressed the * * * attempted application of this rule and identified a set of facts that allow a government-filed action to take precedence over this long-standing principle." *Id.* at 9a-10a. In particular, the court of appeals reasoned that "*Leiter Minerals*

identified several factors that could allow the government" to obtain an injunction against state-court litigation over particular property: "the state court's inability to make a complete determination of the basic issue in the litigation, confusion that could be caused by inconsistent judgments, and a [governmental] claim of right or interest in the property that precedes the state court litigation." *Id.* at 10a.

Observing that "few" cases like this one had been decided by courts of appeals "[i]n the years following the *Leiter Minerals* decision," Pet. App. 10a, the court of appeals determined that the district court's order in this case was proper under the circumstances. *Id.* at 11a-19a. First, the court noted that the United States was not a party to the state-court proceedings, in which petitioner sought to proceed solely against the State, *id.* at 13a-14a, and that petitioner had "agree[d] that the acquisition of title by the United States and the setting of the compensation it will pay are matters solely for the federal suit." *Id.* at 14a.

Second, the court of appeals concluded that the "district court was correct about the potential conflict between state and federal judgments concerning who held title to the property at the time of the June 3, 2009 taking by the United States, and * * * the amount of compensation due." Pet. App. 17a. The court rejected petitioner's contention that "no conflict will arise because the federal court may decide title (in the State of Louisiana) and the compensation amount (presently unknown) without needing to know the result of the state court suit." *Id.* at 15a-16a. That argument, the court of appeals reasoned, "requires our accepting the premise that in 2009, title was in the State of Louisiana"—a premise that "may, however, be false." *Id.* at 16a. The court of

appeals explained that the State had commandeered the property in 2006 for the use of the federal government; that the commandeering order had purported to leave the original owners with certain rights; and that the effect of the order was unclear. *Id.* at 16a-18a. The court reasoned that, if both suits were to proceed, "[t]here could be conflicting just-compensation awards that are based on different interpretations of the interests acquired by the act of commandeering." *Id.* at 17a.

Third, the court of appeals observed that "[s]ince March 2006, the federal government has been in continuous possession of the land" and that the agreement between the State and the federal government had specifically contemplated acquisition of the property by the United States. Pet. App. 18a. "[I]t is possible," the court reasoned, that "the United States had a claim to the land that preceded the commencement of the state court lawsuit." *Id.* at 17a-18a. The court further reasoned that because "Louisiana acted in concert with the United States in taking control of this property prior to the state court litigation," the government's "prior assertion of control distinguishes [the] circumstances" here from cases relied on by petitioner in which federal courts had declined to stay state-court proceedings: *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463 (1936), and *United States* v. *Certified Industries, Inc.*, 361 F.2d 857 (2d Cir. 1966). Pet. App. 12a.

The court of appeals recognized that some of the issues in this case would involve state law, and reasoned that the district court was best situated to "[r]esolv[e] them in the most appropriate manner that still protects [its] jurisdiction." Pet. App. 17a. The court of appeals pointed out that this could include lifting the stay for the limited purpose of allowing the state court to decide cer-

tain issues and noted that a similar procedure had been followed in *Leiter Minerals* itself. *Id.* at 18a-19a (citing *Leiter Minerals*, 352 U.S. at 229-230).

b. Judge Dennis dissented, stating that "this case is neither analogous to nor controlled by" *Leiter Minerals.* Pet. App. 35a. In his view, *Leiter Minerals* "at most, creates only a very narrow exception" to the prior-exclusive-jurisdiction doctrine—namely, for cases in which "the United States sues defensively to quiet its pre-existing title to property"—"that does not apply here." *Id.* at 20a.

5. a. Petitioner sought rehearing. Pet. App. 54a. The court of appeals denied rehearing en banc. *Ibid.* The panel likewise denied rehearing, but issued a short opinion supplementing its original decision. *Id.* at 54a-56a.

