No. _____

In The Supreme Court of the United States

IN RE SARA GONZÁLEZ FLAVELL,
Petitioner,

v.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
No. 21-7060 September Term, 2020

Filed on July 9,2021 C.A. No. 20-623 (CKK)

In re: Sara Gonzalez Flavell, *Petitioner*
BEFORE: Rogers, Millett, and Katsas, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, a writ of prohibition, and a stay of district court proceedings, it is ORDERED that the petition be denied. Petitioner has not demonstrated that she has "no other adequate means" to attain the relief she desires. United States v. Fokker Servs. B.V., 818 F.3d 733, 747 (D.C. Cir. 2016). Petitioner has already filed in district court a motion that will require the district court to determine its own jurisdiction, which provides an adequate means for petitioner to attain the relief she seeks.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. Per Curiam.

FOR THE COURT: Mark J. Langer, Clerk.
BY: /s/. Manuel J. Castro Deputy Clerk

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SARA GONZALEZ FLAVELL *Plaintiff*

v.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Defendant

Civil Action No. 20-623 (CKK)

MEMORANDUM OPINION & ORDER

(June 9, 2021)

Plaintiff Sara Gonzalez Flavell. proceeding Pro se, filed this action in the Superior Court of the District of Columbia seeking reimbursement for certain employment benefits allegedly owed to her by her former employer. Defendant International Bank for Reconstruction & Development ("IBRD"). IBRD removed this action to federal court. Plaintiff moved to remand the action to state court. The Court denied without prejudice Plaintiff's motion to remand.

Now pending before the Court are Plaintiff's [38] Expedited Motion to Certify Court Order Denying Plaintiffs Motion to Remand for Interlocutory Appellate Review and [39] Motion to Stay. Plaintiff requests that the Court certify for interlocutory appeal its order denying Plaintiffs motion to remand and stay the proceedings in this case pending the Court's consideration of this request and/or appellant proceedings. Upon review

of the pleadings[1] the relevant legal authority, and the record as a whole. for the reasons below, the Court shall **DENY** Plaintiffs motions.

I. BACKGROUND

On February 6. 2020, Plaintiff filed a civil action against IBRD in the Superior Court of the District of Columbia ("D.C. Superior Court"). See Compl., ECF No. 1-1. On March 3, 2020, IBRD removed Plaintiff's action from the D.C. Superior Court to this Court, pursuant to 28 U.S.C. § 1441(a). To support removal, IBRD explained that it is a "public international organization" under the International Organizations Immunities Act of 1945 ("IOIA""), Not. of Removal 5, ECF No.1, and. therefore, receives "the same privileges and

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[1] [1] 1 The Court's consideration has focused on the following:

- Plaintiff's Expedited Motion to Certify Court Order Denying Plaintiffs 28 U.S.C.§ 1447(c) Motion to Remand for Interlocutory Appellate Review Pursuant to 28 U.S.C. §1292(b) and Request for Expedited Ruling (""Pl.'s Mot. to Certify"), ECF No. 38;
- Plaintiff's Expedited Motion to Stay Proceedings, Briefings, and Filings Pending Courts Decision on the Plaintiff's Motion for Certification ... and Pending Appellate Court's Issuance of its Decision on the Dismissal or Plaintiffs Motion to Remand ("Pl.'s Mot. to Stay'"), ECF No. 39;
- IBRD's Opposition to Plaintiffs Motion for Certification and Motion to Stay ("IBRD's Opp'n'), ECF No. 42: and
- Plaintiffs Reply to Defendant's Opposition to Plaintiffs Motion for Certification ("Pl.'s Reply"). ECF No. 44.

In an exercise of its discretion. the Court finds that holding oral argument in this action would not be or assistance in rendering a decision on the pending motions. See LCvR 7(f).

immunities as foreign nations conferred by the Foreign Sovereign Immunities Act ("FSIA")." *id.* / 6. IBRD contended that because "the Court must apply the intricacies of federal case law interpreting the FSIA at the outset of any suit against an international organization, Plaintiffs claims arise under a federal question."' *Id.* In sum. IBRD asserted that "[t]his Court has original jurisdiction over this matter pursuant to the IOIA, 22 U.S.C. § 288a, the FSIA, 28 U.S.C. § 1330(a), ... and because it raises a question arising under federal law, 28 U.S.C. § 1331." *id.* / 7.

One week after its removal under §1441(a), IBRD filed a motion to dismiss Plaintiff's breach of contract claim for lack of subject matter jurisdiction. *See* Def.'s Mot. to Dismiss at 1, ECF No. 7. IBRD argued that this Court lacked jurisdiction over Plaintiff's claims because IBRD "is immune from suit and legal process pursuant to its Articles of Agreement and the [IOIA]." *Id.* at 1. In particular, IBRD explained that "having to defend against a lawsuit based on Plaintiff's employment-related allegations interferes with the pursuit of [IBRD's] chartered objectives" and "would contravene the express language of Article VII section 1 "of its Articles of Agreement. *Id.* at 6 (quotation omitted). Accordingly, IBRD maintained that this Court "lacks subject-matter jurisdiction and the Complaint should be dismissed with prejudice." *Id* at 5.

In view of Plaintiff's *pro se* status, the Court issued an order on March 10, 2020, pursuant to *Fox v. Strickland*, 837 F.2d 507 (D.C. Cir. 1988), notifying Plaintiff of her obligation to respond to IBRD's dispositive motion. *See* Order at 1, ECF No.

8. The Court also "order[ed] Plaintiff to include in her response to [IBRD's] Motion to Dismiss either an Amended Complaint, or a precise statement of the nature of the claims she [wa]s making in her Complaint and the legal grounds in order to assist the Court and parties in determining her claims." *Id.*

On March 17, 2020, Plaintiff promptly filed a motion to remand her complaint to the D.C. Superior Court. *See* Mot. to Remand at 1, ECF No. 9. In that motion, Plaintiff contended that her "claim [was] based on state law," *id.* at 19, and that IBRD's notice of removal included "no plausible case [for] federal question jurisdiction ... "*id.* at 16. As such, Plaintiff requested that this Court "remand [her] case to state court in accordance with 28 U.S.C. §1447(c)." *Id.* at 19. In turn, IBRD filed an opposition brief on March 31, 2020, which again argued that "[p]ursuant to the IOIA, international organizations enjoy the same privileges and immunities as foreign nations under the FSIA, so this action may be removed to federal court." Def.'s Opp'n to Mot. to Remand at 3, ECF No. 13. Additionally, IBRD's opposition brief asserted, for the first time, that the Court alternatively has original jurisdiction pursuant to Section 10 of the Bretton Woods Act of 1945." *Id.* (citing 22 U.S.C. §286g).

In June 2020; after moving for remand, Plaintiff filed an amended complaint. *See* Order, ECF No. 8 at 1. Plaintiff made clear that her amended complaint was filed specifically to comply with what "the Court ordered ... in its Order of March 10. 2020." Pl.'s Mot. to Amend, ECF No. 22, at 1. Plaintiff's amended complaint reiterated, in greater detail, her allegations that IBRD had

wrongfully withheld benefit payments contractually owed to Plaintiff upon her termination in December 2017. *See* Am. Compl. at 1-12, ECF No. 22-2. In her amended complaint, Plaintiff set forth eight common-law causes of action, for: (I) Breach of Contract; (2) Conversion; (3) Misappropriation and/or Dctinue; (4) Unjust Enrichment and/or Restitution; (5) Fraud and Deceit; (6) Misrepresentation; (7) Nonfeasance and/or Malfeasance; and (8) Tortious Interference with Contract. See *id.* at 55-103. In light of this amended pleading, the Court denied IBRD's original motion to dismiss without prejudice and ordered IBRD to respond to Plaintiff's amended complaint by June 26, 2020. *See* Order at 1, ECF No 23. IBRD subsequently filed a renewed motion to dismiss Plaintiff's amended complaint. again arguing that this Court lacks subject matter jurisdiction over Plaintiff's claims because IBRD is "immune from suit and legal process pursuant to its Articles of Agreement and the [IOIA]." Def.'s Mem. of P. & A. in Supp. of Second Mot. to Dismiss at 1, ECF No. 24-1.

On March 25,2021, the Court issued an order denying without prejudice Plaintiffs Motion to Remand and denying without prejudice IBRD's Motion to Dismiss. *See* Order Denying Mot. to Remand & Mot. to Dismiss. ECF No. 32. The Court was not persuaded by IBRD's arguments that the IOIA, FSIA, or Bretton Woods Act support removal jurisdiction over Plaintiff's law suit. See Mem. Op. at 6-9, ECF No. 33. The Court also noted that it was unpersuaded by IBRD's "attempt to invoke federal question jurisdiction ... based on its own potential federal immunity to Plaintiffs common law action."

