No. 22-529

In the Supreme Court of the United States

ALEX CANTERO, SAUL R. HYMES, and ILANA HARWAYNE-GIDANSKY, on behalf of themselves and all others similarly situated,

Petitioners,

v.

BANK OF AMERICA, N.A.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether federal banking law preempts a state law that requires national banks to pay interest on mortgage escrow accounts.

CORPORATE DISCLOSURE STATEMENT

Bank of America, N.A. is wholly owned by BAC North America Holding Company ("BACNAH"). BACNAH is a direct, wholly owned subsidiary of NB Holdings Corporation ("NB Holdings"). NB Holdings is a direct, wholly owned subsidiary of Bank of America Corporation. Bank of America Corporation is a publicly traded company whose shares are traded on the New York Stock Exchange and has no parent corporation. Based on the U.S. Securities and Exchange Commission Rules regarding beneficial ownership, Berkshire Hathaway Inc., 3555 Farnam Street, Omaha, Nebraska 68131, beneficially owns greater than 10% of Bank of America Corporation's outstanding common stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Legislative Materials

Other Authorities

INTRODUCTION

The National Bank Act establishes a system of federally chartered national banks that derive their banking powers exclusively from federal law and are extensively regulated by federal banking authorities, primarily the Office of the Comptroller of the Currency ("OCC"). Because national banks are instrumentalities of the federal government, states "can exercise no control" over them, "nor in any wise affect their operation, except in so far as Congress may see proper to permit." *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007) (cleaned up). A national bank's federal banking powers are thus "not normally limited by, but rather ordinarily pre-empt[], contrary state law." *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 32 (1996).

The Second Circuit applied this Court's precedent to hold that the National Bank Act preempts a New York law requiring national banks to pay interest on funds held in mortgage escrow accounts. This decision conflicts with the Ninth Circuit's decision in *Lusnak v. Bank of America, N.A.*, 883 F.3d 1185 (9th Cir. 2018), which held that neither the National Bank Act nor OCC regulations preempts a similar California law. A subsequent decision from that court, applying *Lusnak*, is the subject of a pending writ of certiorari to this Court. *Flagstar Bank, N.A. v. Kivett*, No. 22-349 (Oct. 13, 2022).

Petitioners contend that certiorari is warranted in this case because Bank of America previously sought certiorari in *Lusnak*. But this Court denied the petition for certiorari in *Lusnak*, and therefore petitioners must show that a question that did not warrant this

Court's review four years ago warrants it now. Petitioners note that the decision below created a circuit split, but this Court often considers a 1-1 split like this one too shallow to warrant certiorari. In any event, if the Court concludes that the question presented should be reviewed now, the Court should grant the petition in *Flagstar* and hold this petition. *Flagstar* is a better vehicle because it addresses whether federal law preempts a state interest-on-escrow law for all mortgage escrow accounts, whereas the Second Circuit in this case decided the preemption question only for escrow accounts that are not subject to certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376 (2010).

STATEMENT

A. Statutory and Regulatory Background

1. This Court first encountered a state law attempting to regulate a federally chartered bank in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). The Court struck down a Maryland law that sought to levy a tax on the Bank of the United States. Because "the power to tax involves the power to destroy," as Chief Justice Marshall famously explained, a state could not lawfully exercise such power over the national bank. *Id.* at 431. Otherwise, state tax laws could be used "to control the constitutional measures" of the federal government, which the Supremacy Clause does not permit. *Id.*

In 1864, more than forty years after *McCulloch*, Congress enacted the National Bank Act, which created the "national banking system" that remains in

place today. *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 315 (1978) (quotation marks omitted). By creating a system of national banks that derive their banking powers from federal law, Congress aimed to "protect [national banks] against possible unfriendly State legislation," *Tiffany v. Nat'l Bank of Mo.*, 85 U.S. 409, 412 (1873), and to prevent the "[d]iverse and duplicative" regulation of national banks that would occur if their banking activities were subject to multiple states' laws, *Watters*, 550 U.S. at 13–14.

