Original

Appendix attached with
order denying certiorari
and copy of this
courts order

No. 24-7004

IN THE
SUPREME COURT OF THE UNITED STATES

GERALD NELSON,
Petitioner,

-v-

NEW YORK CITY TRANSIT NEW YORK DEPOT)
TRANSPORT WORKERS UNION LOCAL 100,
DEPARTMENT OF BUSES,(East New York Depot)
Respondents,

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

PETITION FOR REHEARING

Gerald Nelson
Pro Se/ Petitioner
293 Ralph Avenue 2nd floor
Brooklyn,New York 11233
Tel-347-737-2217
Email-rockynelson234@gmail.com

QUESTION PRESENTED

The District Court dismissed plaintiff's amended complaint based on 12 (b) (6) Motion to Dismiss and Failure to State a Claim, because Nelson could not, as a public employee, pursue his hybrid (301) claim under the National Labor Relations Act ("NLRA") as amended by the Labor Management Relations Act ("LMRA") . The Court of Appeals stated employees of political subdivisions of a state are not covered by the NLRA, as amended by the LMRA and , because Nelson's duty of fair representation claim is a derivative of his 301 claim against the employer, it too fails.

1. Was jurisdiction properly exercised over this action, considering the federal question and the potential lack of subject matter jurisdiction, particularly given the lower courts' failure to follow the controlling Supreme Court decision in Royal Canin U.S.A. v. Wullschleger, 604 U.S. 22 (2025)?

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PETITION FOR REHEARING

Gerald Nelson Petitioner (hereinafter "Nelson") respectfully petitions for a rehearing of the Court's May 27, 2025 decision. Specifically, it asks for (1) vacating its denial of the petition for writ of certiorari, entered on May 27, 2025, and (2) granting the petition. As grounds for this motion, Nelson states the following:

GROUNDS FOR REHEARING

Although this Court almost never grants a petition for rehearing, this case meets the rare exception contemplated by Sup. Ct. R. 44.2 , Royal Canin U.S.A., Inc.. v. Wullschleger 604 U.S 22 and Gondeck v. Pan American World Airways, Inc. , 382 U.S. 25 (1965). It was held in Royal Canin U.S.A v. Wullschleger 604 U.S. 22 : That if a plaintiff amends the complaint to remove the only claim giving rise to federal question jurisdiction , the district courts can no longer decide if the complaint can maintain federal jurisdiction; they must remand. It was held in Gondeck v. Pan American World Airways Inc. 382 U.S. 25 (1965) : Since the Court of Appeals misinterpreted the standard in Brown-Pacific-Maxon, and since of those eligible petitioners alone had not received compensation for the accident here involved, the interest of justice would make unfair the strict application of the Court's rules "by which the litigation here would otherwise be final. United

States v. Power Co.., 353 U.S. 98,99.

In Harper v. Virginia Dept. of Taxation, 509 U.S. 86 (1993) This court held: When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of the federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate the announcement of the tule pp.94-99.

In light of the above facts, this Court concluded in Gondeck, 382 U.S at 26-27, that: We are now appraised , however , of intervening of substantial * effect" [Rule 44.2], justifying application of the established doctrine that " the interest of finality litigation must yield where the interest of justice would make unfair the strict application of our rules." United States v. Ohio Power Co. ., 353 U.S. 98,99 (1957) * [A]nd since, of those eligible for compensation from the accident , this petitioner stands alone in not receiving it, the interest of justice would make unfair the strict application of our rules. " United States v. Ohio Power Co., supra at 99.

I. REHEARING IS WARRANTED IN LIGHT OF THE FACT THAT ONCE A CASE IS REMOVED FROM STATE COURT TO FEDERAL COURT AND PLAINTIFF AMENDS THE COMPLAINT TO ELIMINATE THE THE FEDERAL-LAW-CLAIMS THAT ENABLED

THE REMOVAL, THE COURT'S POWER TO DECIDE THE DISPUTE DISSOLVES .