Id at 12. However, the Court noted that "there does exist a narrow exception to the traditional 'well-pleaded complaint' rule," articulated by the Supreme Court in *Grable & Sons Metal Prods.. Inc. v. Darue Engineering & Mfg.,* 545 U.S. 308 (2005). *Id.* Specifically, "a purely state-law claim may still trigger federal question jurisdiction, where it 'necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities' ", *Id.* (quoting *Gunn v. Minton*, 568 U.S. 251, 258 (2013)). Although IBRD "ma[de] no attempt in either its Notice of Removal or opposition brief to invoke the Grable exception," *id.* at 13, the Court observed:

> Plaintiff has filed a parallel action against several IBRD officers and employees for alleged wrongdoing also related to Plaintiff's December 2017 termination. *See* Gonzalez Flavell v. Kim et al., 21-CV-115 (CKK), Compl., ECF No. 1-3. at / 1-10. As with this present action, the defendants in Kim removed Plaintiff's original complaint from D.C. Superior Court and are now litigating Plaintiff's pending motion to remand. Unlike IBRD, however, the defendants in *Kim* have raised the *Grable* exception as a basis for federal jurisdiction and provide detailed arguments in favor of. its applicability. *See Gonzalez Flavell v. Kim et al.*, 21-CV-l15 (CKK), Opp'n. to Remand, ECF

> No. 23, at 3-12. In order to avoid inconsistent jurisdictional rulings in these parallel actions, the Court will deny Plaintiffs motion to remand without prejudice. Plaintiff may then refile her remand motion and, in response, IBRD may directly address the applicability or Grable and its progeny to the Court's removal jurisdiction over Plaintiffs action.

Id. at 13-14.

In a motion dated April 15, 2021, Plaintiff sought reconsideration of the Court's Order denying her Motion to Remand. See Mot. for Reconsideration, ECF No. 34. The Court denied Plaintiff's motion for reconsideration because Plaintiff had not identified an intervening change in law. the discovery of new evidence, or a clear error of law in the Court's Order justifying reconsideration. *See*-Order. ECF No. 36.

On April 23. 2021, Plaintiff filed her pending Motion to Certify. in which she requests that the Court certify for interlocutory appeal its order denying her motion to remand. Pl.'s Mot. to Certify at 2. Plaintiffs motion is based on her claim that such an appeal raises a "substantial question" of law, specifically whether "a *pro se* Plaintiff, or any Plaintiff, should have to file a Motion to Remand twice when there is no clear basis on which the removal was made and/or in case where it is unclear that removal should be allowed". *Id.* Plaintiff argues that 28 U.S.C. § 1292(b) and the collateral order doctrine supply the legal bases for the requested interlocutory appeal. *See id.* al 4, 7. Plaintiff contemporaneously filed her Motion to Stay, in

which she requests that the Court stay proceedings in this case, including its order directing Plaintiff to re-file her Motion to Remand. *See* Pl.'s Mot. to Stay at 7.

On April 29, 2021, the Court ordered IBRD to respond to Plaintiff's Motion to Certify and, in light of its order for this briefing, extended Plaintiff's time to re-file her motion to remand.[2] Order. ECF No. 40. The Court also held in abeyance Plaintiffs Motion to Stay pending its resolution of her Motion to Certify. *Id.* IBRD filed its opposition to Plaintiff's Motion to Certify on May 7. 2021, and Plaintiff filed a reply on May 17, 2021. *See* Def.'s Opp·11, ECF No. 41; Pl.'s Reply, ECF No. 44.

II. DISCUSSION

Federal courts of appeals have jurisdiction only over "final decisions" of the district courts. 28 U.S.C. §1291. "The Supreme Court has defined as final only a decision that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Neal v. Brown*, 980 F.2d 747, (D.C. Cir. 1992) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463,467 (1978)) (additional

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[2] 2 In its April 29, 2021 Order. the Court extended Plaintiffs time to re-file her motion to remand from May 3. 2021 until May 17, 2021. Plaintiff still re-filed her motion to remand on May 3, 2021. See Pl.'s Second Motion to Remand, ECF No. 41. Upon receipt of Plaintiffs second motion to remand. the Court stayed its consideration of that motion pending its resolution of her Motion Certify and Motion to Stay. See Order, ECF No. 43.

citations and quotation marks omitted). A decision to deny a motion to remand plainly does not end the litigation, but merely "determines that it will proceed in federal court." [3] *Id.* at 748; see *Caterpillar v. Lewis.* 519 U.S. 61. 74 (I 996) ("[A]n order denying a motion to remand, standing alone, is [o]bviously ... not final and [immediately] appealable as of' right." (internal citations and quotation marks omitted)). Accordingly, a denial of a motion to remand is not appealable under§ 1291 as a ' final" order. *Id.* (collecting cases and noting that "[i]n holding that a denial of a motion to remand is not appealable under § 1291, [the D.C. Circuit] is in accord with every other federal circuit court of appeals that has addressed this issue").

Plaintiff, however, asserts two legal bases in support of her request to certify for interlocutory appeal the Court's order denying her motion to remand: (1) 28 U.S.C. § 1292(b) and (2) the collateral order doctrine. *See* Pl.'s Mot. to Certify at 4, 7. Because the Court concludes that neither basis is

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[3] Plaintiff suggests that the Court's order is final with respect to the purported "procedural irregularities made by [IBRD] in its legally defective [Notice of Removal" because the Court's order denying her motion to remand did not address those procedural deficiencies. Pl.'s Reply at 6. But, by "timely moving to remand, [plaintiff] did all that was required to preserve [her] objection to removal," including based on the procedural grounds she asserted in her original motion to remand. *Caterpillar Inc. v. Lewis* 519 U.S. 61,74 (1996). Moreover, the Court denied Plaintiff's initial motion to remand *without prejudice* and ordered her to *re-file* her motion.

appropriate in this case, the Court shall decline to certify for interlocutory review its order denying without prejudice her motion to remand. The Court shall also deny Plaintiff's request for a stay in this case and order the parties to complete briefing on Plaintiff's second motion to remand.

A. Certification for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b).

Plaintiff first relies on § 1292(b) as the basis for her request that the Court certify for interlocutory appeal its order denying her motion to remand. "A party seeking certification pursuant to § 1292(b) must meet a high standard to overcome the strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals." *Am. Society for Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus*, 246 F.R.D. 39, 43 (D.D.C. 2007) (quoting *Judicial Watch. Inc. v. Nat'l Energy Policy Dev. Grp.*, 233 F. Supp. 2d 16. 20 (D.D.C. 2002) (additional citation omitted)). "Although courts have discretion to certify an issue for interlocutory appeal, interlocutory appeals are rarely allowed ... the movant 'bears the burden of showing that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of final judgment.'" *Judicial Watch*, 233 F. Supp. 2d at 20 (quoting *Virtual Def and Dev. Int 'l, Inc. v. Republic of Moldova* ', 133 F. Supp. 2d 9, 22 (D.D.C. 2001)); see *also Tolson v. United States*, 732 F.2d 998. 1002 (D.C. Cir. 1984) ("Section 1292(b) is meant to be applied in relatively few situations and should not be read as a significant

incursion on the traditional federal policy against piecemeal appeals."); *In re Vitamins Antitrust Litigation*, No. 99-197 (TFH), 2000 WL 673936, at* I (D.D.C. Jan. 27, 2000) ("[T]he law is clear that certification under§ 1292(b) is reserved for truly exceptional cases.").

Section 1292(b) provides for interlocutory appeals from "otherwise not immediately appealable orders, if conditions specified in the section are met, the district court so certifies, and the court of appeals exercises its discretion to take up the request for review." *Caterpillar Inc.*, 519 U.S. at 74 n. 10. The moving party must demonstrate that the order at issue (1) involves a controlling question of law; (2) offers substantial ground for difference of opinion as to its correctness and; (3) if appealed immediately, would materially advance the ultimate termination of the litigation. *See* § 1292(b). Even if the movant establishes the three criteria under section 1292(b), the Court may still deny certification, as the decision to certify an order for interlocutory appeal is entirely within the district court's discretion. *See Swint,.. Chambers County Comm'n*, 514 U.S. 35, 47 (1995) ("Congress ... circumscribed [a district court's] authority to certify for immediate appeal interlocutory orders deemed pivotal and debatable."). Because the Court finds that Plaintiff' has not satisfied the three statutory factors or demonstrated that "exceptional circumstances" justifying interlocutory appeal apply here, certification pursuant to § 1292(b) is not warranted.

Plaintiff argues that the Court's order denying without prejudice her motion to remand involves a

"controlling issue of law" because "resolution or the remand question could determine the course of the litigation of the Plaintiffs claim." Pl.'s Mot. to Certify at 7-8. To be sure, the resolution of whether this case was properly removed will determine whether this case may proceed in this Court or whether it must be remanded to D.C. Superior Court. But that question must be addressed by *this Court* in the first instance; this Court has *not* yet determined whether removal was appropriate or if it has jurisdiction to consider the merits of Plaintiff's claims. See Mem. Op. at 14, ECF No. 33. Rather. because the Court is "required to satisfy [itself of [its] own jurisdiction before proceeding to the merits of a case," · *New York v. Microsoft Corp.,* 209 F. Supp. 23 132, 144 (D.D.C. 2002), the Court concluded that additional briefing - specifically addressing the applicability of *Grable* to this case - would aid its determination of its own jurisdiction. *See id.* at 13-14.

