No. 02-306

IN THE

Supreme Court of the United States

BENEFICIAL NATIONAL BANK AND
BENEFICIAL TAX MASTERS, INC.,
Petitioners,

v.

MARIE ANDERSON, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether a usury claim against a national bank, even if ostensibly brought under state law, necessarily arises under Section 30 of the National Bank Act, 12 U.S.C. §§ 85 and 86, so as to permit a federal court to exercise removal jurisdiction over the claim.

PARTIES TO THE PROCEEDING BELOW

Plaintiffs-Appellants:

Marie Anderson, Alvester Brafort, Walter Brutley, Patricia Coleman, Talaya Cope, Audrey Darby, Annie Davis, April DeLoach, Diane Franklin, Lillie Franklin, Willie Lewis, Caledonia Jackson, Shirley Jernigan, Evelyn Nelson, Willie Lawrence, Mamie Mitchell, Betty Person, Diane Peterson, Gwen Rogers, Williams Screws, Ernestine Starks, Gerald Stokes, Albert Thomas, Charles Thomas, Kenneth Williams, and Earline Young

Defendants-Appellees:

Beneficial National Bank, Beneficial Tax Masters, Inc., and H&R Block, Inc.

CORPORATE DISCLOSURE STATEMENT

As a result of a corporate merger in 1998, Beneficial National Bank was merged into Household Bank, f.s.b., and Beneficial Tax Masters, Inc., was renamed as Household Tax Masters, Inc. Household Bank, f.s.b., was dissolved in January 2003. Its remaining assets were sold to various entities. Assets relating to the tax-refund anticipation loan program at issue in this case were sold to Household Tax Masters, Inc. In addition, Household Finance Corporation has guaranteed any and all contingent obligations of Household Bank, f.s.b. Household International, Inc., is the parent corporation of Household Finance Corporation and Household Tax Masters, Inc., and is publicly traded.

In November 2002, Household International, Inc., agreed to merge into H2 Acquisition Corporation, which is a wholly owned subsidiary of HSBC Holdings plc. HSBC Holdings plc is publicly traded. The merger is expected to be completed in the first quarter of 2003, subject to regulatory approvals in various jurisdictions.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit (Pet. App. 1a-20a) is reported at 287 F.3d 1038. The opinion of the United States District Court for the Middle District of Alabama (Pet. App. 21a-28a) is reported at 132 F. Supp. 2d 948.

JURISDICTION

The judgment of the court of appeals was entered on April 3, 2002. The court of appeals denied a petition for re-

hearing on May 29, 2002 (Pet. App. 29a).[1] The petition for a writ of certiorari was filed on August 26, 2002, and was granted on January 24, 2003. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves Section 30 of the National Bank Act, 12 U.S.C. §§ 85, 86. It also involves 28 U.S.C. § 1331, § 1441, and § 1446(a) and (b). These statutes are set forth in the appendix to this brief.

STATEMENT OF THE CASE

1. At all times pertinent, petitioner Beneficial National Bank (the "Bank") was a national bank chartered under the National Bank Act ("NBA") and was subject to the supervision of the Office of the Comptroller of the Currency in the United States Department of the Treasury ("OCC" or "Comptroller"). The Bank made tax-refund anticipation loans to the respondents, who were tax-preparation customers of H&R Block, Inc. ("Block"). These are loans made by a bank in the amount of the borrower's anticipated tax refund less interest and fees, enabling the borrower to receive cash more quickly than waiting for the tax refund.

In September 2000, respondents brought suit in an Alabama state court, the Circuit Court of Barbour County, against petitioners, the Bank and its affiliate Beneficial Tax Masters, Inc., and also against Block,[2] alleging that the Bank had charged usurious interest on the tax-refund anticipation loans it had made to respondents. The plaintiffs (the respondents in this Court) were 26 citizens of Alabama, all resident in Barbour County. Although the Bank was sued

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[1] On June 17, 2002, the court of appeals granted a stay of its mandate, pending the filing of the certiorari petition and this Court's disposition of the petition. Pet. App. 36a.

[2] Block has filed a separate petition for a writ of certiorari (No. 02-312). The Court has not acted on that petition.

under its name, which identifies it as a national bank, the complaint asserted usury claims based only on Alabama Code § 8-8-1 and the common law, and did not mention Section 30 of the National Bank Act. App. 18-30. Indeed, the complaint contained an express disavowal of any intent to assert a federal claim. ¶ 31, App. 23.

The complaint charged usury in the following Count IV:

> USURY VIOLATIONS
>
> 58. Plaintiffs reallege and incorporate by reference the foregoing paragraphs 1 through 57 and further aver[ ] as follows:
>
> 59. Defendants charged each Plaintiff excessive interest in violation of the common law usury doctrine.
>
> 60. Defendants have violated Alabama Code § 8-8-1, et seq. by charging excessive interest on the Plaintiffs' tax refund.
>
> 61. Defendants breached their statutory and common law duties described hereinabove, and Plaintiffs suffered damages as follows:
>
> (a) paying excessive interest and fees to the Defendants;
>
> (b) foregoing the use of their money; and
>
> (c) suffering mental anguish.
>
> 62. As a direct and proximate consequence of Defendant[']s actions, Plaintiffs have been injured and damaged as identified her[e]inabove.
>
> WHEREFORE, PREMISES CONSIDERED, Plaintiff[s] demand[] judgment against Defendants joint[ly] and severally for compensatory damages and punitive damages not to exceed $74,900 per named Plaintiff, in an amount to be determined by a jury.

App. 28-29.

In addition to the "Usury Violations" alleged in Count IV, respondents also repeatedly alleged the charging of "excessive interest" in all the other counts. Paragraph 36 alleged that "[t]he interest charges were knowingly assessed by the Defendants and are in excess of the legal limit on interest rates allowed under Alabama statute and the common law doctrine of usury." That allegation is incorporated by reference in all other counts of the complaint. *Id.* ¶¶ 38, 43, 50, and 63; *see also id.* ¶¶ 41(a) ("excessive interest"), 46(a) ("excessive interest"), 53 ("excessive interest"), 56(a) ("excessive interest"), ¶ 67(a) ("excessive interest"); App. 24-29. These other counts included intentional misrepresentation, suppression of material facts, breach of fiduciary duty, and violations of the Alabama Code by charging "excessive interest." Each of these counts, like that quoted above, demanded compensatory and punitive damages "not to exceed $74,900 per named Plaintiff, in an amount to be determined by a jury."

2. Petitioners and Block timely removed the case to the United States District Court for the Middle District of Alabama, pursuant to 28 U.S.C. § 1441(a) and (b). App. 31-35. Jurisdiction was invoked under 28 U.S.C. § 1331 on the ground that the action necessarily arose under the laws of the United States. As the basis for removal, petitioners argued that any usury claim against a national bank must arise only under Section 30 of the National Bank Act, codified at 12 U.S.C. §§ 85-86, which provides that a national bank may charge interest "at the rate allowed by the laws of the State . . . where the bank is located,"[3] or "at a rate of 1 per centum in excess of the discount rate on ninety-day commer-

[3] The state where a national bank is "located" for this purpose is the state in which the headquarters specified in its certificate of organization is located. *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 308-13 (1978). In this case, the Bank's location so defined was in Delaware.

cial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater . . . ." 12 U.S.C. § 85. Section 30 of the National Bank Act also provides that if the national bank commits usury, then the borrower may obtain a judgment declaring forfeiture of the interest on the debt (if not previously paid), or may recover twice the amount of any interest already paid. 12 U.S.C. § 86.