In creating the national banking system, "Congress did not abolish state banking, but it did include explicit protections in the new framework so that national banks would be governed by Federal standards administered by a new Federal agency—the [OCC]—and not by state authority." Office of Thrift Supervision and Integration; Dodd-Frank Act Implementation, 76 Fed. Reg. 43,549, 43,554 (July 21, 2011). Under this "dual banking system," "[t]he state system is characterized by state chartering, bank powers established under state law, and operation under state standards, subject to state supervision." OCC, *National Banks and the Dual Banking System* at 3 (Sept. 2003), https://bit.ly/3Kdptny. In contrast, "[t]he federal system is based on a federal bank charter, powers defined under federal law, operation under federal standards, and oversight by a federal supervisor." *Id.*; *see also Watters*, 550 U.S. at 15 n.7 (discussing "dual banking system" and noting that "national banks" are not "supervise[d]" by states). A bank may choose to be chartered at either the state or federal level. 12 U.S.C. § 35.

National banks, in contrast to state-chartered banks, are "instrumentalit[ies] of the federal government, created for a public purpose, and . . . subject to the paramount authority of the United States." *Marquette*, 439 U.S. at 308. Although the structure of the system has changed, *McCulloch*'s approach to federal supremacy still applies with full force: states "can exercise no control" over national banks, "nor in any wise affect their operation, except in so far as Congress may see proper to permit." *Watters*, 550 U.S. at 11 (quoting *Farmers' & Mechanics' Nat'l Bank v. Dearing*, 91 U.S. 29, 34 (1875)).

To ensure that national banks are regulated primarily by federal law, this Court has interpreted the National Bank Act to broadly preempt state law. A unanimous Court provided a comprehensive overview of National Bank Act preemption in *Barnett Bank*. 517 U.S. at 32–34. The Court observed that some provisions of the National Bank Act "accompany a grant of an explicit power with an explicit statement that the exercise of that power is subject to state law." *Id.* at 34. When Congress has expressly required compliance with state law, the Supreme Court "has interpreted those explicit provisions to mean what they say." *Id.* But "where Congress has *not* expressly conditioned the grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies." *Id.* (emphasis added). That is because "Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted." *Id.* at 33. Thus, absent a provision of federal law expressly permitting states to regulate national banks, such regulation is permitted only where "doing so does not prevent or

significantly interfere with the national bank's exercise of its powers." *Id.*

Congress has endorsed and adopted the *Barnett Bank* standard by codifying it as part of the Dodd-Frank Act. *See* 12 U.S.C. § 25b(b)(1)(B). The relevant statutory provision states that a state law is preempted if, "in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in [*Barnett Bank*]," the law "prevents or significantly interferes with the exercise by the national bank of its powers." *Id.* Based on this plain statutory language, lower courts have uniformly held that the Dodd-Frank Act did not change the test for National Bank Act preemption, but instead codified this Court's *Barnett Bank* test. Pet. App 26a; *Lusnak*, 883 F.3d at 1191–92; *see also Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1197–98 (11th Cir. 2011).

Although the National Bank Act "ordinarily preempt[s] . . . contrary state law," *Barnett Bank*, 517 U.S. at 32 (quotation marks omitted), it does not preempt all state laws. As the OCC has explained, "states retain some power to regulate national banks in areas such as contracts, debt collection, acquisition and transfer of property, and taxation, zoning, criminal, and tort law." OCC C.A. Amicus Br. 19. These laws do not generally interfere with national banks' exercise of their federal powers; they "establish the legal infrastructure that surrounds and supports national banks' ability to do business." *Id.* at 20.

The dual banking system established by the National Bank Act has provided significant benefits to

the U.S. economy. Permitting national banks "to operate under uniform national rules across state lines, has helped to foster the growth of national products and services and multi-state markets." 76 Fed. Reg. at 43,554. That benefit is especially important today when "the Internet and the advent of technological innovations in the creation and delivery of financial products and services has accentuated the geographic seamlessness of financial services markets." *Id.*

2. National banks may exercise only those powers granted to them by federal law. As relevant here, the National Bank Act provides that "[a]ny national banking association may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to section 1828(*o*) of this title and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order." 12 U.S.C. § 371(a). This broad grant of real-estate lending power requires national banks to comply with federal statutes and regulations, but it does not mention compliance with state laws.

