No. 25-____

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Two years ago, in *Cantero v. Bank of America, N.A.*, 602 U.S. 205 (2024), this Court vacated a Second Circuit decision holding that the National Bank Act preempts a New York law requiring mortgage lenders to pay a minimum interest rate on funds held in mortgage-escrow accounts. The Court explained that the Second Circuit had taken too expansive a view of the preemption standard codified in Dodd-Frank, under which a state law like New York's is preempted "only if" it "prevents or significantly interferes with" a national banking power. 12 U.S.C. § 25b(b)(1)(B); *see Cantero*, 602 U.S. at 220-21.

On remand, a divided Second Circuit panel again held that New York's interest-on-escrow law is preempted. In doing so, the panel majority adopted an "approach that is just as capacious" as the prior approach that this Court unanimously rejected. App. 29a (Pérez, J., dissenting). And the panel majority expressly "disagree[d]" with a First Circuit case that applied this Court's decision in *Cantero* to "reach[] the opposite conclusion" as to another state's materially similar escrow-on-interest law. App. 27a.

The question presented, once again, is:

Does the National Bank Act preempt the application of state interest-on-escrow laws to national banks?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners Alex Cantero, Saul R. Hymes, and Ilana Harwayne-Gidansky were the plaintiffs in the district court and the appellees in the court of appeals.

Respondent Bank of America, N.A. (NYSE: BAC) was the defendant in the district court and the appellant in the court of appeals.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *Cantero v. Bank of America, N.A.*, No. 21-400 (2d Cir. May 5, 2026)
- *Cantero v. Bank of America, N.A.*, No. 21-400 (2d Cir. Sept. 15, 2022)
- *Cantero v. Bank of America, N.A.*, No. 18-cv-4157 (E.D.N.Y. Oct. 7, 2020)
- *Hymes v. Bank of America, N.A.*, No. 21-403 (2d Cir. Sept. 15, 2022)
- *Hymes v. Bank of America, N.A.*, No. 18-cv-2352 (E.D.N.Y. Oct. 7, 2020)

There are no related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

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INTRODUCTION

This Court has already once granted certiorari in this case, vacating and remanding a Second Circuit decision holding that the National Bank Act preempts state laws requiring mortgage lenders to pay interest on mortgage-escrow accounts. *Cantero v. Bank of America, N.A.*, 602 U.S. 205 (2024). But that remand has now produced a fresh circuit split—one even starker than before—about what this Court's decision means. In again declaring that New York's interest-on-escrow law is preempted, the Second Circuit on remand recognized that the First Circuit had "reached the opposite conclusion" as to Rhode Island's comparable law in *Conti v. Citizens Bank, N.A.*, 157 F.4th 10 (1st Cir. 2025). App. 27a. The Second Circuit, however, "disagree[d] with that conclusion" and "decline[d] to follow the First Circuit's analysis." *Id.* The result is an express split on an issue that the banking industry's chief regulator has described as having "foundational consequence" to the banking system. OCC Amicus Br. 3, *Cantero v. Bank of Am.*, 49 F.4th 121 (2d Cir. June 15, 2021) (No. 21-400). Only this Court can resolve it.

This Court's prior decision in this case unanimously rejected the Second Circuit's holding that the National Bank Act preempts state laws purporting to "control" the exercise of a federal banking power, regardless of "the magnitude of its effects." App. 91a. The proper standard, the Court held, is instead the one that it articulated in *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 32 (1996), and that Congress codified in the Dodd-Frank Act of 2010: A state law is preempted "only if," as relevant here, it "prevents or significantly interferes with the exercise by the national bank of its powers." App. 65a. In applying that standard, this Court explained, a court "must make a practical assessment of the nature and

degree of the interference caused by a state law." App. 72a. It must focus on the particular "text and structure" of the law, and ask if the nature and degree of interference with the asserted banking power is "more akin" to the interference in cases where this Court has found preemption than in cases where it has not. App. 72a n.3.

Because the Second Circuit "did not conduct that kind of nuanced comparative analysis"—and instead adopted a rule that would wrongly "preempt virtually all state laws that regulate national banks, at least other than generally applicable state laws such as contract or property laws"—this Court vacated its decision. App. 73a. But the Court declined to conduct the preemption analysis in the first instance, instead remanding to the Second Circuit to apply the rule to the New York law at issue. For that reason, as the dissenting opinion observed below, this Court's decision "left many questions unanswered"—including the question of how its test applies to state interest-on-escrow laws. App. 29a. The result is a stark circuit conflict: The decisions in this case and *Conti* both involve state laws requiring banks to pay a modest interest rate on mortgage-escrow accounts. But while the Second Circuit held that such laws are preempted by the National Bank Act, the First Circuit held that they are not.

Nobody doubts the importance of that conflict to the national banking system. The Second Circuit's decision leaves banks uncertain of the interest rates they must pay, undermining the stability on which our financial system depends. Bank of America has therefore "agree[d] with petitioners that the question whether federal law preempts state interest-on-escrow laws is an important question." BIO 14, *Cantero v. Bank of Am.*, 144 S. Ct. 1290 (Feb. 16, 2023) (No. 22-529). And the parties here are far from alone in that view. The Chamber of Commerce and

leading industry groups have called the issue "critical to the U.S. banking system." Bank Policy Inst. Amicus Br. 3-4, *Citizens Bank v. Conti*, 2026 WL 1052171 (U.S. Mar. 25, 2026) (No. 25-1004). And as noted above, the United States agrees. Even standing alone, these significant, national effects demonstrate the need for this Court's review.

But the Second Circuit's decision will have even wider-ranging effects, risking preemption of any state law that impacts the "efficiency" or "flexibility" of a national bank's exercise even of banking powers that Congress has never expressly granted—no matter how insignificant the law's real-world impact on banks. That rule, as the dissent recognized below, would effectively reinstate the Second Circuit's disapproved "control" test, allowing banks to ignore state consumer-financial laws, and resurrecting the preemption regime that Congress concluded had "planted the seeds" for the 2008 financial crisis. *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1189 (9th Cir. 2018).