Plaintiff also argues that the questions of whether the Court can order her to "re-file a Second Motion to Remand to address arguments not raised" and whether "arguments in different cases can be relied on by different Defendants" are controlling issues of law. Pl.'s Mot. to Certify at 3. 9: *see also id* at 9 ("l]f a District Court is unclear whether it should remand or not should it ask for a Further re-filing of a new Motion to Remand from a pro se Plaintiff to address matters not raised?"). Here. the Court's order directed the parties to address a legal issue relevant to the Court's jurisdiction because the Court has a "continuing duty to examine its subject matter jurisdiction." *Bronner v. Duggan,* 962 F.3d 596, 601 (D.C. Cir. 2020) (internal citations). Its

order requiring the parties to file additional briefing to aid the Court's assessment of its own jurisdiction was not a "controlling issue of law" justifying appellate review, but rather an effort to obtain additional information from the parties to address lingering concerns about its jurisdiction. *See, e.g., id.* at 599 (affirming district court's dismissal order after the district court had ordered additional briefing to address "lingering concerns" about its jurisdiction).

Plaintiff also has not demonstrated that "substantial ground for difference of opinion" exists with respect to the Court's order.[4] Plaintiff argues

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[4] 4 In support of this argument. Plaintiff contends that the Court's order denying her motion to remand demonstrates "that this element is met." because the Court "states that there may be a 'Grable' · argument to be made, and, asks that the Plaintiff make it and then answer it." Pl.'s Mot. to Certify at 9, ECF No. 33. This is *not* what the Court's order required, as the Court has previously endeavored to clarify. *See* Mem. Op. at 14, ECF No. 33 ("In order to avoid inconsistent jurisdictional rulings in these parallel actions, the Court will deny Plaintiff's motion to remand without prejudice. Plaintiff may then *refile* her remand motion and, *in response,* IBRD may directly address the applicability of *Grable* and its progeny to the Court's removal jurisdiction over Plaintiffs action." (emphases added)): Order, ECF No. 36 ("The Court notes that its March 25. 2021 Memorandum Opinion indicated that '"Plaintiff may ... re-file her remand motion and, in response. [Defendant] may directly address the applicability of *Grable* and its progeny to the Court's removal jurisdiction over Plaintiff's action. Plaintiff will have the opportunity to *reply* to Defendants arguments raised in response to her refiled motion to remand in a reply brief." (internal citation and quotation marks omitted)).

that there is --substantial difference ' of opinion as to whether her case may proceed in federal court. Pl.'s Mot. to Certify at 9. While that may or may not be the case, *this Court* has yet to decide whether her case may proceed in Federal court or whether it must be remanded. Plaintiff's arguments that certification at this stage would "materially advance the disposition of litigation" because "the prospect of an immediate remand to D.C. Superior Court [would] thereby avoid otherwise needless material expense" fail for the same reason. *Id* at 10. She presupposes that this Court lacks jurisdiction over her claims, an issue this Court has not yet determined. Certifying its order for interlocutory review at this juncture would not materially advance the litigation because this Court has yet to reach any conclusion regarding the very issue about which Plaintiff seeks appellate review.

B. Collateral Order Doctrine.

Plaintiff also argues that the Court's order denying without prejudice her motion to remand is appealable pursuant to the "collateral order doctrine." · *See id* at 4. To be immediately appealable under the collateral doctrine, an order must: (1) "conclusively determine the disputed question"; (2) "resolve an important issue completely separate from the merits of the action"; and (3) "be effectively unreviewable on appeal from a final judgment." · *Doe v. Exxon Mobil Corp.*, 473 F.3d 345, 349 (D.C. Cir. 2007). The Supreme Court has "*repeatedly* emphasized the narrowness of the collateral order doctrine," *id.* (emphasis in original): "[This] 'narrow' exception *should stay that way* and never be allowed to swallow the general rule ... that a party

is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of district court error at any stage of the litigation may be ventilated." *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863. 868 (1994) (emphasis added).

The D.C. Circuit has directed that "[t]he denial of a motion to remand does not fall within the collateral order doctrine ... because such a denial does not 'render impossible any review whatsoever..,, *Neal,* 980 F.2d at 748. This binding precedent plainly forecloses application of the collateral order doctrine to the Court's order denying Plaintiffs motion to remand. Moreover, the Court's earlier order, as discussed above, did not "conclusively determine the disputed question" - whether the Court has removal jurisdiction over Plaintiffs claims. For these reasons, the Court's order denying Plaintiffs Motion to Remand is not immediately appealable under the narrow collateral order doctrine.

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Because the Court shall deny Plaintiffs Motion to Certify. it also finds that a stay of this matter is not required, and so shall also deny Plaintiff's pending Motion to Stay. As provided below. the Court shall order the parties to complete briefing regarding Plaintiff's [41] Second Motion to Remand.

III. CONCLUSION & ORDER

For the foregoing reasons, it is this 9th day of June, 2021, hereby

ORDERED that Plaintiffs [38] Motion to Certify and [39] Motion to Stay are **DENIED**;

it is further

ORDERED that Defendant shall file a response to Plaintiff's [41] Second Motion to Remand by **no later than June 18, 2021** and Plaintiff shall file her Reply **by no later than July 2, 2021.**

The Clerk of Court shall mail a copy of this Memorandum Opinion & Order to Plaintiff's address of record.

SO ORDERED.

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SARA GONZALEZ FLAVELL *Plaintiff*
v.
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
Defendant
Civil Action No. 20-623 (CKK)

ORDER
(March 25, 2021)

For the reasons set forth in the accompanying Memorandum Opinion, the Court DENIES WITHOUT PREJUDICE Plaintiff's [10] Motion to Remand. Plain tiff shall refile her motion for remand by or before APRIL 23, 2021. At this this time, the Court also DENIES WITHOUT PREJUDICE IBRD's (24] Motion to Dis miss . IBRD may refile this motion later in these proceedings, if appropriate.

SO ORDERED.

/s/
Date: March 25, 2021.
COLLEEN KOLLAR-KOTELLY
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SARA GONZALEZ FLAVELL *Plaintiff*
v.
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
Defendant
Civil Action No. 20-623 (CKK)

MEMORANDUM OPINION
(March 25, 2021)

Plaintiff Sara Gonzalez Flavell, proceeding *pro se*, filed this action in the Superior Court of the District of Columbia seeking reimbursement for certain employment benefits allegedly owed to her by Defendant International Bank for Reconstruction & Development ("IBRD"). IBRD subsequently removed this action to federal court and then moved to dismiss Plaintiff s complaint. Now pending before the Court are Plaintiff's [10] Motion to Remand and Defendant's [24] Motion to Dismiss. Upon review of the pleadings, the relevant legal authority, and the record as a whole,[1] the Court will **DENY WITHOUT**

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[1] The Court's consideration has focused on the following briefing and material submitted by the parties:

- Notice of Removal ("Not. of Removal"), ECF No. 1;
- Compl., ECF No. 1-1;
- Def.'s Mem. of P. & A. in Supp. of Mot. to Dismiss; ECF No. 7;

PREJUDICE Plaintiff's Motion to Remand and also **DENY WITHOUT PREJUDICE** IBRD's Motion to Dismiss.

I. BACKGROUND

On February 6, 2020, Plaintiff filed a civil action against IBRD in the Superior Court of the District of Columbia ("D.C. Superior Court"). See Compl. at 1. Therein, Plaintiff alleged that she had been an employee of IBRD from October 1988 until December 2017. See *id.* at / A. In December 2017, however, IBRD allegedly terminated Plaintiff "due to redundancy." *Id.* at / E. IBRD then withheld $74,101.90 in employee benefits from Plaintiff, allegedly owed to her upon termination. See *id.* at / P. According to Plaintiff, IBRD's refusal to pay out these benefits violated I BRD ' s own "rules," as well as "DC law." *Id.* at / E. On the basis of these withholdings, Plaintiff asserted a single "breach of contract" claim against IBRD in her complaint before

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• Pl.'s Obj. to Removal and Request to Order Remand to the D.C. Sup. Ct. (" Mot. to Remand"). ECF No. 9:

• Def.'s Mem . of P. & A. in. Opp'n to Pl.'s Mot. to Remand ("Def.'s Opp'n"), ECF No. 13;

• Pl.'s Reply in Opp'n to Def.'s Opp'n to Remand ; ECF No. 18;

• Am . Compl., ECF o. 22-2;

• Def.'s Mem. of P. & A. in Su pp. of Second Mot. to Dismiss ; ECF No. 24-1;

•Pl.'s Opp'n to Def.'s Second Mot. to Dismiss; ECF No 30; and,

•Def.'s Reply to Pl.'s Opp'n to Second Mot. to Dismiss; ECF No. 31.

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision .*See LCvR 7(f).*

the D.C. Superior Court. See *id.* at 13 (identifying "nature of suit").

