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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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VADEN *v.* DISCOVER BANK ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 07–773. Argued October 6, 2008—Decided March 9, 2009

Section 4 of the Federal Arbitration Act (FAA or Act), 9 U. S. C. §4, authorizes a United States district court to entertain a petition to compel arbitration if the court would have jurisdiction, "save for [the arbitration] agreement," over "a suit arising out of the controversy between the parties."

Discover Bank's servicing affiliate filed a complaint in Maryland state court to recover past-due charges from one of its credit cardholders, petitioner Vaden. Discover's pleading presented a claim arising solely under state law. Vaden answered and counterclaimed, alleging that Discover's finance charges, interest, and late fees violated state law. Invoking an arbitration clause in its cardholder agreement with Vaden, Discover then filed a §4 petition in Federal District Court to compel arbitration of Vaden's counterclaims. The District Court ordered arbitration.

On Vaden's initial appeal, the Fourth Circuit remanded the case for the District Court to determine whether it had subject-matter jurisdiction over Discover's §4 petition pursuant to 28 U. S. C. §1331, which gives federal courts jurisdiction over cases "arising under" federal law. The Fourth Circuit instructed the District Court to conduct this inquiry by "looking through" the §4 petition to the substantive controversy between the parties. With Vaden conceding that her state-law counterclaims were completely preempted by §27 of the Federal Deposit Insurance Act (FDIA), the District Court expressly held that it had federal-question jurisdiction and again ordered arbitration. The Fourth Circuit then affirmed. The Court of Appeals recognized that, in *Holmes Group, Inc.* v. *Vornado Air Circulation Systems, Inc.*, 535 U. S. 826, this Court held that federal-question jurisdiction depends on the contents of a well-pleaded complaint, and

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may not be predicated on counterclaims. It concluded, however, that the complete preemption doctrine is paramount and thus overrides the well-pleaded complaint rule.

Held: A federal court may "look through" a §4 petition to determine whether it is predicated on a controversy that "arises under" federal law; in keeping with the well-pleaded complaint rule as amplified in *Holmes Group*, however, a federal court may not entertain a §4 petition based on the contents of a counterclaim when the whole controversy between the parties does not qualify for federal-court adjudication. Pp. 6–21.

(a) Congress enacted the FAA "[t]o overcome judicial resistance to arbitration," *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 443, and to declare " 'a national policy favoring arbitration' of claims that parties contract to settle in that manner," *Preston* v. *Ferrer*, 552 U. S. ___, ___. To that end, §2 makes arbitration agreements in contracts "involving commerce" "valid, irrevocable, and enforceable," while §4 provides for federal district court enforcement of those agreements. The "body of federal substantive law" generated by elaboration of §2 is equally binding on state and federal courts. *Southland Corp.* v. *Keating*, 465 U. S. 1, 12. However, the FAA "requir[es] [for access to a federal forum] an independent jurisdictional basis" over the parties' dispute. *Hall Street Associates, L. L. C.* v. *Mattel, Inc.*, 552 U. S. ___, ___. Under the well-pleaded complaint rule, a suit "arises under" federal law for 28 U. S. C. §1331 purposes "only when the plaintiff's statement of his own cause of action shows that it is based upon [federal law]." *Louisville & Nashville R. Co.* v. *Mottley*, 211 U. S. 149, 152. Federal jurisdiction cannot be predicated on an actual or anticipated defense, *ibid.,* or rest upon an actual or anticipated counterclaim, *Holmes Group*, 535 U. S. 826. A *complaint* purporting to rest on state law can be recharacterized as one "arising under" federal law if the law governing the complaint is exclusively federal, see *Beneficial Nat. Bank* v. *Anderson*, 539 U. S. 1, 8, but a state-law-based *counterclaim*, even if similarly susceptible to recharacterization, remains nonremovable. Pp. 6–11.