That result cannot be reconciled with this Court's test. Nothing in any statute or this Court's cases authorizes displacing New York's law, nor does common sense. As the district court correctly held below, any interference caused by this law is "minimal" when "[c]ompared to the state laws in *Barnett Bank*" and the other cases in which this Court has found significant interference. App. 185a. In those cases, the state laws at issue imposed a significant practical impediment to the exercise of an express banking power. But all New York's law does is require a modest interest payment on the money that borrowers put into their escrow accounts—a requirement that is fully compatible with federal policy. Indeed, the Dodd-Frank Act *requires* national banks to pay interest on certain escrow accounts "[i]f prescribed by applicable State or Federal law." 15 U.S.C. § 1639d(g)(3). Many of Bank of

America's competitors, like Wells Fargo, do just that, as does Bank of America itself in other states. There is no evidence that the operations of these national banks have been significantly impaired as a result.

This case is also the best vehicle for resolving this important question. Unlike the Ninth Circuit's decision in *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025), which applied pre-*Cantero* circuit precedent and held that California's interest-on-escrow law is not preempted, the decision below presents the question narrowly, on indistinguishable facts, and without the risk of frustration by extraneous issues. Those considerations previously led this Court to grant certiorari in this case over *Kivett*. If anything, *Kivett* is an even weaker vehicle now than it was then, because the Ninth Circuit panel in that case declined to apply this Court's decision in *Cantero* at all. *See* Pet. Rehearing 9-10, *Citizens Bank v. Conti*, 2026 WL 1052171 (U.S. Feb. 19, 2026) (No. 25-1004) (making similar points).

Although the First Circuit's decision in *Conti* presents the opposite side of the same split, this case—unlike *Conti*—has already been battle-tested: This Court has already granted certiorari and decided the case once before without encountering any lurking issues that might interfere with resolution on the merits. So it is no surprise that the petitioner in *Conti* (represented by the same counsel as the respondent here) concedes that this case is a suitable vehicle. *See id.* at 10. Further, this Court has already denied certiorari in *Conti*, forcing the bank there to seek review in a petition for rehearing. This case, by contrast, offers an opportunity to resolve the split without resorting to the extraordinary remedy of rehearing.

To restore the certainty on which the national banking system depends, this Court should grant certiorari here.

OPINIONS BELOW

The Second Circuit's decision (App. 1a) has been designated for publication but is not yet reported. Its earlier decision (App. 75a) is reported at *Cantero v. Bank of America, N.A.*, 49 F.4th 121 (2d Cir. 2022). The district court's decision denying the defendant's motion to dismiss (App. 144a) is reported at *Hymes v. Bank of America, N.A.*, 408 F. Supp. 3d 171 (E.D.N.Y. 2019). Its decision granting interlocutory review (App. 125a) is unreported.

JURISDICTION

The court of appeals entered judgment on May 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

N.Y. G.O.L. § 5-601—Interest on deposits in escrow with mortgage investing institutions

Any mortgage investing institution which maintains an escrow account pursuant to any agreement executed in connection with a mortgage on any one to six family residence occupied by the owner … and located in this state shall, for each quarterly period in which such escrow account is established, credit the same with … interest at a rate of not less than two per centum per year based on the average of the sums so paid for the average length of time on deposit or a rate prescribed by the superintendent of financial services …[,] whichever is higher. …

* * *

12 U.S.C. § 25b

(b) Preemption standard

(1) In general

State consumer financial laws are preempted, only if—

(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or

(C) the State consumer financial law is preempted by a provision of Federal law other than title 62 of the Revised Statutes.

* * *

15 U.S.C. § 1639d

(g) Administration of mandatory escrow or impound accounts …

(3) Applicability of payment of interest

If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

STATEMENT

A. Statutory and regulatory background

1. National Bank Act preemption. "The United States maintains a dual system of banking, made up of

parallel federal and state banking systems." App. 61a.[1] Under the National Bank Act of 1864, national banks are established and regulated by a federal agency—the Office of the Comptroller of the Currency (OCC). *See id.* But they are also "subject to the laws of the State" and, indeed, "are governed in their daily course of business far more by the laws of the State than of the nation." *Watters v. Wachovia Bank,* 550 U.S. 1, 24 (2007) (Stevens, J., dissenting) (citation omitted). The result is a "mixed state/federal regime[] in which the Federal Government exercises general oversight while leaving state substantive law in place." *Cuomo v. Clearing House Ass'n, L.L.C.*, 557 U.S. 519, 530 (2009).

"In establishing a comprehensive regulatory scheme for national banks, the National Bank Act has long been understood to preempt some, but not all, state regulation." *Conti*, 157 F.4th at 14. This Court articulated the preemption standard in *Barnett Bank*. There, the Court held that a Florida law prohibiting national banks from selling insurance in small towns was preempted by a National Bank Act provision expressly permitting that precise practice. *See* 517 U.S. at 27-28. The Florida law interfered with that express power, the Court explained, because "the Federal Statute authorizes national banks to engage in activities that the State Statute expressly forbids." *Id.* at 31. The Court emphasized, however, that its holding did not "deprive States of the power to regulate national banks"—even as to a "bank's exercise of its powers"—if "doing so does not prevent or significantly interfere with the national bank's exercise" of those powers. *Id.* at 33.

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[1] Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this brief.

Despite decades of coexistence between federal and state escrow-account laws under this system, the OCC in 2004 issued a regulation seeking to preempt fourteen broad categories of state law, including all state laws "concerning … escrow accounts." Bank Activities and Operations; Real Estate Lending and Appraisals, 69 Fed. Reg. 1904, 1917 (Jan. 13, 2004) (codified at 12 C.F.R. § 34.4 (2011)). The agency provided no reasons for the change. Within just a few years of the OCC's sweeping deregulatory efforts, the housing market collapsed and plunged the country into "the worst financial crisis since the Great Depression, in which millions of Americans lost their homes." *Lusnak*, 883 F.3d at 1188-89.

Congress concluded that the OCC had contributed to the crisis by aggressively preempting state consumer-financial laws. The Financial Crisis Inquiry Commission, created by Congress to investigate the causes of the crisis, concluded that the OCC's efforts had "prevent[ed] adequate protection for borrowers and weaken[ed] constraints on … the mortgage market." Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report*, at 126 (Jan. 2011). "Rather than supporting [state] anti-predatory lending laws," Congress found, "federal regulators preempted them." S. Rep. No. 111-176, at 16-17 (2010). The agency thus "actively created an environment where abusive mortgage lending could flourish without State controls." *Id.* at 17.