Respondents moved to remand the case to state court. The district court denied that motion. The district court agreed with petitioners that the claims alleging that the Bank had charged usurious interest necessarily arose under Section 30 of the National Bank Act and thus established jurisdiction under 28 U.S.C. § 1331 over a question "arising under" federal law, permitting removal. Pet. App. 28a. The district court certified that issue for interlocutory appeal. *Id.*

3. A divided panel of the United States Court of Appeals for the Eleventh Circuit reversed. Pet. App. 1a-20a. The majority concluded that removal was improper because, even though (as the court acknowledged) Section 30 of the National Bank Act exclusively "governs the amount of interest a national bank may charge" (*id.* at 13a n.12) and "provides the exclusive remedy for usury claims against a national bank" (*id.* at 13a), Congress had not *additionally* expressed a specific intent to allow removal to federal court of cases arising under those exclusive provisions (*id.* at 13a-15a).[4]

The court of appeals observed that removal based on federal-question jurisdiction "generally is governed by the 'well-pleaded complaint' rule, which provides that a case

[4] The dissenting opinion concluded that removal was permitted, and indeed that federal jurisdiction over usury claims against national banks is exclusive. Pet. App. 17a-20a. We do not argue here that the federal courts have *exclusive* jurisdiction over usury claims against national banks.

may be removed only if the plaintiff's properly pleaded complaint reveals that the claim is based on federal law." Pet. App. 5a (citation omitted). The court of appeals recognized, however, that this Court has also adopted a "corollary" to the well-pleaded complaint rule—referred to sometimes as the "complete preemption" doctrine[5]—permitting removal even when a plaintiff has not invoked (and indeed has abjured) federal law in its state-court complaint. Under that corollary, removal is proper in cases where the plaintiff's claim necessarily must arise under a federally created statute that has entirely supplanted any possible state-law action, even though the plaintiff did not choose to plead a claim under that displacing federal law. *Id.* (noting that removal is proper when "the pre-emptive force of a [federal] statute is so strong that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule") (quoting *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 393 (1987)).

Although the court of appeals remarked that the permissibility of removal under this corollary to the well-pleaded complaint rule turns on congressional intent (Pet. App. 8a-9a), it did *not* view as determinative the congressional intent to supplant state law with a federal-law cause of action. Indeed, the court of appeals acknowledged that this Court's case law had long established that Section 30 of the National Bank Act "governs the amount of interest a national bank may charge . . . and provides the exclusive remedy for usury claims against a national bank," *id.* at 13a n.12 (citations omitted)—thus presumably meaning that a plaintiff could invoke *original* federal jurisdiction under 28 U.S.C.

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[5] This Court referred to "complete preemption" as a "corollary" of the well-pleaded complaint rule in *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 393 (1987), and *Rivet* v. *Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). We will occasionally use the term "complete preemption" as a shorthand herein.

§ 1331 to bring a usury claim against a national bank. Nonetheless, the court of appeals ruled that more was needed to establish federal *removal* jurisdiction over a usury claim against a national bank; it stated that such removal was improper in the absence of specifically expressed congressional intent to authorize *removal of the particular claims at issue*. *See id.* at 4a, 9a.

The court of appeals then proceeded to a review of the legislative history of the National Bank Act, enacted by Congress during the Civil War. The court acknowledged that Congress intended centrally in the National Bank Act to insulate the national banking system—of which, of course, the newly established national banks were a vital part—from state control and regulation. Pet. App. 9a-11a. According to the court of appeals, however, that undisputed history was insufficient to permit removal in the absence of evidence *additionally* showing that Congress was specifically concerned about the fate of national banks in state *courts*. *See id.* at 11a. The court stressed that, when Congress enacted the National Bank Act, it *permitted* federal usury claims to proceed against national banks in state courts, and did not provide for removal of usury claims at the option of national banks. *Id.* at 11a-12a.

The court observed that the National Bank Act was enacted before passage of either the first general original federal-question jurisdiction statute[6] or the general removal statute for federal-question cases—which since 1875 has provided for removal of *any* federal claim over which the federal courts would have had original jurisdiction[7]—and

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[6] Judiciary Act of 1875, § 1, 18 Stat. 470.

[7] The first general federal-question statute, Section 2 of the 1875 Judiciary Act, permitted removal in the course of the action if a federal defense was raised, as well as removal if the complaint asserted a federal-law claim. The general removal statute was first put in a form comparable to the present statute in 1887-88. *See* § 2, 24 Stat. 552 (Mar. 3, 1887),

before this Court's articulation of the well-pleaded complaint rule for federal-question cases[8] and the "complete preemption" corollary to the well-pleaded complaint rule.[9] Nonetheless, the court of appeals did not find the current existence of the *general* removal statute to be a sufficient basis for removal of the usury claim against the Bank in this case. Rather, the court required specific evidence of a particularized congressional intent to allow removal of usury claims arising under the National Bank Act. *See* Pet. App. 13a, 15a. Indeed, the fact that Congress had not yet enacted a general removal statute for cases arising under federal law at the time of the National Bank Act was apparently taken by the majority as evidence that the requisite will of Congress to allow removal of claims arising under Section 30 of the National Bank Act was lacking. The court of appeals thus ruled that, at least when removal jurisdiction is invoked under the "complete preemption" corollary to the well-pleaded complaint rule, there must be a showing that Congress has specifically intended to allow removal with respect to the precise substantive federal law at issue, and that removal cannot be based on the general removal statute. *See id.* at 16a (holding removal improper because "we find no clear congressional intent to permit removal under §§ 85 and 86 of the NBA").

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as corrected, 25 Stat. 433 (Aug. 13, 1888). This form of the removal statute referred directly to "suits of which the circuit courts of the United States are given original jurisdiction by the preceding section," which in turn provided for "arising under" jurisdiction. Thus, the 1887 statute ended the regime of the 1875 statute, under which the district courts' removal jurisdiction over federal-question cases was generally broader than their original jurisdiction over such cases. This history is recounted in *Tennessee* v. *Union & Planters' Bank*, 152 U.S. 454, 459-63 (1894).

[8] *Metcalf* v. *City of Watertown*, 128 U.S. 586 (1888); *Union & Planters' Bank, supra*.

[9] *Avco Corp.* v. *Aero Lodge No. 735, Int'l Ass'n of Machinists*, 390 U.S. 557 (1968).

SUMMARY OF ARGUMENT

I. This Court has consistently held that the rate of interest that may be charged by a national bank is exclusively governed by federal law—namely, Section 30 of the National Bank Act—and that any claim for usury against a national bank necessarily arises only under the National Bank Act, which contains a remedial provision directed precisely at such claims. The Court reached that conclusion after considering the nature and structure of the National Bank Act, its antecedents in provisions establishing the earlier Bank of the United States, and the problems to which the National Bank Act was directed: the stabilization of the national currency and national finances in the midst of the Civil War.

II. Respondents therefore necessarily raised a federal claim, and only a federal claim, for usury in their complaint. Such a federal claim would clearly have fallen within the district court's original jurisdiction under 28 U.S.C. § 1331, had respondents chosen to bring it in federal court as an initial matter. Accordingly, the claim can also be removed from state court to federal court under the general removal statute, 28 U.S.C. § 1441, which allows the district court to exercise removal jurisdiction in any case "arising under" federal law over which the court would have had original jurisdiction under § 1331. Respondents cannot avoid removal by the device of artfully pleading only a purported state-law claim and avoiding any reference to federal law. Although, under the "well-pleaded complaint" rule, it is generally the case that a state-law claim may not be removed to federal court merely because the state-law claim is likely to be met by a federal defense (including a defense of federal preemption), that is not the situation here, where the usury claim itself can only arise under federal law, regardless of the label placed on that claim by the plaintiffs. Federal courts have an established duty and power to look behind the words of the complaint and to examine the substance of the controversy to determine whether federal jurisdiction is

present, or absent. In this case, examination of the substance of the controversy reveals that the usury claim in this case can arise only under federal law.