(b) FAA §4's text drives the conclusion that a federal court should determine its jurisdiction by "looking through" a §4 petition to the parties' underlying substantive controversy. The phrase "save for [the arbitration] agreement" indicates that the district court should assume the absence of the agreement and determine whether it "would have jurisdiction under title 28" over "the controversy between the parties," which is most straightforwardly read to mean the "underlying dispute" between the parties. See *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 25, n. 32. Vaden's argument that the relevant "controversy" is simply and only the par-

ties' discrete dispute over the arbitrability of their claims is difficult to square with §4's language. If courts are to determine whether they would have jurisdiction "save for [the arbitration] agreement," how can a dispute over an arbitration agreement's existence or applicability be the controversy that counts? The Court is unpersuaded that the "save for" clause means only that the "antiquated and arcane" ouster notion no longer holds sway. To the extent that the ancient "ouster" doctrine continued to impede specific enforcement of arbitration agreements, FAA §2, the Act's "centerpiece provision," *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 625, directly attended to the problem by commanding that an arbitration agreement is enforceable just as any other contract. Vaden's approach also has curious practical consequences. It would permit a federal court to entertain a §4 petition only when a federal-question suit is already before the court, when the parties satisfy the requirements for diversity-of-citizenship jurisdiction, or when the dispute over arbitrability involves a maritime contract, yet would not accommodate a §4 petitioner who *could* file a federal-question suit in, or remove such a suit to, federal court, but has not done so. In contrast, the "look through" approach permits a §4 petitioner to ask a federal court to compel arbitration without first taking the formal step of initiating or removing a federal-question suit. Pp. 11–15.

(c) Having determined that a district court should look through a §4 petition, this Court considers whether the court "would have [federal-question] jurisdiction" over "a suit arising out of the controversy" between Discover and Vaden. Because §4 does not enlarge federal-court jurisdiction, a party seeking to compel arbitration may gain such a court's assistance only if, "save for" the agreement, the entire, actual "controversy between the parties," as they have framed it, could be litigated in federal court. Here, the actual controversy is not amenable to federal-court adjudication. The "controversy between the parties" arose from Vaden's "alleged debt," a claim that plainly did not "arise under" federal law; nor did it qualify under any other head of federal-court jurisdiction. The Fourth Circuit misapprehended *Holmes Group* when it concluded that jurisdiction was proper because Vaden's state-law counterclaims were completely preempted. Under the well-pleaded complaint rule, a completely preempted counterclaim remains a counterclaim, and thus does not provide a key capable of opening a federal court's door. Vaden's responsive counterclaims challenging the legality of Discover's charges are merely an aspect of the whole controversy Discover and Vaden brought to state court. Whether one might hypothesize a federal-question suit involving that subsidiary disagreement is beside the point. The relevant question is whether the whole controversy is one over which the fed-

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eral courts would have jurisdiction. Section 4 does not give parties license to recharacterize an existing controversy, or manufacture a new controversy, in order to obtain a federal court's aid in compelling arbitration. It is hardly fortuitous that the controversy in this case took the shape it did. Seeking to collect a debt, Discover filed an entirely state-law-grounded complaint in state court, and Vaden chose to file responsive counterclaims. Section 4 does not invite federal courts to dream up counterfactuals when actual litigation has defined the parties' controversy. Allowing parties to commandeer a federal court to slice off responsive pleadings for discrete arbitration while leaving the remainder of the parties' controversy pending in state court makes scant sense. Furthermore, the presence of a threshold question whether a counterclaim alleged to be based on state law is totally preempted by federal law may complicate the §4 inquiry. Although FAA §4 does not empower a federal court to order arbitration here, Discover is not left without recourse. Because the FAA obliges both state and federal courts to honor and enforce arbitration agreements, Discover may petition Maryland's courts for appropriate aid in enforcing the arbitration clause of its contracts with Maryland credit cardholders. Pp. 15–20.

489 F. 3d 594, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. ROBERTS, C. J., filed an opinion concurring in part and dissenting in part, in which STEVENS, BREYER, and ALITO, JJ., joined.