On March 3, 2020, IBRD removed Plaintiff's action from the D.C. Superior Court to this Court , pursuant to 28 U.S.C. § 1441 (a). To support removal, IBRD explained that it is A "public international organization" under the International Organizations Immunities Act of 1945 ("IOIA"), Not. of Removal, at / 5, and, therefore, receives "the same privileges and immunities as foreign nations conferred by the Foreign Sovereign Immunities Act ("'FSIA")," *id.* at 6. IBRD contended that because "the Court must apply the intricacies of federal case law interpreting the FSIA at the outset of any suit against an international organization, Plaintiff's claims arise under a federal question." *Id.* In sum, IBRD asserted that "[t]his Court has original jurisdiction over this matter pursuant to the IOIA, 22 U.S.C. § 288a, the FSIA, 28 U. S.C. § 1330(a), ... and because it raises a question arising under federal law, 28 U.S.C. § 1331." Id. at / 7.

One week after its removal under§ 1441(a), IBRD filed a motion to dismiss Plaintiffs breach of contract claim for lack of subject matter jurisdiction. *See* Mot. to Dismiss , ECF No. 7, at 1. IBRD's motion acknowledged that Plaintiff's complaint "checked the 'Breach of Contract' box when indicating the nature of her suit." *Id.* at 9 n. 1. Nonetheless, IBRD argued that this Court lacked jurisdiction over Plaintiff's claims because IBRD "is immune from suit and legal process pursuant to its Articles of Agreement and the [IOIA]." *Id.* at 1. In particular, IBRD explained that "having to defend against a lawsuit based on Plaintiff's employment-related

allegations interferes with the pursuit of [IBRD's] chartered objectives" and "would contravene the express language of Article VII section 1" of its Articles of Agreement. *Id.* at 6 (quotation omitted). Accordingly, IBRD maintained that this Court "lacks subject-matter jurisdiction and the Complaint should be dismissed with prejudice." *Id.* at 5.

In view of Plaintiff's *pro se* status, the Court issued an order on March 10, 2020, pursuant to *Fox v. Strickland*, 837 F.2d 507 (D.C.Cir. 1988), notifying Plaintiff of her obligation to respond to IBRD's dispositive motion. *See* Order, ECF No. 8, at 1. In that order, the Court also "order[ed] Plaintiff to include in her response to [IBRD's] Motion to Dismiss either an Amended Complaint, or a precise statement of the nature of the claims she [wa]s making in her Complaint and the legal grounds in order to assist the Court and parties in determining her claims." *Id.* The Court then required Plaintiff to submit her opposition and her amended pleadings by of before April 10, 2020. See *id.*

In response, Plaintiff promptly filed a motion on March 17, 2020, to remand her complaint back to the D.C. Superior Court. See Mot. to Remand at 1. In that motion, Plaintiff contended that her "claim [was] based on state law," *id.* at 19, and that IBRD's notice of removal included "no plausible case [for] federal question jurisdiction ... " *id.* at 16. As such, Plaintiff requested that this Court "remand [her] case to state court in accordance with 28 U.S.C. § 1447(c)." *Id.* at 19. In turn, IBRD filed an opposition brief on March 31 , 2020, which again argued that "[p]ursuant to the IOIA, international organizations enjoy the same privileges and immunities as foreign

nations under the FSIA so this action may be removed to federal court." Def.'s Opp'n at 3. Additionally, IBRD's opposition brief asserted, for the first time, that the Court alternatively "has original jurisdiction pursuant to Section 10 of the Bretton Woods Act of 1945." *Id.* (citing 22 U.S.C . 286g).

In June 2020, after moving for remand, Plaintiff then filed an amended complaint. *See* Order, ECF No. 8, at 1. Plaintiff made clear that her amended complaint was filed specifically to comply with what "the Court ordered . . . in its Order of March 10, 2020." Pl.'s Mot., ECF No. 22, at 1. Plaintiff's amended complaint reiterated, in greater detail, her allegations that IBRD had wrongfully withheld benefit payments contractually owed to Plaintiff upon her termination in December 2017. See Am. Compl. at 1- 12. In her amended complaint, Plaintiff set forth eight common-law causes of action, for: (1) Breach of Contract; (2) Conversion; (3) Misappropriation and/or Detinue; (4) Unjust Enrichment and/or Restitution; (5) Fraud and Deceit; (6) Misrepresentation; (7) Nonfeasance and/or Malfeasance; and (8) Tortious Interference with Contract. *See id.* at 55 - 103. In light of this amended pleading, the Court denied IBRD's original motion to dismiss without prejudice and ordered IBRD to respond to Plaintiff's amended complaint by June 26, 2020. *See* Order, ECF No 23, at 1. IBRD subsequently filed a renewed motion to dismiss Plaintiff's amended complaint, again arguing that this Court lacks subject matter jurisdiction over Plaintiff's claims because IBRD is "immune from suit and legal process pursuant to its Articles of

Agreement and the [IOIA]." Def.'s Mem. of P. & A. in Supp. of Second Mot. to Dismiss, ECF No. 24 – 1 , at 1.

Plaintiff' s motion for remand, as well as IBRD's renewed motion to dismiss Plaintiff's amended complaint remain pending. As the parties have now fully briefed these motions, both motions are ripe for this Court's review.

II. LEGAL STANDARD

"Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).[2] Upon filing a notice of removal , the defendant " bears the burden of proving that jurisdiction exists in federal court." *Downey v. Ambassador Dev. LLC*, 568 F. Supp. 2d 28, 30 (D.D.C. 2008); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Similarly, "[w]hen a plaintiff seeks to have a case that has been removed to federal court remanded back to state court, the party opposing a motion to remand bears the burden of establishing that subject matter jurisdiction exists in federal court." *Mizell v. SunTrust Bank,* 26 F. Supp. 3d 80, 84 (D.D.C. 2014) (quotation omitted). Courts in this jurisdiction "construe removal jurisdiction strictly, favoring remand where the propriety of removal is unclear." *Ballard v. District of Columbia*, 813 F. Supp. 2d 34, 38 (D.D.C. 2011). To that end, courts "must resolve

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[2] The D.C. Superior Court is considered a state court for removal purposes. See 28 U.S.C. § 1451 (a).

any ambiguities concerning the propriety of removal in favor of remand." *Busby v. Cap. One, N.A.*, 84 l F. Supp. 2d 49, 53 (D.D.C. 2012).

III. DISCUSSION

IBRD removed Plaintiff's original complaint "pursuant to 28 U.S.C. § 1441 (a)." Not. of Removal, at / 7. To support removal jurisdiction, IBRD argued that this Court has original jurisdiction over Plaintiff's action under three federal statutes: (1) the IOIA, 22 U.S.C . § 288a; (2) the FSIA, 28 U. S.C. § 1330(a), and (3) 28 U.S.C. § 1331. *See* Not. of Removal, at / 7. Then, in its brief opposing remand, IBRD further asserted that this Court also "has original jurisdiction pursuant to the Bretton Woods Act of 1945, 22 U.S.C. 286g." Def.'s Opp'n at 2 n.1. The Court will address each potential basis for jurisdiction below.

A. Original Jurisdiction under the IOIA and the FSIA

To begin, the Court is not persuaded that either 22 U.S.C. § 288a, under the IOIA, or 28 U.S.C. § 1330(a), under the FSIA, independently confer this Court with original jurisdiction over Plaintiff's action. Under the IOIA, 22 U.S.C. § 288a is a federal immunity statute, providing "international organizations," like IBRD, with "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments..." 22 U.S.C. §288a(b); *see also Zhan v. World Bank*, No. 19-CV-1 1973 (DLF), 2019 WL 61 73529, at *2 (D.D.C. Nov. 20, 2019), *aff'd sub nom. Zhan v. World Bank*, 828 F. App'x 723 (D.C.Cir. 2020). There is, however, no grant of jurisdiction mentioned anywhere in § 288a,

nor does IBRD identify such a jurisdictional provision in either its Notice of Removal or its brief in opposition to remand. See Not. of Removal, at / 7; Def.'s Opp'n at 1-4 . Accordingly, the Court finds no basis for removal jurisdiction under 22 U.S.C. § 288a.

Similarly, 28 U.S. C. § 1330(a), under the FSIA, falls short. Unlike § 288a of the IOIA, § 1330(a) does set forth a jurisdictional grant. See 28 U.S.C. § 1330(a). But this statute specifically confers district court's with "original jurisdiction" over "any nonjury civil action against a *foreign state," id.* (emphasis added), and IBRD is not a "foreign state," *see* 28 U.S.C. § 1603(a) (defining "foreign state"); *Samantar v. Yousuf*, 560 U.S. 305, 314 (2010) ("The term 'foreign state' in FSIA on its face indicates a body politic that governs a particular territory."). In fact, the applicability of § 1330(a) to IBRD would be difficult to reconcile with Congress' s decision to enact a separate jurisdictional statute specifically applicable to IBRD. *See* 22 U.S.C. 286g. IBRD offers no argument to the contrary, nor does it provide any source of authority demonstrating that it may remove an action under § 1330(a). *See* Def.'s Opp'n at 2 – 3. As such, IBRD has also failed to demonstrate that 28 U.S.C. § 1330(a), under the FSIA, supports removal jurisdiction in this case.