III. Under the "complete preemption" corollary to the well-pleaded complaint rule, in a few areas of law where Congress has so forcefully exercised its constitutional power to supplant state law that any claim must necessarily arise under federal law, a purportedly state-law claim raised in state court is essentially transformed into a federal claim and may be removed to federal court. Like an action for benefits due under an ERISA benefit plan and an action under the federal labor laws involving the construction of a collective bargaining agreement, a usury suit against a national bank is such a case. Indeed, the case for such "complete preemption" is even stronger in this context than it is in the ERISA and labor contexts, for the modern national banking system did not exist until Congress enacted the National Bank Act; national banks have always been understood as instruments by which the federal government effectuates national financial and currency policies; and the National Bank Act establishes a highly detailed set of rules for the operations of national banks, along with a federal administrative agency (the Office of Comptroller of the Currency) to supervise them.

The court of appeals acknowledged that federal law exclusively governs usury claims against national banks, and yet it held that removal of the (necessarily federal) usury claim in this case was improper. The court of appeals believed that, for removal to be proper when the plaintiff ostensibly relies only on state-law claims in its complaint, there must be evidence, not just that Congress intended for those state law claims to be entirely supplanted by federal claims, but *also* that Congress specifically intended that those federal claims could be removed to federal court. There is no basis in this Court's decisions or the removal statute for that unduly restrictive approach to removal jurisdiction. Section 1441 of Title 28 simply provides for removal, at the option of

a defendant, of a federal claim that has been raised in state court. The pertinent question is not whether Congress specifically intended for a particular kind of claim to be removable, but whether the claim at issue is, in substance, federal. If the claim is federal, then § 1441 itself provides that it may be removed, without the need for any further analysis.

IV. Removal of the usury claim against the Bank is proper in this case even though respondents have also attempted to raise other claims and sue other defendants. All the claims may be removed together to federal court under 28 U.S.C. § 1367. Nor is it relevant that state law may govern certain other aspects of national banks; interest and usury, it is clear, are entirely matters of federal law. Respondents' arguments to the contrary are contradicted by an unbroken line of decisions of this Court stretching back more than a century.

ARGUMENT

I. ANY USURY CLAIM AGAINST A NATIONAL BANK ARISES UNDER FEDERAL LAW, AND ONLY UNDER FEDERAL LAW

We begin with the propositions that federal law—and only federal law—governs the amount of interest that a national bank may charge, and the only remedy for usury by a national bank is that provided in the National Bank Act. The court of appeals did not take issue with either of those propositions. Indeed, the court of appeals acknowledged the "well-settled law that [the National Bank Act] provides the exclusive remedy for usury claims against a national bank." Pet. App. 13a. That "well-settled law" has been expounded by this Court in a long line of cases stretching back for more than a century.

In the pioneering case in that series, *Farmers' & Mechanics' National Bank* v. *Dearing*, 91 U.S. (1 Otto) 29 (1875)—which was decided just 11 years after the enactment of the usury provisions of the National Bank Act—this Court held that the New York usury statute could not be applied

against a national bank. After undertaking an extensive review of the National Bank Act—including and especially its provisions for the taking of interest by national banks and for usury suits against national banks—the Court concluded that the Act's provisions "form a system of regulations. All the parts are in harmony with each other, and *cover the entire subject*." *Id.* at 32 (emphasis added).

In reaching that conclusion, the Court underscored the historical context in which the national banking system had been established, and found the National Bank Act to rest "on the same principle as the act creating the second bank of the United States," 91 U.S. at 33, which had been upheld in *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819).[10] Based on the Court's understanding of national banks as means through which the federal government sought to effectuate national policies—such as the establishment and maintenance of a stable and uniform national currency and the assurance of the Union government's ability to finance its operations during the Civil War[11]—the Court stressed that "[t]he national banks organized under the [National Bank Act] are instruments designed to be used to aid the [national]

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[10] *See also Easton* v. *Iowa*, 188 U.S. 220, 228 (1903) (reaffirming that "the principles enunciated in *M'Culloch* v. *Maryland*, . . . though expressed in respect to banks incorporated directly by act of Congress, are yet applicable to the later and present system of national banks") (citations omitted).

[11] *See Tiffany* v. *National Bank of Mo.*, 85 U.S. 409, 413 (1873) (noting that national banks "were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market for the loans of the General government"). *See generally* Bray Hammond, *Banks and Politics in America* 718-39 (1957); *Spellman* v. *Meridian Bank (Del.)*, Nos. 94-3203, -3204, -3215 to -3218, 1995 WL 764548, at *21-*24 (3d Cir. Dec. 29, 1995) (Scirica, J., dissenting), *vacated & set for reh'g en banc*, 1996 U.S. App. LEXIS 2506 (3d Cir. Feb. 16, 1996) (dismissed before rehearing).

government in the administration of an important branch of the public service." 91 U.S. at 33.

The Court thus concluded that "the States can exercise no control over [national banks], nor in any wise affect their operations, except in so far as Congress may see proper to permit," and that any attempt by a State to regulate national banks would be the "usurpation of power." 91 U.S. at 34. Nor did the Court find any evidence that Congress intended to permit the States to "supplement [the interest provisions of the National Bank Act] by State legislation." *Id.* at 35. And finally, the Court emphasized that where, as in the National Bank Act, "a statute creates a new offence and denounces the penalty, or gives a new right and declares the remedy, the punishment and the remedy can be only that which the statute prescribes" and cannot be found in any other system of laws, such as state law. *Id.*

The Court's holdings in *Dearing*—that Congress had provided a complete "system of regulations" governing the taking of interest by national banks, defining usury and providing the penalties for any violation, and that Congress had displaced all state usury laws from application to national banks—have been followed consistently by this Court for more than a century, and indeed have never been seriously questioned.[12] This unbroken line of authority

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[12] *See Barnet* v. *Muncie Nat'l Bank*, 98 U.S. 555, 558 (1878) ("The statutes of Ohio and Indiana upon the subject of usury . . . cannot affect the case [because] . . . [w]here a statute creates a new right or offence, and provides a specific remedy or punishment, they alone apply[;] [s]uch provisions are exclusive."); *Carter* v. *Carusi*, 112 U.S. 478, 483 (1884) (holding that Section 30 of National Bank Act provides "the exclusive remedy" for taking of excessive interest by a national bank, and rejecting borrower's argument that he had a common-law right to reclaim or set off usurious interest); *First Nat'l Bank of Charlotte* v. *Morgan*, 132 U.S. 141, 144 (1889) ("A suit against a national bank to recover back twice the amount of interest illegally taken by it is a suit to recover a penalty incurred under a law of the United States."); *Haseltine* v. *Central Nat'l Bank*, 183 U.S. 132, 134 (1901) ("[T]he note in question was given to a

reflects the Court's consistent understanding of Congress's design in the National Bank Act. As the Court explained in *Tiffany* v. *National Bank of Missouri*, 85 U.S. 409 (1873), which predated even its decision in *Dearing*, Congress's paramount concern in establishing the interest provisions of the National Bank Act, including the exclusive federal usury remedy, was to protect the national banks that formed the nascent national banking system from strangulation by the States, which had vested interests in their own banking systems. As the Court noted in *Tiffany,* Congress expected that national banks "would come into competition with State banks" and anticipated the prospect of "unfriendly State legislation." *Id.* at 412. To avoid even the possibility of "unfriendly legislation by the States, or . . . ruinous competition with State banks," Congress determined that national banks should have certain "advantages" over their state competitors, including advantages in charging interest. *Id.* at 413.