The National Bank Act also empowers banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking." *Id.* § 24 (Seventh); *see also NationsBank of N.C., N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 259 (1995) (construing "incidental powers" to include "familiar parts of the business of banking"). For nearly half a century, the OCC has recognized that national banks may "provid[e] escrow services in a variety of contexts." OCC, Interp. Ltr. No. 1041, 2005 WL 3629258, at *2 (Sept. 28, 2005) (citing OCC, Interp. Ltr. (May 13, 1975)). In an escrow account such as petitioners have here, the bank collects money from

the borrower to pay property taxes and home insurance premiums. Pet. App. 7a, 10a. Providing this service is a necessary part of the business of banking because it reduces the risk of loss to the property securing the loans from tax liens or property damage. It may also assist borrowers by "reliev[ing] them of the tasks of paying such regular tax and insurance obligations in a lump sum." OCC, Conditional Approval No. 276, 1998 WL 363812, at *9 (May 8, 1998).

3. In the 1970s, some lenders were accused of requiring borrowers to maintain higher balances in their mortgage escrow accounts than were necessary to pay their tax and insurance liabilities. *See* S. Rep. No. 93-866, at 3 (1974), *reprinted in* 1974 U.S.C.C.A.N 6546, 6548; Pet. App. 74a. As contemplated by the dual banking system, states adopted varied strategies to address this concern, while Congress took a different approach.

Thirteen states ultimately enacted laws requiring lenders or loan servicers to pay interest on mortgage escrow accounts. Pet. App. 21a–22a. These states did not adopt a uniform approach to requiring payment of interest. Some states, including New York and California, impose a fixed minimum interest rate. *See, e.g.*, N.Y. Gen. Oblig. Law § 5-601; Cal. Civ. Code § 2954.8(a). Others apply a variable rate pegged to market rates, but use different methods for calculating the rate. *See, e.g.*, Me. Stat. tit. 33, § 504; Md. Code Ann. Com. Law § 12-109; Mass. Gen. Laws ch. 183, § 61. Still others require the bank to pay the same interest rate on escrow accounts that it pays on savings accounts. *See, e.g.*, Conn. Gen. Stat. § 49-2a; Iowa Code § 524.905(2).

Congress adopted a different approach in the Real Estate Settlement Procedures Act ("RESPA") of 1974, 12 U.S.C. § 2601 *et seq.*, which limits the amount lenders may require in escrow accounts for federally insured, guaranteed, or owned mortgages. Under RESPA, lenders can collect only as much as is necessary to guarantee timely payment of taxes and insurance premiums. 12 U.S.C. § 2609; *see id.* § 2601(a).

In adopting RESPA, Congress specifically considered requiring national banks to pay interest on escrow accounts, but did not pursue that approach. The House bill included a provision directing the Board of Governors of the Federal Reserve System to conduct a study of the feasibility of requiring lenders to pay interest on escrow accounts. *See* H.R. 9989, 93rd Cong. § 113 (1973); H.R. Rep. No. 93-1526, at 14 (1974) (Conf. Rep.); H.R. Rep. No. 93-1177, at 19 (1974). But the Senate bill did not contain that provision, and the conference report did not recommend including it. H.R. Rep. No. 93-1526, at 14.

More recently, Congress addressed mortgage escrow accounts, in part, when it enacted the Dodd-Frank Act. As part of that law, Congress amended the Truth-in-Lending Act ("TILA") to require lenders to establish mortgage escrow accounts in certain circumstances. 15 U.S.C. § 1639d(a)–(b). Congress also specified certain rules for "[a]dministration" of these "mandatory" escrow accounts. *Id.* § 1639d(g). One provision ("Section 1639d") states that creditors shall pay interest on escrow accounts "[i]f prescribed by applicable State or Federal law." *Id.* § 1639d(g)(3). The parties agree that Section 1639d is not implicated in this case because petitioners' mortgages were not

"mandatory" under the Dodd-Frank Act. Pet. App. 8a, 10a–11a, 29a, 32a; *see also* Pet. 3.