B. 22 U.S.C. 286g

Next, IBRD contends that removal is proper because this Court "has original jurisdiction pursuant to the Bretton Woods Act of 1945. 22

U.S.C. § 286g." Def.'s Opp'n at 2 n. 1.[3] In its opposition brief, IBRD argues that under 22 U.S.C. § 286g, "[a]ny 'action at law or in equity to which the [IBRD] shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of any such action' ". Def.'s Opp'n at 3 – 4 (quoting 22 U.S.C. § 286g). Therefore, IBRD contends that "whenever 'the Bank is a defendant in such action, it may, at any time before the trial thereof remove such action from a State court into the district court of the United States for the proper district.' " · *Id.* at 4.

The Court is not persuaded by IBRD's construction of 22 U.S .C. § 286g or its application of this statute to the present action. As an initial matter, IBRD's opposition brief selectively quotes from 22 U.S.C. § 286g, omitting key phrases from the text. In full , 22 U.S.C. § 286g states:

> For the purpose of **any action which may be brought** within the United

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[3] IBRD did not cite to 22 U.S.C. § 286g in its Notice of Removal, as a basis for this Court's removal jurisdiction. *See* Not. of Removal , at 3 IBRD did not cite to 22 U.S.C. § 286g in its Notice of Removal, as a basis for this Court's removal jurisdiction. *See* Not. of Removal , at /1 – 7. Instead, IBRD only raised 22 U.S.C. § 286g as a potential source of jurisdiction in opposition to Plaintiff's motion to remand. *See* Def.'s Opp'n at 2 n.1. This belated jurisdictional reference contravenes the removal procedures set forth in 28 U.S.C. § 1446(a), which require the removing party to include "a short and plain statement of the grounds for removal " within their notice. *See Ballard v. District of Columbia*, 813 F. Supp . 2d 34, 38 (D.D.C. 2011) (explaining that the removal statute is strictly construed).

> States or its Territories or possessions by or against the Fund or the Bank **in accordance with** the Articles of Agreement of the Fund or **the Articles of Agreement of the Bank**, the Fund or the Bank, as the case may be, shall be deemed to be an inhabitant of the Federal judicial district in which its principal office in the United States is located, and **any such action** at law or in equity to which either the Fund or the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of **any such action**. When either the Fund or the Bank is a defendant in **any such action**, it may, at any time before the trial thereof, remove **such action** from a State court into the district court of the United States for the proper district by following the procedure for removal of causes otherwise provided by law.

22 U.S.C. § 286g (emphasis added). Notably, the plain language of § 286g refers to "any action which may be brought...by or against ...the Bank in accordance with . . .*the Articles of Agreement of the Bank*." *Id.* Moreover, both the jurisdictional grant and the removal provision within § 286g relate back to this qualified scope, applying specifically to "any such action." *Id* (emphasis added) .

The Court finds compelling reasons to give effect to this language. First, " it is a fundamental

principle of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute so that no part will be inoperative or superfluous, void or insignificant." *Prime Time Int'l Co. v. Vilsack,* 930 F. Supp. 2d 240. 257 (D.D.C. 2013), *aff'd sub nom. Prime Time Int'l Co. v. U.S. Dep't of Agric.*, 753 F.3d 1339 (D.C.Cir. 2014) (quotation omitted). To simply ignore the specific reference in § 286g to IBRD's "Articles of Agreement" would directly contradict this rule of statutory construction. Moreover, courts routinely do give effect to the conditional language Congress includes in federal removal statutes. For example, 28 U.S. C. §1442(a)(l) permits federal officers to remove civil actions to federal courts, but only where the suit pertains to an act carried out "under color" of the defendant's federal office. Therefore, when applying § 1442(a)(1), courts consider not only the defendant's status as a federal officer, but also whether the conduct at issue arose "under color" of their federal office. *See K&D LLC v. Trump Old Post Off. LLC*, 951 F.3d 503, 506 (D.C.Cir. 2020). Conversely, if Congress wants to provide for removal based on a defendant's status alone. it may do so. In 28 U.S.C. § 1441(d), for example, Congress enacted a removal statute applicable solely based on a defendant's status as a "foreign state." Within this framework, the Court is persuaded that Congress could have enacted an unconditional removal statute for IBRD, without any additional qualifications. But instead, 22 U.S.C. § 286g applies "[f]or the purpose of any action which may be brought ... in accordance with . . . the Articles of Agreement of the Bank." 22 U.S.C. §

286g. The Court will read this language to mean what it says.

From this reading, "it follows that section 286g may be held to provide a jurisdictional basis for this suit only if suit against the Bank is proper under the Articles of Agreement.'" *Chiriboga v. Int'l Bank for Reconstruction & Dev.*, 616 F. Supp. 963, 966 (D.D.C. 1985). This presents two problems for IBRD in this case. The first is that IBRD has done nothing to show that the present action is one which "may be brought . . . in accordance with" its Articles of Agreement. 22 U.S.C. § 286g. Indeed, as discussed above, IBRD makes no mention of this language at all within either its removal papers or within its brief in opposition to remand. This omission alone is prohibitive, as IBRD bears the burden of establishing this Court's jurisdiction upon removal. *See Downey v. Ambassador Dev., LLC*, 568 F. Supp. 2d 28, 30 (D.D. C. 2008).

Even more tellingly, however, IBRD has expressly argued in its dispositive motions that Plaintiff's suit *"contravenes"* the language of IBRD's Articles of Agreement. *See* Mot. to Dismiss, ECF No. 7, at 6 (emphasis added). In particular, IBRD asserted that "having to defend against a lawsuit based on Plaintiff's employment-related allegations interferes with the pursuit of [IBRD 's] chartered objectives." *Id.* And, according to IBRD, this direct conflict between Plaintiffs action and IBRD's Articles of Agreement deprives this Court of subject matter jurisdiction. *See id.* at 5 – 6. Such a position is facially inconsistent with IBRD's own basis for removal jurisdiction under § 286g. If Plaintiff's lawsuit "contravenes" IBRD's Articles Agreement,

then it cannot logically be an action brought *"in accordance with"* those same Articles, as is required for jurisdiction under the statutory text. *See Chiriboga*, 616 F. Supp. at 966 ("If the Bank is immune under the Articles of Agreement, as the Bank contends, this cause of action would not 'be brought ... in accordance with the Articles of Agreement of the Bank', and section 286g could not be used to establish . . . jurisdiction.")(quotation omitted). IBRD cannot have it both ways.[4]. As such, the Court finds that IBRD has not satisfied its burden of demonstrating that 22 U.S.C. § 286g supports removal jurisdiction over Plaintiff's lawsuit.

C. Federal Question Jurisdiction

Finally, IBRD states that this Court has general federal question jurisdiction over Plaintiff's Action, pursuant to 28 U.S.C. § 1331. *See* Not. of Removal. at / 7. "28 U.S.C. § 1331 provides federal jurisdiction of all civil actions 'arising under' federal law." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 136 S. Ct. 1562, 1569 (2016). "The presence or absence of federal question jurisdiction is governed by the 'well-pleaded complaint rule' " *Caterpillar Inc. v. Williams*. 482 U.S. 386, 392

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[4] IBRD's attempt to dismiss Plaintiff's suit for lack of subject matter jurisdiction "promptly" after removal is difficult to reconcile with the federal removal statutes, because "[w]hen it appears that a district court lacks subject matter jurisdiction over a case that has been removed from a state court, the district court must remand the case." *Republic of Venezuela v. Philip Morris Inc.*, 287 F.3d 1 92, 196 (D.C. Cir. 2002) (emphasis added) (citing 28 U.S.C. § 1447(c)).

(1987), which provides that " a suit 'arises under' federal law 'only when the plaintiff's statement of his own cause of action shows that it is based upon [federal law].' " *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (quoting *Louisville & Nashville R. Co . v. Mottley*, 211 U. S. 149, 152 (1908)). Because "[r]emoval is appropriate only when the case might have originally been brought in federal court." *Wexler v. United Air Lines , Inc.*, 496 F. Supp. 2d 150. 152 (D.D.C. 2007), courts assess the presence of federal question jurisdiction based on the complaint as it stood at the time of removal, *see* Wright & Miller, 14C Fed . Prac . & Proc. Juris. § 3722.4 n.5 (Rev. 4th ed.) (collecting cases); *see also Grupo Dataflux v. Atlas Glob . Grp., L.P.*, 541 U.S. 567. 570 (2004) ("It has long been the case that the jurisdiction of the court depends up on the state of things at the time of the action brought.") (quotation omitted).

At the time of removal in this case, Plaintiff's complaint asserted a single cause of action against IBRD for breach of contract. *See* Compl. at 13 (identifying "nature of suit"). Plaintiff grounded this breach of contract claim on allegations that IBRD, her former employer, wrongfully withheld approximately $74,000 in benefits, following Plaintiff's termination in December 2017 *See id.* at / E- P. Plaintiff's "breach of contract" claim within this employment context rests on common law principles.[5] and IBRD does not argue in either its

[5] Plaintiffs amended complaint, which also asserts only common law claims against IBRD, does not waive Plaintiff's right to remand. See Am. Compl. at 55 – 103. Plaintiff promptly filed her motion to remand well in advance of

Notice of Removal or opposition brief that Plaintiff's breach of contract claim itself "arises under ·· federal law, see Not. of Removal, at 6-7; Def.'s Opp'n at 1 – 4. Instead, IBRD asserts that because it "enjoy[s] the same privileges and immunities as foreign nations conferred by the [FSIA]," this "Court must apply the intricacies of federal case law interpreting the FSIA at the outset of (this] suit," such that "Plaintiffs claims arise under a federal question." Not. of Removal, at 6.