In the Dodd-Frank Act, Congress sought to ensure this wouldn't happen again. It expressly repudiated the OCC's aggressive approach, returning "[t]he standard for preempting State consumer financial law … to what it had been for decades" and "undoing broader standards adopted by … the OCC." S. Rep. No. 111-176, at 175; *see* 12 U.S.C. § 25b(b)(1)(B). "To begin, Dodd-Frank ruled out

field preemption," thus reaffirming "that not all state laws regulating national banks are preempted." App. 65a; *see* 12 U.S.C. § 25b(b)(4) (clarifying that federal banking law "does not occupy the field in any area of State law"). Instead, even for the category of state consumer-financial laws, Congress expressly incorporated the standard this Court articulated in *Barnett Bank*, which "asks whether a [non-discriminatory] state law 'prevents or significantly interferes with the exercise by the national bank of its powers.'" App. 60a. Congress further reined in the OCC with a set of stringent procedural and evidentiary requirements on its ability to make preemption determinations, and by limiting deference to those determinations. *See* 12 U.S.C. § 25b(b)(3), (5)(A).

The last time this case was before this Court, the Court expounded on the meaning of Dodd-Frank's preemption standard. It explained that Dodd-Frank does not impose a "categorical test that would preempt virtually all state laws that regulate national banks … other than generally applicable state laws." App. 73a. To the contrary, the law requires courts to undertake "a practical assessment of the nature and degree of the interference caused by a state law." App. 72a. That assessment, in turn, requires a "nuanced comparative analysis" of the "interference with national bank powers" caused by the state law. App. 72a-73a. A court may conduct that analysis, if it is able, "based on the text and structure of the laws, comparison to [this Court's] precedents, and common sense." App. 73a n.3. If the court is satisfied that there is significant interference using these analytical tools, it should hold that the state law is preempted. But if not, and there has been no factual showing of interference, the court should not so hold.

2. Mortgage-escrow accounts. For over half a century, state laws applying to national banks have included rules

governing mortgage-escrow accounts. *See* Bruce E. Foote, Cong. Rsch. Serv., RL98-979, *Mortgage Escrow Accounts: An Analysis of the Issues* 1 (1998). Mortgage-escrow accounts are designed to ensure timely payment of property taxes and insurance premiums by requiring the borrower to make monthly payments and the mortgage lender "to pay the borrower's insurance premium and property taxes on the borrower's behalf." App. 62a. Today, "the vast majority of home mortgages come with" such accounts. *Id.*

But over time, as the escrow device grew in popularity, it became subject to abuse. "In the 1970s, Congress found that some national banks were engaging in 'certain abusive practices' and that 'significant reforms' were necessary." *Id.* (quoting 12 U.S.C. § 2601(a)). Many banks, for example, required borrowers to pay more than necessary to cover tax and insurance charges, and to make these payments well in advance. *See* Foote, *Mortgage Escrow Accounts*, at 3. As a result, these "accounts often carry a significant positive balance." *Lusnak*, 883 F.3d at 1188. And because banks often do not pay interest on that balance, the payments effectively became a large "interest-free loan from the customer" to the customer's bank. *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1173 (8th Cir. 1995).

To limit such abuses, Congress and various state legislatures erected guardrails on escrow accounts. In the Real Estate Settlement Procedures Act of 1974, Congress "extensively regulate[d] national banks' operation of escrow accounts." App. 62a. For example, RESPA caps the amounts that a national bank can require borrowers to deposit, App. 63a, and requires the bank to "promptly return[] to the borrower" any "balance" left in the account after a loan is paid, 12 U.S.C. § 2605(g). *See* App. 62a-63a.

RESPA "does not mandate that national banks pay interest to borrowers on the balances of their escrow accounts." App. 63a But it does not bar states from doing so. As a result, many states began enacting laws around this time to require mortgage lenders to pay a minimum interest rate on escrow-account balances. In total, fourteen states have adopted such laws. *See* Foote, *Mortgage Escrow Accounts*, at 3-4. Among them are New York and California, both of which require banks to pay 2% interest on escrow accounts (though the operative rate for New York has been lower than 2% for much of the past decade). *See* N.Y. G.O.L. § 5-601; Cal. Civ. Code § 2954.8(a). Rhode Island also has such a law, which requires banks to pay "the prevailing market rate of interest for regular savings accounts offered by local financial institutions." R.I. Gen. Laws § 19-9-2(a).[2]

Soon after its enactment in 1974, New York's law faced an industry challenge on the theory that the National Bank Act preempted it. A federal district court had little trouble rejecting that argument, concluding that any burden imposed on national banks was "insignificant." *Fed. Nat'l Mortg. Ass'n v. Lefkowitz*, 390 F. Supp. 1364, 1369 (S.D.N.Y. 1975). "The purpose of prepaying certain insurance and tax expenses," the court explained, "is not to provide [the bank] with income but rather to protect the mortgagees' interest in the mortgaged property." *Id.* New York's interest-on-escrow law, the court held, "in no way impairs this purpose." *Id.* The law "does not regulate how [a bank] must keep or invest the escrow funds in its possession." *Id.* "All that New York State has done is to act

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[2] The other states are Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, Oregon, Utah, Vermont, and Wisconsin.

upon funds which are kept by [the bank] for the ultimate benefit of the original homeowner-mortgagor." *Id.*

Congress has allowed state interest-on-escrow laws for decades without taking action to preempt them. To the contrary, Congress in Dodd-Frank amended section 1639d of the Truth in Lending Act to "require[] national banks to operate escrow accounts for certain mortgages." App. 63a n.1 (citing 15 U.S.C. § 1639d). In doing so, Congress expressly incorporated state interest-on-escrow requirements into federal law for those mandatory accounts: National banks must "pay interest to the consumer … in the manner as prescribed by [an] applicable State or Federal law." 15 U.S.C. § 1639d(g)(3).

B. Factual and procedural history

1. Plaintiffs Alex Cantero, Saul R. Hymes, and Ilana Harwayne-Gidansky are New York residents who financed their homes with mortgage loans from Bank of America, a national bank established under the National Bank Act. App. 156a-157a. Their mortgage agreements required them to cover property taxes and insurance payments by depositing money in escrow accounts. *Id.* Although the agreements were governed by New York law, Bank of America refused to comply with New York's statutory requirement that it pay at least 2% interest on such accounts. App. 157a-58a.