The supplemental opinion emphasized that even "[t]hough the United States had not yet condemned and obtained title to the land at issue here at the time that the state court suit commenced, the United States' interest was certain enough to allow an injunction." Pet. App. 55a. The panel observed that "[t]he government's interest in and possession of this property, and its stated intent to acquire title to that property, predated [petitioner's] state court lawsuit"; that, "[i]ndeed," petitioner's "dismay about the slow pace following the commandeering is what led to its responding with its own suit in state court"; and that the government "had the right to possess the land as a result of the commandeering before the state suit commenced," by virtue of its "cooperation agreement with Louisiana." *Ibid.* "It is the aggregation of these factors," the panel explained, "and not merely a possible future interest, that comprise the United States' property interest." *Ibid.*

The panel further reasoned that "the foundational 'certainty' upon which the Supreme Court ruled when deciding *Leiter Minerals* was that the 'suit in federal court was the only one that could finally decide the basic issue in the litigation' and would foreclose confusing, inconsistent judgments." Pet. App. 55a-56a. "Our decision," it explained, "advances this rationale by ensuring the state court suit will not conflict with a later-in-time federal judgment." *Id.* at 56a.

b. Judge Dennis filed a supplemental dissent (Pet. App. 57a-64a), reiterating his view that "[t]he present case does not fall within the special situation of the *Leiter Minerals* case." *Id.* at 58a.

ARGUMENT

The court of appeals correctly concluded that, on the facts of this case, the district court's stay of the state-court inverse-condemnation suit was proper under *Leiter Minerals, Inc.* v. *United States*, 352 U.S. 220 (1957). The decision does not conflict with any decision of this Court or of another court of appeals. Indeed, the courts of appeals have rarely had occasion to consider the application of *Leiter Minerals* to a case in which the United States is a party. No further review of the court of appeals' fact-bound conclusion in this case is warranted.

1. Petitioner contends (Pet. i) that this Court should grant certiorari to address "whether an exception to the prior exclusive jurisdiction rule exists where the United States brings a later-filed federal action seeking title to property already within the jurisdiction of a state court." As petitioner acknowledges, however, the Court has already answered that question, in the affirmative, in *Leiter Minerals*.

In *Leiter Minerals*, a mineral company filed suit in Louisiana state court seeking a declaration that, under state law, it was the owner of mineral rights located under land owned by the United States. 352 U.S. at 221. The state-court plaintiff named as defendants certain lessees who had removed minerals under a lease issued by the United States, but the United States was not itself a party to that suit. *Ibid.* The United States then brought an action in federal district court to quiet title to the mineral rights, naming the state-court plaintiff and other interested parties as defendants. *Id.* at 222-223. The district court subsequently granted the government's motion for an injunction restraining the state-court plaintiff from prosecuting its action in state court. *Id.* at 223.

This Court upheld the injunction, notwithstanding the state-court plaintiff's objection (based on the prior-exclusive-jurisdiction doctrine) that "the state court had already assumed jurisdiction over the property in question." 352 U.S. at 223; see Pet. Br. at 21-35, *Leiter Minerals*, *supra* (No. 56-26). The Court explained that "[t]he suit in the federal court was the only one that could finally determine the basic issue in the litigation—whether the title of the United States to the mineral rights was affected by [a Louisiana statute]." *Leiter Minerals*, 352 U.S. at 226. The Court further observed that the United States "was not a party to the state suit" and that the state-court proceedings "could not settle the basic issue in the litigation and might well cause confusion if they resulted in a judgment inconsistent with that subsequently rendered by the federal court." *Id.* at 226-227. The Court concluded that, in issuing the injunction, the federal district court had properly acted "to prevent the effectuation of state court

proceedings that might conflict with the ultimate federal court judgment." *Id.* at 228.

The Court distinguished its prior decision in *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 463 (1936) (*Bank of New York*). In that case, the government had unsuccessfully sought to enjoin state-court proceedings concerning the distribution of funds from three Russian insurance companies, based on its claim to some of the funds. *Leiter Minerals*, 352 U.S. at 227; see *Bank of New York*, 296 U.S. at 470-481. This Court affirmed the denial of the injunction in *Bank of New York*, noting that the state court had obtained jurisdiction over the funds first; that "there were numerous other claimants, indispensable parties, who had not been made parties to the federal court suit"; and that requiring the United States to proceed in state court would not "'impair[] any rights' of the United States" or "'require any sacrifice of its proper dignity as a sovereign.'" *Leiter Minerals*, 352 U.S. at 227 (quoting *Bank of New York*, 296 U.S. at 480-481).