IBRD's argument falls short. Rather than focusing on the face of Plaintiff's complaint, IBRD's basis for removal jurisdiction rests on an immunity defense under the FSIA it anticipated raising in response to Plaintiff s state-law cause of action. See *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 494 (1983) ('The House Report on the Act states that 'sovereign immunity is an affirmative defense that must be specially pleaded.'") (quoting H.R. Rep. No . 94-1487, at 17). But "it is now settled law that a case may not be removed to federal court on the basis of a federal defense, ... even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Caterpillar,* 482 U.S. at 393. Even more directly, "it has long been settled that the existence of a federal immunity to the claims asserted does not convert a suit otherwise arising under state law into one which, in the statutory sense, arises under federal law."

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amending her complaint, and only filed her amended complaint in direct response to an order from the Court to do so. See Order, ECF No. 8, at I

Oklahoma Tax Comm'n v. Graham, 489 U.S. 838. 841 (1989).

In its briefing, IBRD cites to no authority permitting federal question jurisdiction specifically on the basis of an asserted federal immunity. In fact, relevant precedent cuts against. IBRD's position. For example, when applying the well-pleaded complaint rule in an earlier common law action raised against a foreign state, this Court reasoned :

> The complaint in this case only reveals a foreclosure action brought exclusively under District of Columbia law. Any issue pertaining to the FSIA would be raised, if at all, as a defense to the action. Because a defense is insufficient to confer jurisdiction on a federal court, the potential involvement of the FSIA does not supply this Court with removal jurisdiction.

Strategic Lien Acquisitions LLC v. Republic of Zaire, 344 F. Supp. 2d 145, 148 (D.D.C. 2004); *see also McKeel v. Islamic Republic of Iran*, 722 F.2d 582, 586 (9th Cir. 1983) ("[T]he . . . allegation that the FSIA deprives Iran of a sovereign immunity defense to this action does not constitute a well-pleaded complaint under section 1331, and therefore does not provide a basis for statutory 'arising under' jurisdiction."). Courts have also rejected attempts to predicate federal question jurisdiction on similar federal immunity defenses like tribal immunity, see *New York v. Shinnecock Indian Nation* , 686 F.3d 133, 139-41 (2d Cir. 2012), as well as the United States' sovereign immunity, see *Calif. ex rel. Sacramento Metro. Air Quality Mgmt. . Dist. v.*

United States , 215 F.3d 1005, 1015 (9th Cir. 2000). For these reasons, the Court is unpersuaded by IBRD's attempt to invoke federal question jurisdiction in this case based on its own potential federal immunity to Plaintiff's common law action.

Nonetheless, there does exist a narrow exception to the traditional "well-pleaded complaint" rule. Under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005), a purely state-law claim may still trigger federal question jurisdiction, where it "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities". *Gunn v. Minton,* 568 U.S. 251, 258 (2013) (quotation omitted). But this so- called " '*Grable* exception is 'extremely rare,' and applies [only] to a special and small category' of cases." *North v. Smarsh, Inc.*, 160 F. Supp. 3d 63, 77 (D.D.C. 2015) (quoting *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006)). "'It takes more than a federal element' to establish federal question jurisdiction under the *Grable* framework, " *Washington Consulting Grp., Inc. v. Raytheon Tech. Servs. Co., LLC*, 760 F. Supp. 2d 94, 101 (D.D.C. 2011) (quoting *Empire*, 547 U.S. at 699), and courts have "confined *Grable* to those rare state-law claims posing a context-free inquiry into the meaning of federal law." *Washington Consulting* ,760 F. Supp. 2d at 101 – 02 (quotation omitted).

IBRD makes no attempt in either its Notice of Removal or its opposition brief to invoke the *Grable* exception. See Not. of Removal, at / 6- 7; Def.'s

Opp'n at 1–4 . Specifically, IBRD does not cite to the relevant standard governing the *Grable* doctrine, nor does it provide any argument that Plaintiff's state-law cause of action satisfies that test. For example, the proponent of federal jurisdiction under *Grable* must demonstrate that the state-law claim in question presents an issue of "substantial" importance not just to the litigants, but to "the federal system as a whole." *Gunn*, 568 U.S. at 260. Yet, IBRD provides no such discussion to the Court. Accordingly, absent any argument from IBRD, the Court declines to "squeeze [ ] . [this case] in to the slim category *Grable* exemplifies." *Empire*, 547 U. S. at 701. Simply put "[j]urisdiction may not be sustained on a theory the plaintiff has not advanced." *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 810 n.6 (1986). And, again, it is IBRD that bears the burden of establishing this Court's removal jurisdiction. *See Mizell v. SunTrust Bank*, 26 F. Supp. 3d 80, 84 (D.D.C. 2014);see also *Ballard v. District of Columbia*, 81 3 F. Supp. 2d 34, 38 (D.D.C. 2011) (noting that remand is favored "where the propriety of removal is unclear.").

The Court notes, however, that Plaintiff has filed a parallel action against several IBRD officers and employees for alleged wrongdoing also related to Plaintiff's December 2017 termination. *See Gonzalez Flavell v. Kim et al.*, 21-CV-115 (CKK). Compl., ECF No. 1-3, at 1-10. As with this present action, the defendants in *Kim* removed Plaintiff's original complaint from D.C. Superior Court and are now litigating Plaintiffs pending motion to remand. Unlike IBRD, however, the defendants in *Kim* have raised the *Grable* exception as a basis for federal

jurisdiction and provide detailed arguments in favor of its applicability. *See Gonzalez Flavell v. Kim et al.*, 21- CV- 115 (CKK), Opp'n to Remand, ECF No. 23, at 3-12. In order to avoid inconsistent jurisdictional rulings in these parallel actions, the Court will deny Plaintiffs motion to remand without prejudice. Plaintiff may then refile her remand motion and, in response, IBRD may directly address the applicability of *Grable* and its progeny to the Courts removal jurisdiction over Plaintiff's action. Finally, because of the uncertainty regarding the Court's removal jurisdiction, the Court will deny IBRD's pending motion to dismiss, without prejudice to IBRD's ability to refile that motion later in this proceeding.

IV. CONCLUSION

For the reasons set forth in this Memorandum Opinion, the Court will **DENY WITHOUT PREJUDICE** Plaintiff's [10] Motion to Remand. Plaintiff may refile her motion for remand and, upon such refiling, the parties should specifically address the applicability of *Grable* and its progeny to the existence of removal jurisdiction over this action. In view of the foregoing, the Court will also **DENY WITHOUT PREJUDICE** IBRD's [24] Motion to Dismiss. An appropriate order will accompany this Memorandum Opinion.

Date: March 25, 2021

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SARA GONZALEZ FLAVELL *Plaintiff*
v.
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
Defendant

Superior Court For The District Of Columbia
CIVIL DIVISION
500 Indiana Avenue, N.W., Suite 5000
Washington D.C. 2001

Case No 2020 00872

Jurisdiction of this Court is founded on D.C. Code S. 11 – 921

COMPLAINT

1. Write a short and plain statement of your claim, including any relevant facts, dates and locations

A. I was employed by the Defendant at its main office in Washington DC from October 3, 1988 until December 2017. I am owed an amount ("the debt") by the Defendant which has been lawfully owing to me since December 2017. The debt arose as a result of my employment by the Defendant in Washington DC.

B. Under the Defendants employment rules and procedures the Defendant pays "education benefits' to eligible employees. I was entitled to "education benefits" which I received for my eligible children from age 5 (when eligibility commences) onwards. Education Benefits are paid to staff members in each year in advance of the forthcoming academic year in order to meet the costs of eligible education expenses for the forthcoming academic year.

C. From Academic Year 2001 the defendant paid to me the education benefits I was entitled to and in accordance with its rules, specifically before commencement of the academic year in the period between the ending of the previous academic year and before commencement of the following academic year. In each year I made applications for the education benefit for the forthcoming year and in each year received it in advance of the academic year applied for establishing a pattern for request and payment by the Defendant.

D. In September through November of 2017 I made applications for my eligible children to receive education benefits for the forthcoming academic year. As I had in each previous year. The requested education benefits were processed and paid to me, correctly based on my valid request in the same manner as in all previous years.

E. On December 11, 2017 I was informed that my employment had been unilaterally terminated by the Defendant effective December 1, 2017 due to redundancy. The Defendants rules state that the education benefits for the forthcoming academic year in which termination takes effect are unaffected for a staff member terminated on grounds of

redundancy and that a staff member must be paid all amounts due on date of termination. DC law further requires that an employee be paid all amounts owing on date of cessation of employment.