The plaintiffs sued for breach of contract and other claims in two related cases in the Eastern District of New York. App. 158a. The bank moved to dismiss, arguing that the National Bank Act preempts application of state interest-on-escrow laws to national banks. App. 159a. The district court denied the motions, holding that New York's law did not "significantly interfere" with the bank's mortgage-lending authority or its ability to provide escrow-account services. App. 185a. After surveying the

cases in which this Court found significant interference, the district court concluded that, as compared to them, any interference caused by this law is "minimal." *Id.* As a result, New York's law was not preempted.

2. The Second Circuit reversed, holding New York's law preempted as applied to national banks. App. 76a. The court found it unimportant that the interest rate required is "not very high." App. 107a. The test for preemption under the National Bank Act, it held, is "not how much a state law impacts a national bank, but whether it purports to 'control' the exercise of its powers." App. 91a. Thus, the court concluded, federal law preempts any state law that "purports to exercise control over a federally granted banking power," regardless of "how much [the] state law impacts" the exercise of that power or "the magnitude of its effects." App. 91a-92a. Because New York's law "would exert control over" national banks' asserted power "to create and fund escrow accounts," the Second Circuit held the law preempted. App. 97a.

The panel rejected the district court's reliance on TILA's express incorporation of state interest-on-escrow laws as evidence that Congress could not have intended that those laws be preempted. *See* 15 U.S.C. § 1639d(g)(3). It "does not make sense," the panel wrote, "to read this provision as effecting a sub silentio sea change," or to rely on it "to ascertain the legal force of the National Bank Act." App. 106a.

After granting certiorari, this Court unanimously vacated and remanded the Second Circuit's decision. The Court rejected the "control" test, holding that the Second Circuit "did not analyze preemption in a manner consistent with Dodd-Frank and *Barnett Bank*." App. 74a. The Second Circuit, this Court held, "did not conduct [the] kind of nuanced comparative analysis" that is required.

App. 73a. The Second Circuit instead adopted "a categorical test that would preempt virtually all state laws that regulate national banks, at least other than generally applicable state laws such as contract or property laws." *Id.* But there is no "bright line" rule. *Id.* Rather, a "court applying [the] *Barnett Bank* standard must make a practical assessment of the nature and degree of the interference." App. 72a. If the "law prevents or significantly interferes with the national bank's exercise of its powers, the law is preempted." *Id.*

3. On remand, a divided panel "again conclude[d]" that New York's law "is preempted." App. 3a. The majority understood that it must make a "practical assessment of the nature and degree of the interference" by a state law. App. 13a. As to the "nature" of the interference, the majority pointed to what it called national banks' "broad power to set the terms of mortgage-escrow accounts." App. 3a. It reasoned that the "broad" nature of this implied power was similar "to the [banking powers] at issue in *Fidelity Federal Savings and Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982), and *Barnett Bank*." *Id.* The majority recognized that, unlike *Fidelity* and *Barnett Bank*—"where federal statutes 'explicitly' granted an express power"—the "federal grant of power here is not express." App. 22a-23a. Rather, the power is "*incidental* to the power to extend 'credit secured by liens on interests in real estate.'" App. 21a (quoting 12 U.S.C. § 371(a)).

The majority therefore turned to "other federal laws governing mortgage accounts," which it read to "suggest that Congress granted this incidental power broadly." *Id.* *First*, the majority held that the "omission of an interest rate requirement from RESPA, a statute regulating many other aspects of escrow accounts, suggests that national banks have a broad power to set those rates." *Id. Second*,

the majority relied on TILA, which "requires national banks to 'pay interest to the borrower in the manner as prescribed by an applicable State or Federal law' for certain mortgage-escrow accounts, but not those at issue here." App. 22a. To the majority, the "clear implication from RESPA and TILA," based on this "statutory silence," is "that national banks have broad power to set interest rates for most mortgage-escrow accounts"—making the "interference in this case 'akin' to that in *Fidelity* and *Barnett Bank*." App. 23a.

On the "degree" of interference, the majority concluded that New York's law interfered with "banks' ability to make real-estate loans efficiently." App. 3a. That decrease in efficiency, the majority reasoned, "is similarly severe to the interference created by the preempted advertising law in *Franklin National Bank v. New York*, 347 U.S. 373 (1954)." App. 3a. The majority did not acknowledge that the federal statute at issue in *Franklin* expressly authorized national banks "to receive savings deposits," or that—by barring national banks from using "the word 'savings'"—the state law had prohibited the "particular label" that "Congress ha[d] specifically selected." *Franklin*, 347 U.S. at 378; *see* App. 23a-24a.

The majority acknowledged that "[t]he First Circuit [in *Conti*] reached the opposite conclusion," holding that Rhode Island's interest-on-escrow law is not preempted. App. 27a. But the majority disagreed because it thought that (1) "*Conti* disregarded RESPA and TILA," *id.*, and (2) "*Conti* failed to acknowledge the practical reality that a state law restricting the pricing of a bank's product would have a 'material impact … on banking operations.'" *Id.* (quoting *Conti*, 157 F.4th at 23-24). The majority "thus decline[d] to follow the First Circuit's analysis." App. 27a.

Judge Pérez, by contrast, would have agreed with the First Circuit. She wrote in her dissenting opinion that, although the majority's decision "nominally sets aside the categorical" test that this Court rejected, it adopts "an approach that is just as capacious." App. 29a. "By reframing the federal grant of power as enabling national banks to exercise discretion and flexibility," she explained, "almost every state law that imposes any restriction on national banks at all necessarily conflicts with the federal grant of power." App. 47a. But that analysis "obviate[s] the need for an inquiry into whether a state law's interference with federal-banking powers was significant." App. 48a. The panel majority's new standard, the dissent concluded, is therefore "just a relabeling of the rejected control test." App. 47a. Instead, the dissent would have followed the reasoning in *Conti*. *See id.*

REASONS FOR GRANTING THE PETITION

I. The decision below creates a circuit split on an important issue.

A. The decision below acknowledges that it creates a circuit split.

1. The Second Circuit's decision in this case expressly splits with the First Circuit's decision in *Conti* about whether the National Bank Act preempts state interest-on-escrow laws, and about the proper application of this Court's banking-preemption framework. In holding New York's law preempted, the Second Circuit acknowledged that the First Circuit "reached the opposite conclusion" as to Rhode Island's comparable law. App. 27a. But the court expressly "disagree[d] with that conclusion" and "decline[d] to follow the First Circuit's analysis." *Id.* The result is an open circuit conflict that only this Court can resolve.