The Court in *Leiter Minerals* reasoned that "[t]he situation" in *Leiter Minerals* was "different" from *Bank of New York* because "[a]ll the parties in the state court proceeding have been joined in the federal proceeding." *Leiter Minerals*, 352 U.S. at 227. "Moreover," the Court continued, "the *Bank of New York* case presented the more unusual situation where the United States, like any private claimant, made a claim against funds that it never possessed and that were in the hands of depositaries appointed by the state court." *Ibid.* In *Leiter Minerals*, however, "a private party [was] seeking by a state proceeding to obtain property currently in the hands of persons holding under the United States"; "the United States [was] seeking to protect that possession

and quiet title by a federal court proceeding"; and "since the position of the United States is essentially a defensive one, [the Court thought] it should be permitted to choose the forum in this case, even though the state litigation ha[d] the elements of an action characterized as *quasi in rem*." *Id.* at 227-228.

2. Because *Leiter Minerals* already recognizes an exception to the prior-exclusive-jurisdiction doctrine, the only question presented by this case is whether the facts here fall within that *Leiter Minerals* exception. The court of appeals correctly concluded that they do.

To begin with, as in *Leiter Minerals*, the United States' rights with respect to the disputed property cannot be settled by the state court. 352 U.S. at 226. To the contrary, the filing of the declaration of taking and deposit of compensation in the *federal*-court proceeding vested title to the parcels in the United States. See p. 3, *supra*. Petitioner itself acknowledged in the court of appeals that "the acquisition of title by the United States and the setting of the compensation it will pay are matters solely for the federal suit." Pet. App. 14a. Furthermore, as in *Leiter Minerals*, the United States is "not a party to the state suit," and the state suit "might well cause confusion if [it] resulted in a judgment inconsistent with that subsequently rendered by the federal court." 352 U.S. at 226-227. The court of appeals rejected petitioner's contention that the state and federal suits are distinct, see Pet. App. 14a-18a, and petitioner does not directly contest that conclusion in this Court (nor would that fact-bound issue warrant this Court's review in any event).

This case, moreover, involves the same factors that *Leiter Minerals* identified in distinguishing *Bank of New York*. First, the relevant parties in the state-court

proceeding "have been joined in the federal proceeding." *Leiter Minerals*, 352 U.S. at 227. Second, the United States is asserting its right to property already in its possession, rather than "ma[king] a claim against funds that it never possessed and that were in the hands of depositaries appointed by the state court." *Ibid.*

Accordingly, here, as in *Leiter Minerals*, the district court could permissibly conclude that a stay was necessary "to prevent the effectuation of state court proceedings that might conflict with the ultimate federal court judgment." *Leiter Minerals*, 352 U.S. at 228. At the very least, the court of appeals' conclusion that the relatively unique circumstances of this case are materially similar to *Leiter Minerals* does not warrant further review in this Court. Cf. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

3. In attempting to frame this case as presenting a legal question that would merit this Court's attention, petitioner relies on an overly narrow reading of *Leiter Minerals* and an overly broad reading of the decision below.

a. Petitioner errs in reading *Leiter Minerals* to turn solely on a distinction between "offensive" and "defensive" government litigation. See, *e.g.*, Pet. 14, 16. Petitioner is correct that the "essentially * * * defensive" posture of the United States was mentioned by the Court in *Leiter Minerals* as one difference between that case and *Bank of New York*. See *Leiter Minerals*, 352 U.S. at 228. But that observation, which came at the end of the Court's discussion of the prior-exclusive-jurisdiction doctrine and which was introduced by the phrase "[m]oreover," was far from the only relevant con-

sideration in concluding that the doctrine did not apply. *Id.* at 227-228. Rather, as discussed above, the Court relied also on several other factors: that "[t]he suit in the federal court was the only one that could finally determine the basic issue in the litigation"; that the United States "was not a party to the state suit"; that the state-court proceedings "could not settle the basic issue in the litigation"; and that the state-court proceedings "might well cause confusion if they resulted in a judgment inconsistent with that subsequently rendered by the federal court." *Id.* at 226-227.