F. The Defendant failed to pay me the amount I was owed on termination until December 31, 2017. It has never paid me the full amount owed. Instead it determined it could now deduct, despite its own Rules indicating the contrary, the amount of the education benefits previously advanced to me. It now made deductions from my termination payment, including salary, and withheld an amount equivalent to these funds despite my protests and the clear need to have the funds to use to pay for education expenses for my eligible children. The amount deducted in respect of eligible expenses for education and travel costs connected to these benefits is $73,839 being $71,114.03 deducted for previously advanced and paid out to me amount for education benefits and $2,725 being the allocated allowance for my dependents correctly paid for travel and other expenses but then wrongfully withheld and repaid to itself by the Defendant.

G. The Defendant has owed me as a debt this amount, passed due, owing and payable, being the amount of the education benefits it had previously paid out correctly during my employment in 2017.

H. The amount calculated and erroneously deducted by the Defendant is a total aggregate amount of $74,101.90 (including expenses described in paragraph (P) below) which it had no right to deduct and pay to itself from my termination payment when my employment was unilaterally terminated by the Defendant. By DC law and by its own internal rules

the Defendant was required to pay me all amounts owing to me for my employment on my last day of employment. It failed to do so.

I. On December 31, 2017 I received a payment in my bank account. The Defendant failed to provide any payroll slip explaining the amount or its calculation. I should not have been in the Defendant's payroll system at all due to the fact that as of December 1, 2017, my employment ended. This is unlawful and in contravention of all employment laws and standards and its own internal rules.

J. After my persistent requests for a breakdown of the final amount paid to me the Defendant finally, in March 2018 provided a copy of the December 31, 2017, payroll slip. On its payroll statement the Defendant clearly indicates that it deducted the amount previously paid to me for education benefits in the amount of $73,839.03. In this manner it had attempted to deny me my rights and renege on its financial obligations owed to me.

K. The Defendants Rule on the matter states that staff made redundant are paid the full amount of education benefits for the full academic year in which the redundancy termination takes place and the Defendant has not contested that it had an obligation to pay me the full education benefit amount for academic year 2017 – 2018 yet although it initially correctly paid me the amount it then wrongfully deducted the amount from my termination payment, which it had no right to do. There is no provision in any rule that entitles the Defendant to make such a deduction and at the time such deduction was wrongfully made the debt arose.

I had to bring the debt to the Defendants attention repeatedly.

L. The Defendant has acknowledged the debt is outstanding and due and owed to me but has not paid the amount to me, despite its own rules and procedures and the procedure established by its former conduct and annual payment process throughout my employment. Despite its clear Rules and agreement that it would pay me the amount for the academic year in which my wrongful termination took place the Defendant has refused to make payment of the debt knowing its wrong-doing the Defendant is now demanding I commit perjury and make misstatements which it knows to be false, and continues to refuse me payment of debt. It is deliberately and knowingly demanding I sign statements that are falsehoods as it knows. By these means it acknowledges the debt but refuses to pay the debt that accrued when it made the wrongful deductions in December 2017.

M. In this manner the Defendant is committing other wrong-doing and unlawful acts and seeks to intimidate and harass me and require I make false statements under oath, which is criminal.

N. The Defendant believes it is above the law and does not comply with any legal requirements, including its own Rules and with federal and DC law regarding employment matters and the civil right of workers to be paid all agreed amounts, emoluments and benefits for their employment . Instead it believes it may do as it likes and require employees and ex-employees to perjure themselves and make knowingly false statements and lies. It must now pay out on the debt owed to me.

O. The Defendant has admitted it owes the amount of the debt, it had no right to unilaterally deduct the amount from my termination payment and must pay interest on the amount at a rate the court considers just , currently calculated at 2.5%, although the amount would have earned significantly more if it had not been wrongfully deducted from my termination payment despite having initially been correctly paid to me by the Defendant.

P. Additionally, other amounts are owed to me. The Bank made numerous erroneous deductions appearing on the payroll statement of December 31, 2017 (finally produced to me in March 2018).

These are :

(i) a Staff Retirement Plan contribution for $71.61 even though I was not an employee in December 2017 and certainly not entitled or required to make a staff retirement pension contribution for the period of December 1 to December 31 2017;

(ii) Optional Dependent Group Term payment of $8.24 for the period of December 2017 when I was no longer an employee of the Defendant and had no ability or eligibility for its "optional dependent group term" ;

(iii) an optional group term life amount of $70.11 which I had not opted for and was unaware of and should not have been paid out by the Defendant from my termination payment due to me on December 1 , 2017;

(iv) "optional accident insurance" of $14.87 for the period of December 15, 2017 to December 31, 2017 when I was no longer an employee of

the Defendant and it had no right to make any such deduction from my termination payment, which had accrued and was due to me in full on December 1, 2017 according to its own accounting;

(v) a further payment of $98.04 which its payroll statement describes as being for "optional group life: for the period of December 16 to 31, 2017 again when I had already ceased to be in its employment and had made no such election or agreed to any optional payment.

The total of these sums is $262.

Together with the wrongful withholding of an amount previously paid to me of $73,839.03 for education allowances including travel and other education expenses the aggregate debt owed to me as of December 1, 2017 is **$74,101.90.**

2. What relief are you requesting from the Court? Include any request for money damages.

I am asking the Court to rule that the Defendant must now pay to me the debt it owes to me and which it had previously paid out to me in the same manner in which it had previously always paid me the education grant amount in advance for use for education purposes. It should also refund me the amounts it wrongfully deducted from a "paycheck" dated 31 December 2017 when my employment had ceased on December 1, 2017 which amount to $262.

The Defendant must pay the full debt owed to me of $74,101.90.

The Defendant had no right to wrongfully deduct from my final termination payment the amount of the debt in an attempt to renege on its financial obligations owed to me as a staff member and cause me financial harm which it knew it was doing by its petty and unlawful act.

The amount of the debt is $74,101.90. The debt is for the amount which the Defendant deducted from my employment payment in December 2017. Evidence will be provided of (a) the amount originally paid out to me (b) the wrongful deduction as shown on my termination payment made when I was no longer even employed by the Defendant a full month after it had terminated my employment and (c) the amount now owed as a debt to me.

I also request interest on the amount at 2.5 % per annum is $1,850 for each year owing, due and outstanding to me since December 1, 2017. For the months until December 2019 the interest is $3,700 and accruing additional interest each month it remains unpaid.

I also request the filing fee of $120 for having to bring this Complaint with no other recourse to obtain the amount due, owing and outstanding to me.

3. State any other information, of which the Court should be aware:

I wrote to the President of the Bank, David Malpass, on January 8, 2020, requiring that payment of the full amount of this debt now be paid and allowing

until January 31, 2020 giving ample time for the payment. No payment has been received.

I also used the Defendants own internal justice system which is wholly owned, managed and operated by the Defendant in an attempt to give the appearance of providing redress for grievances for staff members, however the Defendant controls its own internal justice system which is a sham and which failed to correctly address the situation. It did not even address the wrongful matter of the Defendant taking back an amount by deduction from my termination payment on redundancy that it had already paid out to me for education benefits (which had been correctly paid), nor why it deducted amounts totaling $262 for optional group term, a Staff Retirement Plan, optional accident insurance and optional group life from my termination payment for a period of December 1,2017 to December 31, 2017 being a time period I was no longer employed by the Defendant and should not have been in its "payroll" at all and why it failed and refused to provide me with any statement as to my termination payment despite repeated requests until March of 2018 (three months after its wrongful payroll statement and the wrongful acts which resulted in the debt now sought to be recovered. Its internal "justice" system simply ignored the matter of the claw back of amount previously paid and amounts the Defendant was not entitled to deduct for a period I was not in the Defendants employment.

The Defendant is spuriously, unreasonably and unlawfully with holding money it has owned me since December 2017. It must now be held

accountable and pay the debt it owes and has had outstanding since December 2017.

No employer in the District of Columbia should be allowed to withhold payment for employment from its workers unilaterally and without cause. Nor should employers require employees or ex-employees to knowingly make statements which both parties know to be false and which cannot be true. To require another party to make falsehoods and commit perjury under oath is itself a violation of DC and Federal laws and cannot be upheld. To add insult to injury the Defendant is attempting to distract from the debt it owes by demanding instead and coercing me using financial duress claiming I must now sign its form, effectively a receipt, indicating the reverse of the truth, namely that I have indeed received the amount outstanding and used the money, which it knows to be a falsehood and the opposite of the facts. It has not paid me the money I am owed and cannot be allowed to ask for a receipt under oath that I have received from the Defendant the debt disputed. Further since it did not uphold its statements that it would pay me education benefits on redundancy in 2017 and broke its trust, exhibiting bad faith, reneging and deducting the amount it had previously correctly paid out to me ($73,839) there is no assurance that, after extracting by coercion a receipt ahead of payment stating I have already received the money and signed under oath, the Defendant will honor its hollow "assurance" to pay. All facts point to the opposite and the Defendant would then rely on its deceitful form to indicate the amount had been fully paid when it has not been.