The conflict is stark: The cases involve "a substantively identical issue"—"whether the National Bank Act preempt[s] a [state] law requiring banks to pay interest on escrow accounts." *Conti*, 157 F.4th at 13. *Conti* involved a Rhode Island law that—like the New York law—"requires all banks operating within the state to pay mortgage borrowers interest on the funds they deposit into mortgage-escrow accounts." *Id.* at 12; *see* R.I. Gen. Laws § 19-9-2(a). There are no material differences between the laws. The only distinction is a slight difference in the interest rate required, which played no role in either the First or Second Circuit's analysis. But while the First Circuit held that Rhode Island's interest-on-escrow law is preempted by the National Bank Act, the Second Circuit held that New York's virtually identical law is not.

Adding to the division, the Ninth Circuit in *Kivett*, relying on its pre-*Cantero* precedent, declined to preempt a California law that (like New York's) imposes a 2% interest-on-escrow requirement. 154 F.4th 640. The Ninth Circuit—like the First Circuit in *Conti*—thus reached the opposite outcome as the decision below. As a result, Bank of America must continue to comply with California's 2% law, but not New York's.

2. Beyond their irreconcilable results, the First and Second Circuits parted ways on the proper application of this Court's precedent in determining the nature of a state law's interference.

Nature of interference. Both courts agreed that this Court requires a "nuanced comparative analysis" of its bank-preemption cases to determine whether the law's interference with national-bank powers is "more akin" to the cases where the Court held state laws preempted than those where it upheld them. App. 14a; *Conti*, 157 F.4th at

15. But when the courts conducted that analysis, they arrived at opposite conclusions.

The Second Circuit held that state interest-on-escrow laws are "more akin" to this Court's decisions in *Barnett Bank*, 517 U.S. 25, and *Fidelity*, 458 U.S. 141. App. 7a-8a. Those cases, the Second Circuit asserted, found state laws preempted where they affected "broad grants of federal power." App. 26a. In *Barnett Bank*, for example, the federal statute provided, "without relevant qualification, that national banks may act as the agent for insurance sales." App. 17a-18a. The lack of any "qualification" on the bank's power, the Second Circuit reasoned, suggested "a broad, not a limited, permission." *Id.*

Likewise, the federal provision in *Fidelity* granted a federal savings-and-loan association authority to include due-on-sale clauses in contracts "at its option." App. 17a. Allowing enforcement of a state law that severely limited such clauses, the court wrote, would have "impermissibly deprived banks of the 'flexibility'" that federal law gave them. *Id.* (quoting *Fidelity*, 458 U.S. at 155). Because national banks' incidental "power to set interest rates for mortgage-escrow accounts" is, in the Second Circuit's view, similarly broad and unqualified, the court held that New York's limit on that power is preempted. App. 26a.

In stark contrast, the First Circuit held that "*Barnett Bank* and *Fidelity* are not useful in determining whether the Rhode Island statute is preempted." *Conti*, 157 F.4th at 22. That's because those cases "turned on an *express* conflict between federal and state law." *Id.* at 20 (emphasis added). The state law in *Barnett Bank* was preempted because a federal statute "'authorized national banks to engage in activities that the State Statute expressly forbade,'" creating an "obvious conflict." *Id.* at 17 (quoting *Barnett Bank*, 517 U.S. at 31). Similarly, the state law in

Fidelity was preempted because federal law "expressly granted banks unrestricted discretionary power," and the state law "limited" that power, creating another obvious conflict. *Conti*, 157 F.4th at 20. "Unlike *Barnett Bank*," however, "nothing in the National Bank Act expressly prohibits state interest-on-escrow laws, and unlike *Fidelity*, nothing in the Act expressly reserves for national banks the option to decide whether to pay interest on escrow accounts." *Id.*

The First Circuit likewise rejected the argument—accepted by the Second Circuit here—that state-law restrictions on incidental bank powers are preempted if they limit national banks' "unqualified" powers or restrict the banks' "flexibility" in invoking them. *Id.* at 22 & n.10, 26. As the First Circuit noted, "incidental federal-banking powers are not enumerated." *Id.* Thus, requiring Congress "[t]o 'qualify' such incidental powers would require [it] to do the impossible, i.e., to affirmatively permit state regulation of a federal power that has never been written down." *Id.* And that "would lead to the preemption of almost all state banking laws that involve federal incidental banking powers." *Id.* Moreover, the First Circuit wrote, *Fidelity* did not preempt the state law at issue there "because it restrained a bank's flexibility," but because the state law purported to limit a bank power on which Congress "*expressly* granted banks unfettered discretion." *Id.* at 25. "[N]o equivalent textual hook exists here." *Id.* at 23.

Degree of interference. The Second Circuit also expressly "decline[d] to follow the First Circuit's analysis" on the "degree" to which state interest-on-escrow laws interfere with federal banking powers. App. 27a. In its view, the First Circuit in *Conti* "failed to acknowledge the practical reality that a state law restricting the pricing of

a bank's product would have a 'material impact ... on banking operations.'" *Id.* To the Second Circuit majority, interest-on-escrow laws "interfere[] with banks' ability to offer mortgage-escrow accounts efficiently and to attract customers." App. 23a. Because such laws "raise[] the cost to national banks to use escrow accounts," the majority speculated that they "may cause national banks to offer escrow accounts on fewer real estate loans; attempt to recoup costs in other ways; or even reduce lending." *Id.*

The Second Circuit cited no evidence for these assertions. Although New York's law has been on the books for more than half a century, and thirteen other states have adopted comparable laws, it could not identify any facts supporting its speculation.[3] Despite the lack of evidence, the court held that interest-on-escrow laws' "degree of interference on banks' ability to make real-estate loans efficiently is similarly severe to the interference created by the preempted advertising law in *Franklin*," 347 U.S. 373, which the court understood to rest on the law's interference with national banks' "ability to advertise savings accounts *efficiently*." App. 3a, 18a.