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national bank, the definition of usury and the penalties affixed thereto must be determined by the national banking act, and not by the law of the state."); *Evans* v. *National Bank of Savannah*, 251 U.S. 108, 109, 111, 114 (1919) ("Whether transactions by [a national bank] are usurious and the consequent penalties therefor[] must be ascertained upon a consideration of the National Bank Act.") ("The National Bank Act establishes a system of general regulations [and] adopts usury laws of the states only in so far as they severally fix the rate of interest.") ("[F]ederal law . . . completely defines what constitutes the taking of usury by a national bank, referring to the state law only to determine the maximum permitted rate."); *McCollum* v. *Hamilton Nat'l Bank of Chattanooga*, 303 U.S. 245, 245-46 (1938) (applying rule that Section 30 of the National Bank Act "governs the rates of interest to be taken by national banking associations and . . . declares [the penalty for] the receiving of a rate of interest greater than that allowed"); *Marquette Nat'l Bank* v. *First of Omaha Serv. Corp.*, 439 U.S. 299, 308, 319 n.31 (1978) ("The interest rate that [the national bank] may charge . . . is . . . governed by federal law[.]"); *Smiley* v. *Citibank (S.D.), N.A.*, 517 U.S. 735, 744 (1996) ("there is no doubt that § 85 pre-empts state law"; "the protection of state usury laws is an issue of legislative policy, and any plea to alter § 85 to further that end is better addressed to the wisdom of Congress than to the judgment of this Court") (internal quotation marks omitted).

"National banks," the Court emphasized, "have been National favorites." *Id.*; *see also Marquette Nat'l Bank* v. *First of Omaha Serv. Corp.*, 439 U.S. 299, 314 (1978).

II. A PLAINTIFF CANNOT AVOID CONGRESS'S TOTAL SUPPLANTATION OF STATE LAW CLAIMS WITH FEDERAL LAW AND DEFEAT REMOVAL BY ARTFULLY PLEADING A NONEXISTENT STATE-LAW CLAIM

Because the complaint in this case raised a usury claim against a national bank, and because (as this Court has made clear on numerous occasions) such a claim can arise only under federal law, that claim necessarily "arises under" the laws of the United States and falls within the jurisdiction of the district courts under § 1331 over cases arising under federal law. Respondents, however, have maintained that their complaint simply raised a claim of state law—a choice they were purportedly entitled to make as the framers of their complaint—and that petitioners are attempting to effectuate removal based on a federal defense of preemption. But while the assertion of a federal defense to a state-law claim ordinarily will not support federal jurisdiction at the behest of either the plaintiff or the defendant, that is not the situation in this case. Rather, this is a case where the plaintiffs are attempting to avoid federal jurisdiction by "artfully pleading" a claim that is necessarily federal in substance as a state-law claim. Such artful pleading cannot defeat federal jurisdiction.

Under the "well-pleaded complaint" rule, a lawsuit in which the claim in fact arises under state law, but is expected to be met by a defense under federal law, does not, in the usual case, "arise under" the laws of the United States, so as to permit either the plaintiff to file a complaint in federal court or the defendant to remove such a case if filed in state

court.[13] This rule was apparently derived from the system of common-law pleading, in which the plaintiff was bound to plead only its entitlement, and was not permitted to anticipate what it would say in any reply that it would file to the defendant's plea or answer. *See, e.g.*, *Louisville & Nashville R. R. Co.* v. *Mottley*, 211 U.S. 149, 152-53 (1908).[14]

This case, however, does not involve an anticipatory reply. The only source of law that could support the usury claim here is federal law. If federal law is violated by the terms of the loan, a series of federal remedies, some quite draconian involving forfeitures, is available; if federal law is not violated by the terms of the loan, then there is to be a judgment that respondents take nothing, whatever Alabama state law may say. What is presented here is not a federal defense, but a federal cause of action, and one that is exclusive. Respondents' complaint is disingenuously pleaded, not "well pleaded" in any respect, for it purports to raise a state law claim that does not exist, and it disavows reliance on the only source of law that could support a usury claim, federal law (*viz.*, the National Bank Act).

This Court has never countenanced efforts to avoid federal jurisdiction through such pleading devices that lack a real and substantial basis. Although it is sometimes said that, for federal jurisdiction purposes, the plaintiff is "master of the claim,"[15] the Court has long recognized limits on that

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[13] *Rivet*, 522 U.S. at 475 (citing *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 63 (1987)).

[14] In *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 673-74 (1950), this Court held that a party could not use the declaratory judgment procedure to present a federal defense as if it were part of a claim. *Skelly Oil* was apparently the first instance of the Court's use of the phrase "artful pleading," although not of course the first in which it had applied the concept that a federal court has the duty to examine the true nature of a plaintiff's claim.

[15] *See, e.g.*, *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 392 (1987).

aphorism. Where the plaintiff has a real choice between a state and a federal claim, the plaintiff is indeed the "master of the claim" and has the right to make that choice. The plaintiff does not, however, have the right to conceal the necessarily federal nature of the claim where (as here) there is no alternative state claim. As the Court recently explained in *Rivet* v. *Regions Bank of Louisiana*, 522 U.S. 470, 475-76 (1998):

> Allied as an "independent corollary" to the well-pleaded complaint rule is the further principle that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." If a court concludes that a plaintiff has "artfully pleaded" claims in this fashion, it may uphold removal even though no federal question appears on the face of the plaintiff's complaint. The artful pleading doctrine allows removal where federal law completely preempts a plaintiff's state-law claim.

In the words of the Court's decision in *Rivet*, the state claim is "transformed" into a federal claim. *Id.* at 476.

The Court's refusal to accept a plaintiff's ostensible reliance on nonexistent (or "completely preempted") state-law claims is simply one aspect of the more general principle that a federal court need not accept at face value the words printed in the plaintiff's complaint, but rather has a duty to examine the real nature of the plaintiff's case to determine whether federal jurisdiction is present. This is true with respect to diversity cases as well as cases arising under federal law, whether originally filed in federal court or originally filed in state court and removed to federal court. This Court's recent treatment of the subject in *Rivet* follows a long line of cases disallowing manipulations by plaintiffs designed to create or avoid diversity jurisdiction, such as misaligning the interests of the parties, naming parties (whether plaintiffs or defendants) who have no real interest in or relationship to the controversy, misstating the

citizenship of a party (whether plaintiffs or defendants), or misstating the amount in controversy.

In *City of Indianapolis* v. *Chase National Bank*, 314 U.S. 63 (1941), the Court made clear that federal courts must "look beyond the pleadings, and arrange the parties according to their sides in the dispute" in determining whether there is truly diversity of citizenship. *Id.* at 69 (quoting *City of Dawson* v. *Columbia Ave. Sav. Fund, Safe Deposit, Title & Trust Co.*, 197 U.S. 178, 180 (1905)). The Court realigned the parties in *Chase* according to their interests in the actual controversy, concluded that there was not actually complete diversity of citizenship, and admonished as follows:

> Litigation is the pursuit of practical ends, not a game of chess. Whether the necessary collision of interest exists, is therefore not to be determined by mechanical rules. It must be ascertained from the principal purpose of the suit, and the primary and controlling matter in dispute.

314 U.S. at 69 (citations and internal quotation marks omitted). Similarly, a federal court need not and should not simply adopt the plaintiff's view as to who are the proper parties to the dispute.[16] Federal courts also must determine whether the alleged jurisdictional amount is truly in controversy.[17]

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[16] *See Ex Parte Nebraska*, 209 U.S. 436, 445 (1908) (federal court should itself decide for jurisdictional purposes whether a state is the real party plaintiff, even when the state is not named as such, and whether a state is not the real party plaintiff, even when it is nominally identified as a plaintiff); *Wecker* v. *National Enameling & Stamping Co.*, 204 U.S. 176 (1907) (ruling that codefendant was joined baselessly to defeat diversity jurisdiction); *Wilson* v. *Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921) (similar). *See generally* 13B Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 3607 (3d ed. 1998).