A. Nelson's instant case deserves to be reheard, based on the magistrate report and recommendation, the District Court's adoption of the magistrate's R&R, and the Court of Appeals Summary Order. The affirmance below was premised on the theory that Nelson's amended complaint relied on 301 a federal statute. Then the Court of Appeals went on to state, that gave the federal court jurisdiction and made removal proper.(see page 6 Second Circuit Summary Order). In Royal Canin U.S.A v. Wullschleger 604 U.S 22,27,28 (2025) , this Court explicitly stated "And yet one more preparatory point if a statute confers federal jurisdiction over a suit, not only the plaintiff but also the defendant can get into federal court. Take the arising under statute: it grants federal question 1331; see 1332 (similarly providing "original jurisdiction" over diversity suits.) The plaintiff may avail herself of that jurisdiction (and of the opportunity 1367 affords to add supplemental state claims);but she also may file her suit in state court. If she takes the latter route; another statute then gives the defendant an option. Because the case falls within the federal courts "original jurisdiction, the defendant remove[ ] " it from state to federal courts 1441 (a). And there the case (including supplemental claims) usually

remains. Except that if at any time before the final judgement it appears that the district court lacks subject matter jurisdiction, the case must be remanded to state court. 1447 (c). That is because, to return to where we started, federal courts are courts of limited jurisdiction: when they do not have (or no longer have) authorization to resolve a suit it must hand it over."

1447 (c) was never used in Nelson case , even though both parties New York City Transit Authority (hereinafter "NYCTA") and Local Transport Workers Union Local 100 (hereinafter "Local 100") both stated the District Court Lacked Subject Matter Jurisdiction. Instead the Magistrate Judge grabbed Jurisdiction and the District Judge followed suit, and Nelson has been trying to get this case back in State Court ever since, Because the district Court lacked subject matter jurisdiction and federal jurisdiction.

This Court stated that other courts had agreed with Second Circuit , on the view, The existence of subject matter jurisdiction is determined by examining the complaint as it existed at the time of removal; this Court granted Certiorari to resolve the Circuit split. This Court affirmed the decision of the 8th Circuit.

This is why Nelson believes this Court should rehear his denied Certiorari, Because Second Circuit Decision is contrary to this Court decision in Royal

Canin U.S.A., Inc. v. Wullschleger 604 U.S 22,30 (2025).

For these various reasons ,therefore , the denial of certiorari should be reconsidered to the end that this case be heard and resolved in accordance with Royal Canin U.S.A.., Inc. v. Wullschleger 604 U.S 22 (2025). Nelson was clearly entitled to his day in state court.

Nelson has pointed out more than once that there was a problem with jurisdiction, but the lower courts disagreed. Nelson could go into the issues with 301 Labor Management , but since the District court did not remand the case or the Court of Appeals didn't reverse the case ,These issues should be taken up with the state court. That's if this Court revisits Nelson denied Certiorari.

II. THE DISTRICT COURT RETAINED JURISDICTION BUT THEN DISMISSED NELSON'S CASE ON THE MERITS , ACCORDING TO THIS COURT, THE DISMISSAL SHOULD NOT HAVE BEEN GRANTED.

Nelson amended his complaint to add Local 100 , the District Court and the Magistrate Judge deleted the federal-law-claim 301 labor Management by stating:, Nelson as a public employee, is not covered under the LMRA and the NLRA and that his claims under this 301 (LMRA) should therefore be denied with prejudice. This court stated when the Federal Claims are gone the case must be remanded back to state court. (see Royal Canin U.S.A. Inc. v. Wullschleger 604 U.S. 22

(2025). But that is not what happened in Nelson's case.

CONCLUSION

For the reasons set forth above,as well as those contained in the petition for writ of certiorari ,Nelson respectfully asks that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and summary order below.

Respectfully submitted,

Gerald Nelson
293 Ralph Avenue 2Fl.
Brooklyn,New York 11233
347-737-2217

June 22,2025

CERTIFICATE OF PRO SE

As Pro Se (representative of this case), I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

Gerald Nelson

Additional material from this filing is available in the Clerk's Office.

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NEW YORK CITY TRANSIT NEW YORK DEPOT)
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DEPARTMENT OF BUSES,(East New York Depot)
Respondents,

I, Gerald Nelson the undersigned, I am over 18 years of age, and reside at: 293 Ralph Avenue, Brooklyn, New York, 11233 On , June 23, 2025 I served a copy of Petition for Rehearing dated June 22,2025 with Appendix by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to the following:
Dennis A. Engel, Colleran O' Hara &Mills L.LP., 100 Crossways Park Drive West , Suite 200, Woodbury, New York 11797.

Neil H. ABRAMSON, Proskauer Rose LLP, 11 Times Square , New York,New York, 10036.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 23, 2025

Gerard Nelson