The First Circuit in *Conti*, by contrast, rejected the Second Circuit's position "that preemption applies

[3] The Second Circuit cited only the OCC's proposed preemption determination for interest-on-escrow laws. But despite Dodd-Frank's requirement that OCC preemption determinations be supported by "substantial evidence, made on the record," 12 U.S.C. § 25b(c), the agency, like the Second Circuit, offered only speculation. *See* Preemption Determination: State Interest-on-Escrow Laws, 90 Fed. Reg. 61093-01 (asserting, without evidence, that "*[i]f* ... the state's mandated interest rate renders escrow accounts unprofitable," "this *may* cause national banks" to suffer these effects (emphasis added)); *see also id.* at 61097 ("[T]hese laws *could* cause banks to increase mortgage prices or even reduce their mortgage lending." (emphasis added)).

whenever a state law dictates the terms of a banking product in a manner that impairs a bank's 'efficiency.'" 157 F.4th at 25. As the court pointed out, that test "does not allow for the kind of commonsense analysis" that this Court requires. *Id.* "[V]irtually every banking-specific state law imposes some burden on the regulated bank and thus can be said to affect a bank's … efficiency." *Id.* Were that enough to preempt state law, it "would obviate the need for an inquiry into whether a state law's interference with federal-banking powers was significant." *Id.* And the First Circuit, unlike the Second Circuit, was unwilling to speculate on the "likely practical effects" of state interest-on-escrow laws where the bank "had not developed any substantial argument" on that point. *Id.*

RESPA and TILA. Finally, the Second Circuit expressly "disagree[d]" with the First Circuit's decision to "disregard[] RESPA and TILA" in its preemption analysis. App. 27a. To the Second Circuit, Congress's "omission of an interest rate requirement from RESPA, a statute regulating many other aspects of escrow accounts, suggests that national banks have a broad power to set those rates." App. 21a. Likewise, the court concluded that "Congress's decision to adopt specific state interest-on-escrow requirements in TILA [] also suggests that similar state laws," like New York's, "are preempted." App. 22a.

The First Circuit in *Conti* reached the polar opposite conclusion as to TILA, holding that Congress's mandate of "compliance with state interest-on-escrow laws as to a select set of mortgages under section 1639d" is "evidence that such laws are *not* inconsistent with the federal-banking scheme." *Conti*, 157 F.4th at 24 (emphasis added). And as to RESPA, the court found no "evidence in RESPA's statutory text to support [the] contention that Congress sought to preempt state interest-on-escrow

laws." *Id.* at 20 n.7. Any '"negative implication"' that could be drawn from Congress's silence, the court wrote, "does not apply 'unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.'" *Id.* at 22 n.9 (quoting *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013)). But there is no "specific statutory language from which it can reasonably be inferred that Congress considered the impact of interest-on-escrow laws on national banks." *Id.* And "[n]one of the cases identified by *Cantero* held a state law preempted based on congressional silence." *Id.* at 22.

* * *

Given that eleven states—in addition to New York, Rhode Island, and California—have similar laws, the split is bound to deepen as other circuits weigh in. Further percolation will therefore merely entrench the existing split, further undermining the certainty and predictability on which the banking system depends.

As Bank of America noted in its last brief in opposition (at 14), banks "need to know when they are governed by state laws and when they are exclusively regulated by federal law." For that reason, this Court granted certiorari in *Barnett Bank* to resolve "uncertainty among lower courts about the pre-emptive effect" of the National Bank Act after a split between the Sixth and Eleventh Circuits. 517 U.S. at 30. And it granted certiorari in this case to resolve a similar 1-1 split between the Second and Ninth Circuits. This Court should again grant certiorari here to resolve the split created by the Second Circuit's misapplication of the Court's precedents.

B. There is no dispute that this case presents issues of exceptional importance to the national financial system.

The parties in this case, the federal government, and the banking industry all agree that the question of whether the National Bank Act preempts state interest-on-escrow laws is one of paramount importance. *See* BIO 14, *Cantero v. Bank of Am.*, 144 S. Ct. 1290 (Feb. 16, 2023) (agreeing that this "is an important question"). As the OCC told the Second Circuit, the question is of "foundational consequence to the OCC and to the federal banking system." OCC Amicus Br. 3, *Cantero*, No. 21-400. Likewise, a consortium of industry groups and the Chamber of Commerce told this Court that the issue "strikes at the foundation of the uniform federal banking system." Bank Policy Inst. Amicus Br. 3-4, No. 25-1004.

Given the ubiquity of mortgage-escrow accounts, the circuit split's immediate impact is huge. *See* Bank Policy Inst. Amicus Br. at 6, *Cantero v. Bank of America*, 49 F.4th 121 (2d Cir. June 11, 2021) (No. 21-400). National banks hold billions of dollars in these accounts. *See id.* And the interest rate applicable to them also affects the pocketbooks of ordinary borrowers in fourteen states—including New York and California, two of the largest state economies.

A circuit split is particularly intolerable here because it creates "confusion and uncertainty for national banks." *Id.* at 20. National banks "offer banking products and services in States in both Circuits" that are subject to the circuit split, "as well as all other States" in which they now face "uncertainty … as to which State laws are preempted." Bank Policy Inst., Amicus Br. 11, *Flagstar Bank, N.A. v. Kivett*, 144 S. Ct. 2628 (U.S. Nov. 23, 2022) (No. 22-349). If the financial system is to operate

rationally, banks need to know which laws govern their conduct in those states—especially when the laws affect the interest rates that they must pay.

This petition also gives this Court an opportunity to provide guidance to lower courts about the proper application of *Cantero*'s preemption framework. As Judge Pérez observed in dissent below, *Cantero* "left many questions unanswered." App. 29a; *see Kivett*, 154 F.4th at 645 (*Cantero* "did not resolve [the] split"). And in the wake of that decision, a growing number of courts have struggled to resolve those questions as to a growing list of state laws. *See, e.g.*, *Ill. Bankers Ass'n v. Raoul*, 2026 WL 371196, at *2-3 (N.D. Ill. Feb. 10, 2026) (law barring interchange fees); *In re Cap. One 360 Sav. Acct. Int. Rate Litig.*, 779 F. Supp. 3d 666, 693-94 (E.D. Va. 2024) (anti-fraud law); *Corvallis Hosp., LLC v. Wilmington Tr., N.A.*, 2025 WL 2624512, at *2 (D. Or. Sept. 11, 2025) (law prohibiting fees during COVID-19 pandemic); *Jensen v. Cap. One Fin. Corp.*, 2025 WL 606194, at *4 (W.D. Wash. Feb 25, 2025) (law limiting text-message ads); *Bank of Am., N.A. v. Riffard*, 19 N.W.3d 604, 607-08, 611 (Wis. Ct. App. 2025) (law requiring notice of the right to cure); *Rubino v. HSBC Bank USA, N.A.*, 238 N.Y.S.3d 376, 383 (N.Y. Sup. Ct. 2025) (law requiring recording of mortgage satisfactions).