[17] *See Thomson* v. *Gaskill*, 315 U.S. 442, 446 (1942); *St. Paul Mercury Indem. Co.* v. *Red Cab Co.*, 303 U.S. 283 (1938) (plaintiff may

Thus, if a North Carolina plaintiff sued a South Carolina defendant in North Carolina state court for an amount in excess of $75,000 but claimed that both parties were North Carolina citizens, the plaintiff's allegations of citizenship could not defeat federal diversity jurisdiction; if the defendant filed a notice of removal, the district court could make an independent determination of the citizenship of the parties. This is a not-uncommon experience in the district courts, and the district courts will not grant a plaintiff's motion to remand based on the plaintiff's version of the citizenship of the parties, if the defendant can demonstrate that the plaintiff's characterization is wrong and that diversity exists. *See generally* 15 *Moore's Federal Practice* §§ 102.30 through 102.56 (3d ed. 2002).

Likewise, in cases "arising under" federal law, the lower federal courts have long followed this Court's admonitions to examine the real nature of actions removed from state courts. As one federal district court explained 30 years ago:

> Removal is always proper where the real nature of the claim asserted in the complaint is federal, irrespective of whether it is so characterized, and even where plaintiff inadvertently, mistakenly or fraudulently may have concealed a federal question that would necessarily have appeared if the complaint had been well-pleaded.

City of Galveston v. *International Org. of Masters, Mates & Pilots*, 338 F. Supp. 907, 909 (S.D. Tex. 1972); *see also New York* v. *Local 1115 Joint Bd.*, 412 F. Supp. 720, 722 (E.D.N.Y. 1976) ("[P]laintiff may not, by artful pleading, cast a claim, the essence of which is a federal right, in terms of State law and thereby defeat removal."); *Sylgab Steel & Wire Corp.* v. *Strickland Transp. Co.*, 270 F. Supp. 264, 267 (E.D.N.Y. 1967) ("The mere fact . . . that plaintiff makes no

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not defeat jurisdiction by reducing amount in controversy following removal).

specific reference to federal law in his pleading, and strenuously objects to the inference that his cause of action is so based, cannot be decisive in determining jurisdiction.").

In sum, there are two closely related aspects of the "well-pleaded complaint" rule in the context of "arising under" cases, which in fact are no more than two faces of the same coin. The primary rule states that the right of action pleaded by the complaint generally governs, and that efforts to plead a reply to an anticipated defense will be disregarded. The "corollary," sometimes called the "complete preemption" corollary, is found where federal law has "transformed" the state claim into a federal one. *Rivet*, 522 U.S. at 476. In such a case, the complaint is to be treated as arising under federal law, since that is the only basis on which the plaintiff's claim can be made at all, irrespective of whether the plaintiff has attempted to affix a state-law label to it. In such a case, an assertion that the claim arises under state law is *not* pleading "well," and the courts are to treat the complaint as if it had correctly pleaded federal law.[18]

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[18] Although some older cases considered the plaintiff's intent in mischaracterizing the jurisdictional situation, it is now the predominant view that the federal court need not inquire into the intent of the plaintiff in characterizing its case as it did. Rather, the court's proper analysis is directed to determining the true nature of the controversy presented. If the case is mischaracterized, for whatever reason, when assessed against Congress's intent in providing for federal jurisdiction, then the federal court is free, and indeed is obligated, to recharacterize the complaint in accordance with the realities of the sitaution and with that congressional intent. *See, e.g.*, 15 *Moore's Federal Practice* § 102.21[5][a], at 102-56 (3d ed. 2002) (so-called "fraudulent joinder" may be proven either by showing inability to prove a claim against defendant or outright fraud).

III. BECAUSE A USURY CLAIM AGAINST A NATIONAL BANK NECESSARILY ARISES UNDER FEDERAL LAW, IT MAY BE REMOVED TO FEDERAL COURT, NOTWITHSTANDING THE PLAINTIFF'S PURPORTED RELIANCE ONLY ON STATE LAW

A. A Claim That Necessarily Arises Under Federal Law Can Be Removed Without A Further Showing That Congress Specifically Intended For That Claim To Be Removable

1. We have shown that respondents' usury claim necessarily arises under federal law, even though they have purported to rely only on state law. We have also shown that a federal district court presented with a notice of removal invoking the court's "arising under" jurisdiction may examine the substance of the complaint to determine whether the claim is in fact federal in nature, notwithstanding the state-law label. To be sure, it is only in a small minority of cases that a federal court is called upon to disregard the plaintiff's express reliance on state law and disavowal of federal law in this manner. Nonetheless, it is an established practice for the federal courts to do so in those few areas of law in which Congress has forcefully exercised its constitutional powers to supplant state regulation and has fashioned federal causes of action that are analogous to, although perhaps not completely coextensive with, the displaced state law. In such situations, any claim *must* be a federal question over which the district courts have "arising under" jurisdiction.

The leading case establishing this principle is *Avco Corp* v. *Aero Lodge No. 735*, *International Ass'n of Machinists*, 390 U.S. 557 (1968). *Avco* involved the construction of a collective bargaining agreement enforceable in federal court under Section 301 of the Labor-Management Relations Act of 1947 ("LMRA"). The Court had previously construed LMRA § 301 as providing not merely a basis for federal-court jurisdiction over disputes involving collective bargaining agreements, but also a direction to the federal

courts to fashion federal rules for the construction and enforcement of such agreements. *See Textile Workers Union* v. *Lincoln Mills of Ala.*, 353 U.S. 448 (1957). *Avco* held that this congressional direction to apply federal law included as well a direction *not* to apply state law to collective bargaining contracts: "[A]n action arising under Section 301 is controlled by federal substantive law even though it is brought in a state court." 390 U.S. at 560. And since federal substantive law controlled the construction of the collective bargaining agreement, it necessarily followed that any complaint raising such an issue of construction could be removed to federal court for that court to exercise its "arising under" jurisdiction.

In *Avco*, the plaintiff, an employer, had filed a complaint in state court to enjoin a strike on the grounds that the strike violated a "no strike" clause agreed to in a collective bargaining contract. This Court affirmed the denial of the motion to remand, observing that removal is but one aspect of the "primacy of the federal judiciary in deciding questions of federal law." 390 U.S. at 560. Moreover, whether or not the plaintiff had pleaded the case as one arising under federal law, the Court concluded that "it is thus clear that the claim under this collective bargaining agreement is one arising under the 'laws of the United States' within the meaning of the removal statute," and that the claim would therefore fall within the original jurisdiction of the district court. *Id.* The Court reached that conclusion even though the particular remedy that the plaintiff sought, an injunction against the strike, was barred in federal court under the Norris-LaGuardia Act (and even though the employer had presumably filed suit in suit state court precisely so that it could obtain such an injunction). *See id.* at 560-61.

Avco makes clear that, where federal law displaces state law as a basis for a claim, a suit that purports to arise under the displaced state jurisprudence nonetheless arises under the laws of the United States. Like any other federal claim, it is subject to removal under 28 U.S.C. § 1441, absent a federal

statute expressly precluding removal. It is irrelevant that the rules or remedies applicable under federal law are different from those which might have applied under state law, and that they may be disappointing to the plaintiff. Moreover—and of considerable significance in the present case—the Court in *Avco* did *not* look for the presence of congressional intent, revealed in the legislative history or otherwise, with respect to the specific issue of removability. Rather, the conclusion that the case was removable to federal court under § 1441 followed simply from the fact that the case arose under the laws of the United States, without any further requirements or analytical steps.

The Court next visited the subject in *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983). That case involved the Employee Retirement Income Security Act of 1974 ("ERISA"), a statute that federalized certain kinds of controversies involving the construction of qualified employee benefit plans. The California taxing authorities brought suit in a California state court against the Vacation Trust, an ERISA-qualified welfare benefit trust, seeking to collect taxes, and the Vacation Trust removed the case to federal district court. This Court reversed decisions of the lower federal courts permitting removal of the case. As the Court explained, ERISA did not provide the California taxing authority with any basis for proceeding against the Vacation Trust (even though ERISA authorized suits under federal law by individual beneficiaries to obtain benefits promised them under the plan). Thus, the only federal issue in the case was the expected interposition of a federal defense of preemption, which under the "well-pleaded complaint" rule does not provide a basis for removal to the district court. 463 U.S. at 25, 27. The Court focused on whether the particular claim in question had been converted by Congress into a federal claim, and concluded that it had not. Once again, as in *Avco*, the Court made no mention of any requirement to show an intent by Congress to permit removal of the specific claim at issue.