4. National banks' general exemption from complying with state law does not mean that their banking activities are unregulated. "National banks are subject to extensive regulation at the Federal level . . . and to regular, and in some cases, continuous examination of their operations." 76 Fed. Reg. at 43,554. The OCC has issued extensive regulations governing virtually "[e]very aspect" of national banks' affairs. *Indep. Bankers Ass'n of Am. v. Heimann*, 613 F.2d 1164, 1168 (D.C. Cir. 1979) ("National banks are perhaps as meticulously regulated as any industry.").

As part of these regulations, the OCC has addressed when national banks must comply with state laws in exercising their real-estate lending powers. *See, e.g.*, 12 C.F.R. § 34.4. These regulations permit national banks to make real estate loans "without regard to state law limitations concerning . . . [e]scrow accounts, impound accounts, and similar accounts." *Id.* § 34.4(a)(6). The regulations are "based on the OCC's experience with the potential impact of such laws on national bank powers and operations." 76 Fed. Reg. at 43,557.

The OCC reexamined its regulations after Congress enacted the Dodd-Frank Act, and "confirm[ed] that the specific types of state laws cited in the rules are consistent with the standard for conflict preemption in the Supreme Court's *Barnett* decision." 76 Fed. Reg. at 43,557. The OCC explained that state laws concerning "escrow standards" are preempted because they "meaningfully interfere with fundamental and substantial elements of the business of national banks

and with their responsibilities to manage that business," including by "mitigat[ing] credit risk, manag[ing] credit risk exposures, and manag[ing] loan-related assets." *Id.*

5. New York law provides that "mortgage investing institutions" that maintain escrow accounts must pay at least two percent interest on those accounts. N.Y. Gen. Oblig. Law § 5-601. As of 2018, however, New York state-chartered banks are required to pay interest on escrow accounts at the lesser of the two percent statutory rate or "the six-month yield on United States Treasury securities." N.Y. Dep't of Fin. Servs., Order Issued under Section 12-A of the New York Banking Law (Jan. 19, 2018), https://bit.ly/3HrFKUv. New York's Superintendent of Financial Services justified this change by acknowledging that national banks are not subject to New York's interest-on-escrow law because federal law preempts it. *Id.* (citing 12 C.F.R. § 34.4(6)). The rule was thus necessary, in the Superintendent's view, to promote "parity" between state-chartered banks and federal-chartered banks. *Id.*

B. Facts and Procedural History

1. Petitioners in these cases are New York residents who obtained mortgages from Bank of America. Pet. App. 9a–10a.[1] Petitioners agreed, as a term of

[1] Petitioners filed two separate lawsuits in the district court: *Hymes* (No. 2:18-cv-02352) and *Cantero* (No. 1:18-cv-04157). The cases were not formally consolidated, but they have proceeded in tandem. The district court issued a single opinion addressing both cases. Pet. App. 70a. On appeal, the cases proceeded in

their loans, that a portion of their monthly payments would be placed into escrow accounts to pay property taxes and insurance premiums. Pet. App. 10a. When petitioners obtained their mortgage loans, they were provided with notices stating they would not receive interest on their escrow accounts "even if your state has a law concerning the payment of interest on escrow accounts." *Cantero* C.A. J.A. 40; *Hymes* C.A. J.A. 51.

2. Years after obtaining their mortgages, petitioners filed these putative class action lawsuits against Bank of America. Petitioners alleged that Bank of America had violated New York's interest-on-escrow law (N.Y. Gen. Oblig. Law § 5-601) by not paying at least two percent interest on their escrow accounts. Pet. App. 11a, 84a. Based on that alleged violation, petitioners also asserted claims for breach of contract, unjust enrichment, and violation of New York's consumer protection statute (N.Y. Gen. Bus. Law § 349). Pet. App. 84a.

Bank of America moved to dismiss the complaints on the ground that federal law preempts New York's interest-on-escrow law as applied to national banks. The district court rejected Bank of America's preemption defense and allowed petitioners' breach-of-contract claims to proceed. Pet. App. 71a, 119a.[2]

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tandem under separate docket numbers (*Hymes*, No. 21-403; *Cantero*, No. 21-400), and the court of appeals issued a single opinion deciding the cases together. Pet. App. 1a, 5a n.1.