Even setting aside the need for certainty, the Second Circuit's decision has enormous stakes for the national economy. Dodd-Frank reflects Congress's judgment that the OCC's interference with state efforts to protect consumers helped precipitate the 2008 financial crisis. "Rather than supporting [state] anti-predatory lending laws, federal regulators preempted them." S. Rep. No. 111-176, at 16-17 (2010). By doing so, the agency "actively created an environment where abusive mortgage lending

could flourish without State controls." *Id.* Congress responded by rebuking the OCC in Dodd-Frank—clarifying the proper preemption standard and "undoing broader standards adopted" by the agency. *Id.* at 175.

But the Second Circuit's rule, as the dissenting opinion explains, adopts "an approach that is just as capacious"—risking preemption of "almost every state law that imposes any restriction on national banks." App. 29a, 47a. If allowed to stand, the Second Circuit's holding would undo Congress's judgment in Dodd-Frank, effectively reinstating the "broad preemption" system that Congress concluded had "planted the seeds for long-term trouble in the national banking system." *Lusnak*, 883 F.3d at 1189.

II. This case is the best vehicle for deciding the question presented.

A. This case gives the Court an opportunity to cleanly and definitively resolve an acknowledged circuit split on an issue of national importance. The sole question that the district court certified for appeal, App. 126a, and the sole issue decided below, is the one presented here: whether the National Bank Act preempts state interest-on-escrow laws. The decision below created the split and includes well-developed opinions setting forth the reasoning on both sides. And there are no ancillary issues or factual disputes. The question is thus cleanly teed up by this petition. To avoid additional uncertainty in the financial system, this Court should take this opportunity to answer it.

B. The Ninth Circuit's decision upholding California's interest-on-escrow law in *Kivett*, as the United States previously told this Court, presents a "flawed vehicle" for resolving the question presented. *See* U.S. Br. on Pet. for Writ of Cert. 22, *Flagstar Bank, N.A. v. Kivett*, No. 22-349 (U.S. Aug. 30, 2023). Because the Ninth Circuit panel

considered itself bound by its pre-*Cantero* precedent, it had no occasion to apply *Cantero*'s preemption framework. 154 F.4th at 647-49. *Kivett* therefore sheds little light on how lower courts are interpreting and applying *Cantero* or where additional guidance is needed.

Kivett is a flawed vehicle for a second reason: Until December 1, 2022, Flagstar Bank was not a national bank governed by the National Bank Act, but a federally chartered *savings association* governed by the Home Owners' Loan Act, 12 U.S.C. § 1461. *See* U.S. Kivett Br. 22. That changes the preemption standard: Savings associations, governed by the Office of Thrift Supervision rather than OCC, have historically "received different and greater preemption from state laws." *McShannock v. JP Morgan Chase Bank*, 976 F.3d 881, 895 (9th Cir. 2020) (Gwin, J., dissenting). Although Dodd-Frank harmonized the preemption standards, that harmonization did not take effect until July 21, 2011, 75 Fed. Reg. 57252-02 (Sept. 20, 2010)—a year after the start of the *Kivett* class period. *See* Class Cert. Order 13, *Kivett v. Flagstar Bank, FSB*, No. 3:18-cv-5131 (N.D. Cal. Nov. 20, 2019), Dkt. 120.

If this Court were to grant review in *Kivett*, it would face the "antecedent question" of which preemption regime applies before reaching the question presented. U.S. Kivett Br. 23. That likely informed this Court's prior decision to grant certiorari in this case over *Kivett*—despite the fact that the petition in *Kivett* was the first petition of the two to be filed. For these reasons, the bank in *Conti* shares the view that *Kivett* is the worst vehicle for answering the question presented. *See* Pet. Rehearing 9-10, *Citizens Bank v. Conti*, 2026 WL 1052171 (U.S. Feb. 19, 2026) (No. 25-1004).

C. The First Circuit's decision in *Conti* does not suffer from the same problems. But this case presents the

superior vehicle. Unlike in *Conti*, this Court has once before granted certiorari in this case and decided it on the merits. That the case has already been battle-tested should assure this Court that there is no risk of lurking issues that may interfere with resolution of the question presented. Further, this Court has already denied certiorari in *Conti*, forcing the bank to seek review in a petition for rehearing. This case, unlike *Conti*, allows the Court to resolve the split without resorting to the extraordinary remedy of rehearing. And because the Second Circuit adopted a preemption standard that is "just as capacious" as the one this Court unanimously rejected as too expansive, App. 29a, granting certiorari here would also give the Court the option to vacate the decision below, as it did before, which could aid in the decisional process.

Indeed, the petitioner in *Conti* (represented by the same counsel as the respondent here) does not deny that this case presents a good vehicle. *See* Pet. Rehearing 9-10, *Conti*, No. 25-1004. Its only argument for preferring review there—that the Court need not "wait to see whether the *Cantero* plaintiffs … will file another petition," *id.* at 10—is obviated by this filing.

III. The Second Circuit's decision contradicts this Court's earlier decision in this case.

Certiorari is further warranted because the Second Circuit's answer to the question presented is, for the second time, wrong. Although the Second Circuit majority purported to apply a nuanced comparative analysis, it actually adopted a brand of preemption that is "just as capacious" as before, App. 29a—and just as erroneous.

A. The Second Circuit's decision effectively reinstates the preemption rule this Court unanimously disapproved.

The majority below adopted a rule that, in the dissent's words, "effectively reimpose[d] the control test" that this Court rejected the last time around. App. 47a. That test provided that federal law preempts any state law that "exercise[s] control over a federally granted banking power," regardless of "the magnitude of its effects." App. 91a-92a. As explained, this Court unanimously disapproved of the control test because it failed to "make a practical assessment of the nature and degree of the interference caused by" New York's law. App. 72a.