In *Metropolitan Life Insurance Co.* v. *Taylor*, 481 U.S. 58 (1987), by contrast, the Court held that ERISA had federalized all employee claims to recover benefits under covered plans, so that any such claims could be brought in, or removed to, a federal district court under its "arising under" jurisdiction. *Id.* at 64-65. The Court observed that "federal pre-emption is ordinarily a federal defense to the plaintiff's suit," and that such a defense "does not appear on the face of a well-pleaded complaint, and therefore, does not authorize removal to federal court." *Id.* Nevertheless, the Court went on to reaffirm that "[o]ne corollary of the well-pleaded complaint rule developed in the case law . . . is that Congress may so completely preempt a particular area that any civil complaint raising this select group of claims is necessarily federal in character." *Id.* at 63-64. When Congress "displace[s] entirely any state cause of action" in an identified area, "any such suit [in that area] is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of the [displacing statute]." *Id.* at 64.

As to whether the particular claims involved—suits by beneficiaries to obtain benefits with respect to a plan subject to ERISA—were governed by federal law displacing state law, the Court found dispositive a provision of ERISA stating as follows:

> The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

29 U.S.C. § 1132(f). That language was virtually identical to the language in § 301 of the LMRA that the Court had held, in *Avco*, to federalize all substantive law governing construction and enforcement of collective bargaining contracts. The Court also referred to a passage in the conference report accompanying ERISA, in which the conferees stated, referring

to suits to obtain benefits, that "[a]ll such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947." 481 U.S. at 65-66.

In the face of that indisputable evidence that Congress had intended ERISA claims for benefits to be treated as purely and solely federal, the Court held that, even though Taylor had taken pains to avoid pleading a federal right of action (as did the respondents here), the case in fact arose under the laws of the United States and thus fell within the district court's removal jurisdiction under § 1441. 481 U.S. at 67. The Court did not look in the ERISA text or in the legislative history for special references to removability; nor did the statutory provision or the conference report speak about removability. Rather, once the suit was identified as one arising under the laws of the United States, removability followed inevitably.

2. Two ambiguities in what appear to be clear-cut decisions seem to have caused confusion in the lower courts, including the court below. In *Metropolitan Life*, the Court noted that only once before—in *Avco*—had it ruled that federal law so "completely preempted" state law in an area that any claim in that area must necessarily arise under federal law. 481 U.S. at 64. This point, coupled with the *Metropolitan Life* Court's quotation from the ERISA conference report's reference to § 301 of the LMRA, has led some courts and commentators mistakenly to believe that a federal court may conclude that a purportedly state-law cause of action is removable under the "complete preemption" doctrine *only* where Congress enacts in a statute the same language as that of § 301 of the LMRA, or perhaps refers to § 301 in the legislative history.[19]

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[19] *See, e.g.*, *Aaron* v. *National Union Fire Ins. Co.*, 876 F.2d 1157, 1165 (5th Cir. 1989); *Klussman* v. *Cross-Country Bank*, No. C-01-4228-

Nothing in logic or in this Court's decisions supports that position, however. While the Court in *Avco* ascribed some importance to the language used by Congress in LMRA § 301 to hold that the law governing construction and enforcement of collective bargaining agreements is exclusively federal, the Court's greater emphasis lay on the nature of the subject of federal regulation. And while Congress's use in ERISA of similar statutory language and its reference in the ERISA conference report to LMRA § 301 made *Metropolitan Life* a straightforward case in which to hold that Congress had intended ERISA benefit suits to be governed by federal law and removable, the Court did not suggest that *only* such language could lead to a similar conclusion.

Second, a concurring opinion by Justice Brennan in *Metropolitan Life* referred in passing to the clear congressional intent in ERISA *to permit removal*. 481 U.S. at 67-68. But the opinion for the Court, joined by all the Justices, did not suggest that removal of a "completely preempted" and necessarily federal claim is proper only when there is affirmative evidence of congressional intent *to permit removal of that kind of claim*; the only congressional intent that was relevant was an intent that the suits in question necessarily "aris[e] under the laws of the United States." Justice Brennan's concurring remarks appear to have been a shorthand for an intent reflected in the statute that the claim in question arises exclusively under the laws of the United States—as, of course, do usury claims against a national bank. *See* pp. 11-14, *supra.*

Indeed, in a unanimous decision of the Court delivered by Justice Brennan just nine weeks later, *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386 (1987), the Court (although finding

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SC, 2002 WL 1000184, at *5 (N.D. Cal. May 15, 2002); *see also Spellman* v. *Meridian Bank (Del.)*, Nos. 94-3203, -3204, -3215 to -3218, 1995 WL 764548, at *6 (3d Cir. Dec. 29, 1995), *vacated & set for reh'g en banc*, 1996 U.S. App. LEXIS 2506 (3d Cir. Feb. 16, 1996) (dismissed before rehearing).

removal improper in that particular case), made clear once again that a plaintiff cannot defeat removal of a claim that is actually and in substance federal by artfully pleading the claim as arising under state law: "Once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law." *Id.* at 393. Nor did the Court suggest in *Caterpillar* that a defendant seeking to remove a state-law claim on the ground that it has been "completely preempted" must show that Congress intended to authorize removal for the particular kind of state claim at issue.[20]

In these cases, the Court's focus was on the true basis of the plaintiff's complaint: Where a state-law claim was actually available to the plaintiff, the plaintiff could choose to rely only on state law, even if that complaint might be met by a federal defense of preemption; but where only federal law was available as a basis for any claim, the plaintiff could not defeat federal jurisdiction by purporting to rely on a nonexistent state-law claim.[21] In each case, the intent of Congress in superseding and displacing any state-based claim with a federal claim—*not* its intent specifically to permit removal of that federal claim—was the touchstone for removal jurisdiction under § 1441.

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[20] In *Caterpillar*, the Court further summarized the well-pleaded complaint rule by stating that "[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant." 483 U.S. at 392. The Court did not qualify that summary further; it did not state, for example, that only state-court actions that could have been filed in federal court *and* as to which there was specific congressional authorization for removal may be removed to federal court.

[21] The analysis in *Rivet* v. *Regions Bank of Louisiana*, 522 U.S. 470 (1998), is similar; the Court looked to see whether the claim "arose under" federal law, not to see separately whether Congress intended removal. In *Rivet*, the claim was found not to "arise under" federal law.

B. Usury Claims Against National Banks Are Removable

Under the principles from this Court's cases just discussed, it is clear that respondents' usury claim is federal and therefore removable. Indeed, this is an *a fortiori* case from the situations in *Avco* and *Metropolitan Life*. In those cases, although federal law exclusively governed the adjudication of the disputes before the Court, Congress expected that the federal law would, in large part, be drawn from state-law concepts of contract and fiduciary law, and Congress had not provided a comprehensive or detailed statutory guide to the interpretation of collective bargaining contracts or benefit plans. Moreover, both collective bargaining agreements and benefit plans had existed long before the enactment of the pertinent statutory laws (the LMRA and ERISA), and the interpretation of those agreements had previously been a matter of state law.