The Defendants refusal to pay the amount owed me by virtue of my employment is baseless, without merit, an attempt to avoid a debt, and display its contempt for the laws of the country in which it is allowed to have its office. It needs to respect local law and the civil rights of its staff/ex-staff, its attempt to act in a manner placing it above the law when it is so clearly committing unlawful acts should cease and the DC Superior Court is requested to give judgment on the debt against the Defendant. The Defendant is under an obligation to abide by the laws, including civil right and employment laws, of the place in which it maintains its headquarters which is the District of Columbia. No entity employing thousands of workers in the District of Columbia is entitled to abuse workers' rights and refuse to pay amounts established for employment simply reneging on termination and making unlawful deductions as the employer chooses without any basis and departing from its pattern of payment, this runs counter to DC laws.

To the best of my knowledge, everything in this Complaint is true and I am not filing this complaint to harass the Defendant(s). Superior Court Civil Rules 11 (b).

___/s/_____

SIGNATURE
Sara González Flavell
February 6, 2020

Sara González Flavell
Proceeding Pro Se
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APPENDIX F

EXCERPTS FROM IBRD's MEM. OF PTS & AUTHORITIES IN OPPOSITION TO PLAINTIFF'S SECOND MOTION TO REMAND, filed June 18, 2021

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SARA GONZALEZ FLAVELL *Plaintiff*
v.
INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
Defendant
Civil Action No. 20-623 (CKK)

ARGUMENT

[relevant parts only reproduced]

I. THIS COURT HAS FEDERAL QUESTION JURISDICTION BECAUSE PLAINTIFF'S SUIT TURNS ON SUBSTANTIAL QUESTIONS OF FEDERAL LAW

A. Plaintiff's Complaint Necessarily Raises Federal Issues

The threshold issue of the World Bank's immunity from this suit necessarily raises federal questions. Here, Plaintiff's "right to relief necessarily depends on resolution of a substantial question" concerning the presumption of immunity

under the FSIA and the D.C. Circuit's governing constructions of the World Bank's Articles of Agreement ("Articles") conferring immunity. *see also Mendaro v. World Bank,* 717 F.2d 610, 614-21 (D.C. Cir. 1983).

**** *[deletion]*****

The United States, as a member state, has accepted and incorporated the Bank's Articles - including the provisions in the Articles conferring immunity - into federal law. *See* Bretton Woods Agreements Act, 22 U.S.C. § 286h. In addition, the IBRD is also immune from suit as an international organization, so designated by the President of the United States, under the IOIA, 22 U.S.C. § 288a. The Supreme Court recently held that as the IOIA grants international organizations the "same immunity" from suit as is enjoyed by foreign governments. Accordingly, the language of the Foreign Sovereigns Immunity Act ("FSIA"), 28 U.S.C. § 1605, and its precedent are relevant to a court's analysis of the IOIA. *See Jam v. lnt'l Fin. Corp.,* 139 S. Ct. 759, 772 (2019).

*****[deletion]*****

Plaintiff's Amended Complaint also requires the Court to interpret and apply the Bank's Articles, a multilateral treaty incorporated into United States law by the Bretton Woods Agreements Act. *See* 22 U.S.C. § 286h. The Bank's Articles must be interpreted "in light of both national and international law governing the immunity of international organizations." *Mendaro,* 717 F.2d at 611. The

Articles create binding legal obligations for the United States in the form of a congressional-executive agreement whose interpretation is categorically a question of federal law.

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B. The Federal Issues Are Actually Disputed

IBRD has disputed subject matter jurisdiction from the outset of this suit because it is immune from suit under federal law and the Bank's Articles. See Defs Mem. in Support of Mot to Dismiss Compl., ECF No. 7-1; Def's Mem. in Support of Mot. to Dismiss Am. Compl., ECF No. 24-1. As such, the World Bank's IOIA and Articles immunities are federal issues that are "actually disputed."

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Thus, the parties *actually dispute* the federal questions concerning the scope of the Bank's immunities conferred by treaty and federal law in this action. *Compare, e.g.,* Am. Compl. at 18-19 (Plaintiff arguing that IBRD's "commercial activity" gives rise to her complaint) *with* Defs Mem. in Support of Mot. to Dismiss Am. Compl. at 11-12 (IBRD disputing that the alleged acts are commercial activity under the FSIA).

C. The Federal Issues Are Substantial

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Foreign affairs is an area of federal common law "so 'powerful,' or important, as to displace a purely state cause of action: · *Marcos,* 806 F.2d at 354. Just as "a suit against a foreign state under this Act necessarily raises

questions of substantive federal law at the very outset," *Verlinden B.V v. Cent. Bank of Nigeria,* 461 U.S. 480,493 (1983), a suit against an international organization similarly implicates U.S. foreign relations, as well as the direct interests of the United States , because the United States is a member of these organizations. In a recent international organization immunities case before the Circuit, the United States declared that its "participation in international organizations is a critical component of the Nation's foreign relations and reflects an understanding that robust multilateral engagement is a crucial tool in advancing national interests." Br. for the United State as Amicus Curiae at I, *Rodriguez v. Pan Am. Health Org.,* No. 20 - 7114(D.C. Cir. June 14, 2021).

*****[deletion]*****

An international organization's immunities under the IOIA and its governing Articles "raise sensitive issues concerning the foreign relations of the United States" where "the primacy of federal concerns is evident." *See [Verlinder].* at 493; *see also Int'/ Fin. Corp. v. GDK Sys., Inc.,* 711 F. Supp. 15, 17 (D.D.C. 1989)

*****[deletion]*****

Plaintiff argues that the World Bank "is not at all important to the U.S. federal system." *Mem. in Support of Second Motion at 21.* On the contrary, according to the United States, it "has a substantial interest in the proper interpretation of the FSIA, as litigation against foreign states and international organizations in

U.S. courts can have implications for the United States' foreign relations and can affect the reciprocal treatment of the U.S. Government in the courts of other nations. Moreover, the United States is a member country of the [International Finance Corporation, a member of the World Bank Group], and is its largest shareholder."[1] First Statement of Int. of the United States at *1-2 ,Jam v. Int'/ Fin. Corp.,* No. 1 :15-CV-00612 JDB, (D.D.C. Sept. 13, 2019).

D. The Federal Issues Are Capable of Resolution In Federal Court Without Disrupting The Federal-State Balance

Resolving questions regarding the applicability of the FSIA exceptions to IBRD's alleged conduct and therefore its immunities under the IOIA, as well as its immunities under the Bank's Articles, are pure questions of federal law; they involve no questions of state law and would not upset the balance of federal and state judicial responsibilities.

*****[deletion]*****

E. The Court's Exercise of Federal Jurisdiction Will Not Precipitate a Shift

Federal jurisdiction in this case would not usher an "enormous shift" of state cases into the federal courts because cases that directly implicate multilateral treaties and congressional- executive agreements are typically disputed in federal court in any event.

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[1] The United States is also a member of IBRD and its largest shareholder.

The federal interests at stake here-questions regarding an international organization's immunity from suit and the interpretation of the World Bank's founding charter-warrant consideration in a federal forum because they are necessarily federal issues. *See Grable,* 545 U.S. at 312. Were it otherwise, IBRD would be subject to different laws and potentially contradictory interpretations of its Articles in all fifty states and the District of Columbia. *Cf. Mendaro,* 717 F. 2d 610. Plaintiff argues that if Congress intended all cases against the World Bank to be heard in federal court then it would have enacted a federal statute to that end. The Bretton Woods Agreements Act is just such a statute:

*****[deletion of section's reproduction]****

22 U.S. § 286g. The Bretton Woods Agreements Act, which applies to both the International Monetary Fund and the Bank, allows the Bank to remove a case to federal court based on the status of the World Bank as an international organization. Congress anticipated that suits would be brought against the Bank (and the IMF) and specifically codified the Bank's right to remove such actions to federal court. Thus, the significant policy implications motivating *Grable* are applicable here and support a finding of federal question jurisdiction.

*****[deletion]****

If that question is answered differently in each state jurisdiction, the interests of the United States on the world stage may be compromised.

II. IBRD'S IMMUNITY FROM SERVICE OF PROCESS DOES NOT DEFEAT REMOVAL

*****[deletion]*****

Plaintiff refuses to accept federal law directly on point. The Bank is immune from service of process under the IOIA, yet the Bretton Woods Agreements Act specifically allows the World Bank to remove an action in which it is a defendant from state court to district court. *See* 22 U.S.C.§ 286g. Read together, the IOIA and the Bretton Woods Agreements Act anticipate that the World Bank would remove a suit to federal court even though it was immune from service, as is the case here.

III. THE WORLD BANK'S IMMUNITY REQUIRES DISMISSAL, NOT REMAND

Plaintiff maintains that the Bank cannot, on the one hand, argue that subject matter jurisdiction exists for purposes of removal but, on the other hand, argue that the case should also be dismissed for lack of subject matter jurisdiction,

*****[deletion]*****

The Bank does not concede that subject matter jurisdiction exist for purposes of removal, only that federal questions of subject matter jurisdiction exist and that those questions warrant removal to this Court. Pursuant to the principle espoused in *Grable,* federal common law allows the Bank to remove this case so that a federal court may decide whether the Bank is immune from suit.

Dated: June 18, 2021

Respectfully, /s/

Jeffrey Green, Sidley Austin *[address deleted]*