In purporting to assess the nature and degree of the interference here, however, the Second Circuit on remand articulated a standard that is "just a relabeling of [its] rejected control test." App. 47a. While the control test asked whether New York's law "exercises control over a banking power," the Second Circuit's reformulated test asks whether the law either "limits [a national bank's] broad power to set the terms of mortgage-escrow accounts" or else "interfere[s]" with the bank's "ability to make real-estate loans efficiently." App. 7a-8a. But to "limit" or "interfere" with a power is to exercise control over it. The two tests thus effectively ask the same question. And hence, they fail for the same reason: If all it took to nullify a state law was that the law placed *some* limit on what banks could otherwise do, the significant-interference test would require no "significant" interference at all. It would instead be akin to field preemption, undoing the carefully reticulated scheme that Congress established in Dodd-Frank.

So the dissent below got it right: Like the control test, the Second Circuit's revised test "obviate[s] the need for

an inquiry into whether a state law's interference with federal-banking powers was significant." App. 48a. The majority's test holds that "state laws that prohibit a bank from exercising … *broad* powers are likely to be preempted." App. 15a (emphasis added). And a "broad" power, in the majority's telling, is simply one that federal law grants "without relevant qualification." App. 17a. It is, in other words, a power that does not itself restrict banks' "flexibility" in using it. *Id.* But unless state and federal law impose identical limits, *all* state consumer financial laws impose "qualifications" on banks' powers, just as they also limit banks' "flexibility" in using those powers. After all, that is what regulations do. Yet, in rejecting the control test, this Court made clear that "not all … state laws that regulate national banks are preempted," and that the problem with the control test was that it would improperly "preempt virtually all state laws that regulate national banks, at least other than generally applicable state laws." App. 65a, 69a, 73a-74a.

Further, just as the control test broadly preempted state law regardless of "the magnitude of its effects," App. 91a, the majority's new test achieves the same result by preempting state laws that impair banks' ability to use their powers "*efficiently*," App. 18a. That formulation likewise renders the magnitude of the effect irrelevant, since any state law that touches a banking power can be said to affect how "efficiently" the bank exercises it. *See Conti*, 157 F.4th at 25. Thus, although the majority's rule "nominally sets aside the categorical" test that this Court rejected, it ultimately adopts "an approach that is just as capacious." App. 29a. If left to stand, that rule would again risk preempting *any* state law that affects a national bank's exercise of its powers—however trivial the law's

real-world effects—unless it is "generally applicable." App. 18a n.4; *see Conti*, 157 F.4th at 25.[4]

B. The majority's comparative analysis misunderstands this Court's precedents and the relevance of federal statutes.

The Second Circuit not only misapplied this Court's previous decision in this case; it also misapplied the cases on which the Court relied. The Second Circuit claimed to conduct a "nuanced comparative analysis," as this Court requires. App. 14a. But the panel majority's "nuanced" analysis was not nuanced at all. The court held that New York's interest-on-escrow law "is similar in nature to the preempted laws in" *Barnett Bank* and *Fidelity* because it "limits [banks'] broad power to set the terms of mortgage-escrow accounts." App. 3a. But as the First Circuit recognized in *Conti*, those cases "turned on an express conflict between federal and state law." 157 F.4th at 20. No such conflict could exist here, given that the power to set mortgage-escrow interest rates is not an express power. *Id.* at 22. A genuinely "nuanced" analysis would have recognized that key difference as dispositive. Instead, the Second Circuit's test sweeps it under the rug.

The majority was equally wrong to conclude that the degree of interference here is "more akin" to *Franklin*,

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[4] The Second Circuit separately erred in holding that "New York's law is not generally applicable," but instead "targets banks." App. 21a. The law's text says otherwise. It applies to "[a]ny mortgage investing institution," N.Y. G.O.L. § 5-601—a defined term that expressly includes non-depository mortgage companies (like Rocket Mortgage, Mr. Cooper, and PennyMac), insurance companies, pension funds, and so on. *See* N.Y. Banking Law § 14-b(5). As a result, even non-banks have the obligation to make the payments required; the banks that they contract with to hold funds in escrow accounts, by contrast, do not have that obligation.

347 U.S. 373, than to the cases where this Court found no preemption. In *Franklin*, the state law barred national banks from using the word "savings"—the precise label that Congress had "specifically selected" for that purpose. *Id.* at 378. Again, "no equivalent textual hook exists" in the National Bank Act for the power to set interest rates on mortgage-escrow accounts. *Conti*, 157 F.4th at 23.

Finally, the Second Circuit's reliance on RESPA and TILA to establish that national banks have broad power to set mortgage-escrow interest rates fares no better. Under *Cantero*'s preemption framework, RESPA's silence on interest-on-escrow laws cannot—as the Second Circuit concluded, App. 23a—make this case "more akin" to cases where the Court found preemption, given that "none of the cases identified by *Cantero* held a state law preempted based on congressional silence." *Conti*, 157 F.4th at 22. In addition, RESPA sets a regulatory floor—not a ceiling. It says so expressly: State law is not preempted "except to the extent that [it is] inconsistent with any provision of this chapter, and then only to the extent of the inconsistency." 12 U.S.C. § 2616. And a state law is not "inconsistent with" RESPA just because it gives greater protection to consumers. *See* 12 C.F.R. Pt. 1024, supp. I, ¶ 5(c)(1) ("State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X.").

In any event, RESPA is not specific to national banks; it applies to "a broad group of financial institutions." *Flagg v. Yonkers Sav. & Loan Ass'n*, 396 F.3d 178, 185 (2d Cir. 2005). So, the Second Circuit's preemption finding based on an implied conflict with RESPA would require finding New York's law to be preempted as to everyone—even state banks and non-banks. The Second Circuit cited no authority for that proposition, and there is none.

As to TILA, Congress's express incorporation of state interest-on-escrow laws, if anything, suggests that it viewed such laws as compatible with, not preempted by, federal banking law. *See Conti*, 157 F.4th at 24. In adopting section 1639d, Congress recognized "that creditors, including large corporate banks like Bank of America, can comply with state escrow interest laws without any significant interference with their banking powers." *Lusnak*, 883 F.3d at 1196. TILA thus provides evidence that Congress saw no conflict between such laws and the federal banking regime. *See id.*

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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