By contrast, the national banking system never existed before the enactment of the National Currency Act in 1863 and the addition of Section 30 in the National Bank Act of 1864. Moreover, as the Court recognized in *Dearing* and in the long line of cases following it (*see* pp. 11-14, *supra*), Congress intended national banks to be instruments by which the national government accomplished its fundamental policy goals of stabilizing the national currency and the government's finances. Accordingly, when Congress created the national banking system, it provided for the governance of the national banks in that system through a highly detailed federal statute, which includes provisions regulating the taking of interest by national banks as well as remedies and penalties for violations of those provisions. A federal administrative agency—the OCC—closely supervises the regulation of national banks and has the authority to define, on a basis entitled to the highest degree of respect, the terms of what constitutes "interest" for the purposes of the statute. *Smiley* v. *Citibank (S.D.), N.A.*, 517 U.S. 735, 747 (1996). The na-

tional bank usury statute is thus a paradigm of total supplantation of state law by federal law.

Respondents argue (Br. in Opp. 5-6) that "complete preemption" is only a narrow exception to the general rule that a plaintiff is free to choose the law on which it relies for its claim. That may well be so, but here that exception (or corollary) is to be applied quite narrowly—to usury suits against national banks. Suits against national banks for usury constitute a select group of claims that are exclusively governed in right and remedy by a federal statute. Indeed, the exclusivity of federal law as the basis of the usury claim here is even more apparent than it was with respect to the claims at issue in *Avco* and *Metropolitan Life*. In those cases, a broad panoply of contract claims and claims for breach of fiduciary duty was held to fall within the federal courts' "arising under" jurisdiction of 28 U.S.C. § 1331, even though the LMRA and ERISA govern a multiplicity of potential issues and do not provide specific rules of decision or remedies for many situations. Here, a highly detailed federal statute governs the subject of usury for national banks. A recognition that the corollary of "complete preemption" applies to cases such as this one requires no extension of that doctrine.

C. The Court Of Appeals Erred In Requiring Evidence Of Specific Congressional Intent To Permit Removal Of Usury Claims

The rationale given by the court of appeals for its contrary result has little to commend it. The court of appeals emphasized that it had not found any specific intent on the part of Congress to authorize removal of usury claims against national banks—even though it *also* acknowledged that all such usury claims are necessarily federal in nature. Pet. App. 13a. As a logical matter, the court of appeals' reasoning would also preclude removal of usury claims against national banks that *expressly* relied on federal law. But such a result would be outlandish; no decision of this Court remotely suggests that a state-court complaint that openly invokes federal

law as the basis of a claim can be removed only when Congress has specifically authorized removal of that particular kind of claim. If that were the rule followed by the federal courts, then the general removal jurisdiction statute, 28 U.S.C. § 1441, which permits removal of any claim that would fall within the district court's original federal-question jurisdiction, would be entirely pointless.

The court of appeals stressed that the National Bank Act provided that suits against national banks could be filed in state court or in federal court (as is true today), and that Congress did not include national banks in a later 1868 statute which permitted certain federally-chartered entities to effect removal on the basis of simple preemption (that is, a federal defense). Pet. App. 10a-12a. But the issue in this case is not whether usury claims against national banks would have been removable in 1864 or 1868; it is whether such claims are removable *now*, and the proper way to determine the intent of Congress on that question is to read the jurisdictional statutes that it has enacted and that remain in force. The pertinent jurisdictional statute is § 1441, and the design of that statute is that *any* federal claim may be removed, *except* where Congress has provided to the contrary—as in, for example, cases arising under the Federal Employers' Liability Act, where Congress has expressly *precluded* removal, *see* 28 U.S.C. § 1445(a).

Nor is it necessary to establish, as the court of appeals seemed to believe, that the Congress that enacted the National Bank Act was particularly concerned about state courts' treatment of usury claims against national banks. Removal under § 1441 does not depend on a showing of state-court hostility to a particular federal right or claim. Rather, Congress has made removal available across-the-board to defendants against whom a federal claim is made in state court. The only pertinent points with respect to the actions of the Civil War Congress is that that Congress made the subject matter of interest charged by national banks exclusively a matter of federal regulation and created an exclu-

sive federal cause of action to address usury by national banks—points that the court of appeals did not question. It was a subsequent Congress that enacted § 1441, providing that all federal causes of action in state courts (including but not limited to usury claims under the National Bank Act) shall generally be removable, except in those few circumstances where Congress has *expressly* delineated that removal of federal claims is not permitted. And the propriety of the institutional reasons for which Congress has authorized removal of federal claims (*e.g.*, to ensure greater uniformity of decisions interpreting federal law) are not a matter for debate in this case.

It is no response to say that the state courts will presumably apply federal law properly to respondents' usury claim, and that any error in the state courts' analysis of the federal claims in this case can be brought to this Court on certiorari. The argument that removal is unwarranted here because any federal usury claim under the National Bank Act can be resolved by the Alabama courts and (eventually, perhaps) this Court is simply contrary to the policy of the removal statute itself. Congress provided in § 1441 that defendants should have the option of bringing a federal claim into federal court, even though Congress is also well aware that state courts routinely decide countless federal issues, and that this Court decides federal issues in many cases from the state courts.

The court of appeals apparently believed that, if Congress was really concerned by local prejudice or the fabrication of nonexistent state usury claims, it should have excluded jurisdiction in the state courts altogether. This overlooks the fact that almost all claims arising under federal law can legitimately be filed by a plaintiff in state court. The starting point is the general presumption that state courts enjoy concurrent jurisdiction over federal claims. *See Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 477-78 (1981); *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 507-08 (1962). This presumption only "can be rebutted by an ex-

plicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore Co.*, 453 U.S. at 478.

Nor is there any logical relation between exclusive federal jurisdiction and the "complete preemption" corollary permitting removal of federal claims from state court. In fact, state courts have concurrent jurisdiction over cases claiming benefits due under an ERISA plan and cases arising under LMRA § 301—two situations where this Court has expressly concluded that state-law claims are "completely preempted" by federal law and may be removed to federal court. *See* 29 U.S.C. § 1132(e)(1); *Charles Dowd Box*, *supra*. If the defendant is content to have such cases heard in state court, they will be heard there. *See Avco*, 390 U.S. at 560 n.2. *Cf. Rosciszewski* v. *Arete Assocs.*, 1 F.3d 225, 232 (4th Cir. 1993) (unlike LMRA and ERISA claims, federal courts have exclusive original jurisdiction over copyright claims). The removal statute exists for those cases "arising under" federal law in which the defendant does *not* consent to a state-court forum.

At all events, the policy of the general federal removal statute, § 1441, is clear and straightforward: When a plaintiff raises a federal claim, the defendant has the option to have that federal claim decided in federal court. No further analysis of congressional intent to allow removal of usury claims against national banks is either necessary or proper.[22]

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[22] Given the clarity of the removal statute and the well-settled law establishing that usury claims against national banks are necessarily federal, it is not incumbent upon us to establish that any particular *harm* would fall upon petitioners, or upon national banks more generally, if removal of such usury claims were not permitted. Nonetheless, we do note that, as *amici* American Bankers Association *et al.* persuasively explain, *see* ABA Br. 23-29, purportedly state-law usury claims brought in state courts against national banks (including claims seeking remedies not available under federal law) are not rare; state courts unfortunately do not

IV. RESPONDENTS' VARIOUS OTHER ARGUMENTS AGAINST REMOVAL ARE WITHOUT MERIT

Respondents have made a number of other arguments against removal in this case, all of which are without merit. First, they contend (Br. in Opp. 3-5, 9) that, by adding claims against entities that are not national banks and by including closely related state-law claims such as for fraud and breach of fiduciary duty, they have made the suit non-removable. However, it is well settled that if any claim falling under 28 U.S.C. § 1331 is made against any defendant in a multi-defendant, multi-claim suit, the entire case is removable, and all related claims and all defendants "come along" to federal court under the supplemental jurisdiction statute, 28 U.S.C. § 1367(a). That statute provides:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same