Petitioner does not argue that the court of appeals erred in concluding that those other factors supported an injunction on the facts of this case. See Pet. App. 10a-18a, 55a-56a; see also pp. 10-13, *supra*. Moreover, even assuming for argument's sake that *Leiter Minerals* did turn solely on whether the United States' position is "offensive" or "defensive," the United States' posture in this eminent-domain case can nevertheless be regarded as "essentially * * * defensive" in the relevant sense. 352 U.S. at 228. The United States' interest in the subject property first arose in March 2006, three months before petitioner filed its inverse-condemnation suit in state court in June 2006. Pet. App. 17a-18a, 55a. Petitioner filed that suit because of the perceived delays in compensation for the United States' use of the property. *Id.* at 13a, 55a. And the state-court suit alleged an ownership interest in the same parcels of which the United States already had taken possession and which the United States already intended to acquire. *Id.* at 2a, 11a-12a, 55a-56a. The United States thus acted "essentially defensively" within the meaning of *Leiter Minerals* by proceeding "to protect [its] possession" by filing

an eminent-domain suit and declaration of taking in federal district court. 352 U.S. at 228; see Pet. App. 3a.

b. Petitioner further errs by reading the decision below as "fashion[ing] a new test"—namely, a test solely "based on the United States' 'prior possession' and possible 'future interest' in the property"—for when a stay of state-court proceedings is warranted. Pet. 14; see also Pet. 17. That description substantially oversimplifies the court of appeals' decision, which, as previously discussed, considered a variety of factors in affirming the district court's stay order. Pet. App. 10a-19a; 55a-56a; see pp. 5-9, *supra*. Indeed, the court of appeals expressly stated that its conclusion was based on an "aggregation of * * * factors, and *not* merely a possible future interest" in the property. Pet. App. 55a (emphasis added). And on the issue of prior possession, the court emphasized that the United States not only took possession of the subject parcels before the filing of petitioner's state-court suit, but also stated its intent at that time to acquire title to that property. *Ibid.*; see *id.* at 17a-18a. As the court of appeals recognized, those unusual circumstances make this case materially similar to *Leiter Minerals* and distinguish the case from one in which the prior-exclusive-jurisdiction doctrine might be controlling. *Id.* at 11a-12a, 55a.

4. Petitioner is also incorrect in suggesting (Pet. 14-17) that the court of appeals' determination in this case conflicts with the decisions of other courts of appeals. Petitioner identifies no circuit court decision that has considered the application of *Leiter Minerals* in circumstances materially similar to this case and reached a different result.

Petitioner primarily focuses (Pet. 7, 15) on the Second Circuit's decision in *United States* v. *Certified In-*

dustries, Inc., 361 F.2d 857 (1966). In that case, a contractor had sued a building-management company in state court to collect a debt. *Id.* at 859. The United States, in order to collect back taxes, later asked a federal court to enjoin the state-court action and to impose a trust under state law on the funds owed to the contractor. *Ibid.* The Second Circuit concluded that an injunction would not be proper in that situation. *Id.* at 860-862. The Second Circuit reasoned that the circumstances were more like *Bank of New York* than like *Leiter Minerals*, noting that the state-court litigation did not involve any property in the possession of the United States; that the United States might have been able to assert its rights in the state court; that the "sovereign dignity" of the United States did not "call for protection of the United States from its own mistake in failing to make its claim by way of intervention in, or the commencement of, a state proceeding where its sole claim for relief is made under a state statute"; and that the United States' position was not "a defensive one." *Id.* at 860 n.2, 862.

The court of appeals here correctly recognized a key difference between this case and *Certified Industries*, observing that in that case, unlike in this one, "the government had no control over or title in the property involved in the state court suit[] [it] attempted to enjoin in federal court." Pet. App. 12a; see *id.* at 11a ("In *Certified Industries*, the court focused on the government's lack of possession of the property at issue in the state court suit."). Other differences include the source of law for the United States' claim (here, federal law; there, state law); the time at which the federal government first asserted an interest in the disputed property (here, before the state suit was filed; there, after the state suit

was filed); and the reason why the federal and state proceedings might conflict (here, because both involve the issue of compensation for the government's use of property; there, because the government had failed to timely file a state suit).

Petitioner nevertheless contends (Pet. 15) that *Certified Industries* indicates that the Second Circuit would have overturned the injunction in this case. In petitioner's view, *Certified Industries* holds that *Leiter Minerals* "applies only where the United States' lawsuit is 'defensive,'" rather than offensive. *Ibid.* Petitioner's contention is flawed in two respects. First, as discussed above, *Certified Industries* looked not merely to whether the United States' posture was "defensive," but instead to several factors, in determining whether an injunction was warranted. 361 F.2d at 861-862. Second, even assuming *Certified Industries* could be read to support petitioner's "offensive/defensive" dichotomy, it is at best unclear whether the Second Circuit would in fact consider the United States' position here—where it seeks to establish the amount and recipient of just compensation for land which it currently occupies—as "offensive." See pp. 14-15, *supra*.