[2] The district court dismissed the unjust enrichment and statutory claims on separate grounds, Pet. App. 119a–123a & n.18, that are not before this Court, Pet. App. 11a & n.4.

The district court held that, under the *Barnett Bank* standard, the National Bank Act does not preempt New York's interest-on-escrow law. Pet. App. 107a–118a. After observing that "[t]he Supreme Court has never explained in detail what this standard entails," Pet. App. 109a, the district court rejected the bank's preemption defense because "compliance with the state law" did not amount to "practical abrogation of the banking power at issue," Pet. App. 112a. The court declined to apply the OCC's preemption regulations and concluded that the OCC's views on National Bank Act preemption are entitled to no deference because they are unpersuasive and "do[] not in any way implicate the agency's substantive expertise." Pet. App. 105a–107a.

The district court certified its preemption ruling for interlocutory appeal under 28 U.S.C. § 1292(b), Pet. App. 52a, because "defining the precise contours of the *Barnett Bank* standard from such a limited sample of cases is inherently difficult, leaving substantial grounds for dispute." Pet. App. 62a.

3. The Second Circuit granted leave to appeal, Pet. App. 13a, and then reversed, Pet. App. 5a. In a unanimous decision, the Second Circuit held that the National Bank Act preempts New York's interest-on-escrow law.[3]

The Court disagreed with the district court's view that, under the *Barnett Bank* standard, the National

[3] Given this holding, the Second Circuit did not reach Bank of America's additional argument that OCC regulations provide an independent source of federal law that preempts the state interest-on-escrow law. Pet. App. 12a.

Bank Act preempts a state law only if that law "practical[ly] abrogate[s]" a national banking power. Pet. App. 16a. Surveying this Court's precedents, from *McCulloch* and *Franklin National Bank* to more recent decisions like *Barnett Bank* and *Watters*, the court of appeals concluded that the practical-abrogation standard not only conflicts with this Court's precedent, but "would undermine" the purpose and objectives of the National Bank Act, such as "shield[ing] national banking from unduly burdensome and duplicative state regulation." Pet. App. 21a (quoting *Watters*, 550 U.S. at 11).

In applying the *Barnett Bank* preemption standard to New York's interest-on-escrow law, the Second Circuit looked to "the nature of an invasion into a national bank's operations"—not "the magnitude of its effects"—to determine whether the state law is preempted. Pet. App. 17a. The court identified the relevant "banking power at issue" as "the power to create and fund escrow accounts." Pet. App. 23a. The court concluded that, "[b]y requiring a bank to pay its customers in order to exercise a banking power granted by the federal government," New York's interest-on-escrow law impermissibly "exert[ed] control over banks' exercise of that power." Pet. App. 23a; *accord* Pet. App. 5a (New York law "impermissibly interfere[s] with national banks' exercise of [its federal] power."). It did not matter how much the state law would burden the bank, because the preemption analysis depends on "the *kind* of intrusion on the banking powers granted by the federal government," not "the *degree* of the state law's effects on national banks." Pet. App. 17a (emphasis added).

Judge Pérez "join[ed]" the court's opinion "in full," agreeing that, "[i]n accordance with binding precedent, this Court correctly holds that the New York law at issue is preempted by the National Bank Act because it significantly interferes with incidental national bank powers." Pet. App. 35a. Judge Pérez also filed a separate concurring opinion to address an additional issue: Whether national banks must follow state laws requiring payment of interest-on-escrow accounts for escrow accounts that are "mandatory" under the Dodd-Frank Act. Though Judge Pérez agreed with the panel opinion that the issue was not presented in the case (*see* Pet. App. 29a n.11), she wrote separately to explain her view that national banks are required to pay interest for those mandatory accounts. Pet. App. 40a.

ARGUMENT

The Court Has Previously Denied Certiorari on the Question Presented, but if the Court Wishes to Decide the Question, *Flagstar* Presents a Better Vehicle for Doing So.

Bank of America agrees with petitioners that the question whether federal law preempts state interest-on-escrow laws is an important question. It is important to national banks because they need to know when they are governed by state laws and when they are exclusively regulated by federal law. The question also has a direct effect on the scope of the OCC's regulatory authority over national banks.