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always properly recognize such claims as preempted, and do not always dismiss them even when they lack merit under federal law; and the uncertainty created by the mere pendency of such state-court litigation can be adverse to the operations of a national bank (as the Comptroller has recognized, *see* ABA Br. 26). Respondents presumably did not file their suit in state court and oppose removal with the expectation that a local state judge in their own community would apply federal law and dismiss their usury claim. Perhaps there was some expectation that dismissal would not speedily occur, and that the case might remain in state court unadjudicated for a year, after which an amendment could be made to the complaint to remove the $74,900 cap from the recovery sought for each plaintiff, thus avoiding removal based on diversity jurisdiction (*see* 28 U.S.C. § 1446(b)). Perhaps the case was filed under the expectation that the prospect of taking the case up through the appellate levels in the Alabama court system was not an enticing one for the petitioners. Whatever the reason for respondents' claim to invoke nonexistent state usury law in the state courts against a national bank, such litigation tactics resemble the "game of chess" that this Court condemned in *Chase*, *supra.*

> case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Clearly, § 1367 "applies with equal force" to removed cases and to cases initially filed in federal court, because "a removed case is necessarily one 'of which the district courts . . . have original jurisdiction.'" *City of Chicago* v. *International Coll. of Surgeons*, 522 U.S. 156, 165 (1997) (quoting 28 U.S.C. § 1441(a)); *see also* 28 U.S.C. § 1441(c); *American Fire & Cas. Co.* v. *Finn*, 341 U.S. 6, 14 (1951) ("[W]here there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under [section] 1441(c).").

A review of the allegations and structure of the complaint in this case demonstrates that all the claims raised by respondents are part of the same Article III "case or controversy" within the meaning of § 1367, and so all the non-usury claims and claims against entities other than the Bank fall within the district court's supplemental jurisdiction on removal. Claims are part of the same constitutional "case or controversy" if they "derive from a common nucleus of operative fact." *City of Chicago*, 522 U.S. at 164-65 (quoting *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725 (1966)). The counts in the complaint allege wrongs resulting from the same common scheme, which is asserted in the "Factual Allegations" (Complaint ¶¶ 32-37), App. 23-24, and repeated in each of the five counts, App. 24-29. Thus, the parties' alleged relationship here served as a common nucleus of operative fact for the federal usury claim and for all the state-law claims. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 303 (3d Cir. 1998) ("That implementation of Prudential's scheme resulted in a variety of unlawful transactions does not negate the common basis they all shared."); *Krispin* v. *May Dep't Stores*, 218 F.3d 919, 925

(8th Cir. 2000) (ruling of common nucleus of operative fact in national bank usury suit in removed case).

Respondents also argue (Br. in Opp. 6-8) that this case is distinguishable from *Avco* and *Metropolitan Life* because the National Bank Act as a whole does not make all state laws totally inapplicable to national banks but, rather, leaves certain activities of national banks governed at least to some extent by state law.[23] But we do not argue (and we do not need to argue) that all cases against national banks, or all cases in which the National Bank Act may be implicated, are removable. Rather, what we do maintain—and all that is at issue here—is that usury suits against national banks are removable. That submission is based on the clear evidence that Congress intended the particular subject matter of usury by a national bank to be governed exclusively by the National Bank Act—a point this Court has accepted in numerous earlier decisions (*see* pp. 11-14, *supra*).

Finally, and as an apparent last resort, respondents claim (Br. in Opp. 10-19) that the National Bank Act provides for state law, not federal law, to determine the rate of interest that may be charged by a national bank. This assertion contradicts the long line of cases from this Court and other federal courts that have held that the interest provisions and usury remedies of the National Bank Act are federal law. The federal nature of these provisions is indeed apparent from the face of 12 U.S.C. § 85, which provides for a *federal* standard of permissible interest that may be charged by a national bank. A national bank may take interest at the highest of three available rates: the discount rate of the Federal Reserve, adjusted upwards, or any interest rate permissible under the law of the state of the bank's "location," either generally or for state-chartered banks in that state, whichever is higher. In addition, Congress defined the state of the bank's

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[23] *See Barnett Bank* v. *Nelson*, 517 U.S. 25, 33 (1996) (listing matters left to state law).

"location" under *federal* law to be the state referred to in the bank's charter, and under *federal* law allowed a national bank to charge interest at the highest of any of these rates *nationwide*, without regard to the laws of the other 49 states, including cases (like this) where the normal rules of conflicts of laws might have designated a different State's law. *See Marquette*, 439 U.S. at 313-19. The National Bank Act's usury provisions thus provide a clear example of a "federal statute . . . that . . . 'converts an ordinary common law complaint into one stating a federal claim . . . .'" *Caterpillar*, 482 U.S. at 386.

* * * * *

There are natural human tendencies to favor one's neighbors, whether or not they are one's constituents. The Framers of the Constitution were aware of these tendencies, and so provided the federal courts as a forum where federal claims could be decided without concern for state parochialism. Congress has put into execution this constitutional policy by allowing both plaintiffs and defendants to invoke that federal court jurisdiction for the adjudication of a federal claim. Since enactment of the general federal question statute (in 1875) and the general removal statute (in 1887), it has been the unbroken policy of Congress that parties may elect to have federal claims in civil cases decided by federal courts. The court of appeals' decision is not faithful to that policy, and accordingly should be reversed.[24]

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[24] Indeed, Congress has, if anything, facilitated the removability of federal-question cases since the first general removal act limited to such cases was enacted in 1887. In 1948, the old procedure, under which the petition for removal was required to be addressed to the state court, was abandoned in favor of the present procedure, where removal is automatic subject to a motion to remand addressed to the federal district court. *Compare* Act of June 25, 1948, ch. 646, 62 Stat. 869, 939, *with* Act of March 3, 1911, ch. 231, 36 Stat. 1087, 1095. In 1980, the provision requiring a specified amount in controversy for district-court federal-question claims was abandoned, with the result that the removal jurisdic-

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be reversed, and the case remanded for further proceedings in the district court.

Respectfully submitted,

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tion for cases "arising under" federal law permitted them to be removed without consideration of the amount in controversy. Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, 94 Stat. 2369. Congress has thus shown continuing interest in the removability of cases filed in state court, and particularly cases arising under federal law.

APPENDIX

UNITED STATES CODE ANNOTATED

TITLE 12. BANKS AND BANKING

CHAPTER 2—NATIONAL BANKS

SUBCHAPTER IV—REGULATION OF THE BANKING BUSINESS; POWERS AND DUTIES OF NATIONAL BANKS

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Current through P.L. 108-6, approved 02-13-03

§ 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under state laws, the rate so limited shall be allowed for associations organized or existing in any such State under title 62 of the Revised Statutes. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall

be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

UNITED STATES CODE ANNOTATED

TITLE 12. BANKS AND BANKING

CHAPTER 2—NATIONAL BANKS

SUBCHAPTER IV—REGULATION OF THE BANKING BUSINESS; POWERS AND DUTIES OF NATIONAL BANKS

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Current through P.L. 108-6, approved 02-13-03

§ 86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: *Provided,* That such action is commenced within two years from the time the usurious transaction occurred.

UNITED STATES CODE ANNOTATED

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE

PART IV—JURISDICTION AND VENUE

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Current through P.L. 108-6, approved 02-13-03

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

UNITED STATES CODE ANNOTATED

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE

PART IV—JURISDICTION AND VENUE

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Current through P.L. 108-6, approved 02-13-03

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

> **(A)** the action could have been brought in a United States district court under section 1369 of this title; or
>
> **(B)** the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from

which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

UNITED STATES CODE ANNOTATED

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE

PART IV—JURISDICTION AND VENUE

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Current through P.L. 107-377 (End) approved 12-19-02

§ 1446. Procedure for removal

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to *Rule 11 of the Federal Rules of Civil Procedure* and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be

removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c)(1) A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the prosecution as justice shall require. If the United States district court

determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.