Petitioner purports to find further support for its "offensive/defensive" distinction in asset-forfeiture cases from the Seventh, Ninth, and Eleventh Circuits. See Pet. 16 (citing *United States* v. *$79,123.49 in U.S. Cash and Currency*, 830 F.2d 94 (7th Cir. 1987); *United States* v. *One 1985 Cadillac Seville*, 866 F.2d 1142 (9th Cir. 1989); and *United States* v. *$270,000 in U.S. Currency*, 1 F.3d 1146 (11th Cir. 1993) (per curiam)). None of those cases, however, even cites *Leiter Minerals*, much less applies an "offensive/defensive" approach. Nor do any of them involve, as this case does, disputes over in-

terests in, or just compensation for, land currently occupied by the United States. Like *Certified Industries*, the asset-forfeiture cases cited by petitioner are simply too dissimilar from this one to support petitioner's contention that other courts of appeals would have reached a different result on the unusual facts here.

Petitioner additionally errs in arguing (Pet. 17) that the court of appeals' decision in this case conflicts with *United States* v. *Akin*, 504 F.2d 115 (10th Cir. 1974), rev'd, *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800 (1976).[*] *Akin* supports, rather than conflicts with, the decision below. In *Akin*, the Tenth Circuit relied on *Leiter Minerals* to support the proposition that the "presence of the United States as a plaintiff seeking to establish rights which have a national and sovereign character is * * * a factor

[*] As petitioner notes (Pet. 17 n.2), this Court reversed the Tenth Circuit's decision in *Akin* in *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800 (1976). The Tenth Circuit had concluded that the district court should have adjudicated a particular water-rights suit that was also the subject of state proceedings. *Id.* at 806. This Court, while recognizing that "[o]nly the clearest of justifications will warrant dismissal," nevertheless determined that several case-specific factors warranted abstention by the district court "in this particular case." *Id.* at 817-820. The Court did not specifically address the particular statement in *Akin* on which petitioner relies.

Colorado River did briefly discuss the prior-exclusive-jurisdiction rule and cited *Leiter Minerals* as an example of a case outside that rule. 424 U.S. at 818. The Court additionally emphasized the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Id.* at 819. Petitioner's position in this case—which would suggest that the district court should defer to a state court in the adjudication of rights in land as to which the United States has taken title under the Declaration of Taking Act, 40 U.S.C. 3114—is at odds with that principle.

which militates strongly against" a federal court deferring to a state court and abstaining from exercising its jurisdiction. 504 F.2d at 122. Here, as in *Akin*, the government was "seeking to establish rights which have a national and sovereign character," namely, by exercising its eminent-domain authority over parcels necessary for a post-Katrina construction project by the U.S. Army Corps of Engineers. See Pet. App. 2a. Thus here, as in *Akin*, that factor weighs in favor of federal-court jurisdiction.

5. Finally, petitioner is incorrect in suggesting (Pet. 19) that this case presents a question of "recurring and * * * widespread importance." The relevant statistic is not how many property-related cases the United States has filed over the last decade (Pet. 19-20), but instead how often the relevant legal issue—namely, the application of *Leiter Minerals*—arises. As the court of appeals observed, "[i]n the years following the *Leiter Minerals* decision, courts of appeals have had few opportunities to apply its holding to cases involving the United States as a party." Pet. App. 10a. Indeed, it is telling that of the cases petitioner asserts are in conflict with the decision below, only two of them—*Akin* and *Certified Industries*—cite *Leiter Minerals*, and they were decided over 37 and 45 years ago, respectively.

Moreover, the application of *Leiter Minerals* may wind up having little practical effect even in this case. The district court may follow the court of appeals' suggestion (based on *Leiter Minerals*) to lift the stay in order to allow the state court to resolve some of the disputed issues of state law, Pet. App. 18a-19a, in which case the net effect of the district court's injunction could be quite limited. No further review of the court of ap-

peals' application of *Leiter Minerals* to the particular facts of this case is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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