Despite the importance of the question presented, the Second Circuit's decision makes the need for review less urgent than at the time of the Ninth

Circuit's decision in *Lusnak*. The Second Circuit's preemption analysis is consistent with the views of the OCC, the federal regulator of national banks, and the Second Circuit reached the same conclusion as the OCC: the National Bank Act preempts state interest-on-escrow laws. In contrast, the Ninth Circuit disagreed with the OCC and expressly held that the OCC regulations—at least as applied to state interest-on-escrow laws—were invalid and unenforceable.

Petitioners contend that the Second Circuit's decision warrants immediate review because it "lacks any constraining principle." Pet. 21–22. As petitioners see it, if states cannot set interest-rate policy for national banks, then what power could they ever exercise over those banks? That concern is misplaced and provides no reason to grant the petition. The Second Circuit did nothing more than apply this Court's precedent to the particular state law at issue here. National banks still must follow state laws that "establish the legal infrastructure that surrounds and supports national banks' ability to do business." OCC C.A. Amicus Br. 20. The Second Circuit's ruling that states cannot dictate to national banks the interest rates they must pay on particular accounts does not call into doubt whether those banks must generally comply with, for example, the state's contract, property, tort, and criminal law. *Id.* at 19.

Petitioners rely on the fact that Bank of America petitioned for certiorari in *Lusnak* as a reason for granting certiorari here. But the Court denied the petition in *Lusnak*, and thus petitioners must establish reasons why this petition should be granted when the *Lusnak* petition was not. In the *Lusnak* petition, Bank of America predicted that this issue would be

heavily litigated following *Lusnak*. Although several lawsuits were filed, there are now only two court of appeals' decisions addressing the issue.[4] And while those two decisions have resulted in a circuit split, this Court often views a 1-1 split as too shallow to warrant immediate review where, as here, the split could still be resolved by the outlier circuit. The Court thus may prefer to wait until the First Circuit decides the issue in *Conti v. Citizens Bank, N.A.* (No. 22-1770), or until the Ninth Circuit has an opportunity to reconsider *Lusnak* in light of *Cantero*.[5]

If the Court decides that the question presented warrants immediate review, then the Court should grant the petition in *Flagstar* and hold this petition.

The *Flagstar* petition is a better vehicle because it presents the preemption issue more broadly than the issue decided by the Second Circuit. In *Flagstar*, the Ninth Circuit followed its decision in *Lusnak* and held that federal law did not preempt California's interest-on-escrow law for all mortgage escrow accounts, regardless of whether they qualify as mandatory

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[4] In a similar case against Bank of America challenging Maryland's interest-on-escrow law, the district court awarded summary judgment in favor of Bank of America. *See Clark v. Bank of Am., N.A.*, 561 F. Supp. 3d 542, 562 (D. Md. 2021). The plaintiff did not appeal the district court's ruling to the Fourth Circuit.

[5] Petitioners note that the Ninth Circuit denied rehearing en banc, *see Kivett v. Flagstar Bank, FSB*, No. 21-15667 (9th Cir. July 14, 2022), but that rehearing petition was decided before the Second Circuit disagreed with *Lusnak*, *see* Pet. App. 29a (decided Sept. 15, 2022).

accounts under the Dodd-Frank Act. *Kivett v. Flagstar Bank, FSB*, No. 21-15667, 2022 WL 1553266, at *1 (9th Cir. May 17, 2022). In contrast, the Second Circuit held only that federal law preempted New York's interest-on-escrow law for accounts that are *not* mandatory under the Dodd-Frank Act. Pet. App. 8a, 29a. The panel expressly reserved the question whether the state law would be preempted for mandatory accounts. Pet. App. 29a n.11. The *Flagstar* petition thus presents a broader preemption question that affects more mortgage escrow accounts than the narrower ruling in this case.

CONCLUSION

The Court may wish to deny the petition as it did in *Lusnak*. But if the Court concludes the question presented warrants review at this time, it should grant the petition in *Flagstar Bank, N.A. v. Kivett* (No. 22-349) and hold this petition.

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