

25-6193

May 12, 2026

IN THE
SUPREME COURT OF THE UNITED STATES

GERALD NELSON,
Petitioner,

-v-

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

Motion for Reconsideration

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List of Parties

New York City Transit Authority, Transportation Workers Union Local 100

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Exhibits, Orders, Letter.

Exhibit A: April 26, 2026, letter from Clerk of this Court

Exhibit B: Order Dated 0,1/26/2026,(39,8).

Exhibit C: Motion to Vacate Prior Judgment and Remand, as a Motion

For Relief From Judgement under Federal Rule of Civil Procedure 60 (b)(1)

And 60 (b)(4), order entered on 11/1/2023 and filed 11/1/2023 1-22-cv-05112

ordered by Judge Rachel P. Kovner.

Exhibit D: Defendant's Notice of Removal New York Supreme Court County of Kings, Index No. 537/2022 Dated: October 12, 2022.

Exhibit E: Verified Complaint Index No. 537/2022 Dated 9/14/2022 (Nelson).

Exhibit F: Amended Complaint, Dated November 23, 2022 (Nelson).

Exhibit G: Report and Recommendation, 22-cv-6112 (RPK)(LB), Dated:
September 29, 2023.

Exhibit H: United States Supreme Court of Appeals For The Second Circuit,
Summary Order Dated 9/30/2024.

Exhibit I: United States District Court Eastern District of New York(Transcript of
Civil Cause For Initial Conference Before The Honorable Lois Bloom, United
States Magistrate Judge 10/27/2022 Brooklyn, New York 22-cv-6112 (RPK)(LB),
Filed on 05/31/23. (attached, referenced to pages 8 and 9, in this motion)

I. Introduction (Motion for Reconsideration) Notice: In Forma Pauperis Application and Affidavit Attached Hereto.

Petitioner (“Nelson”) respectfully moves for reconsideration of the January 26, 2026, order denying leave to proceed in forma pauperis and dismissing this matter under Rule 39.8. This case is not frivolous; it presents a substantial jurisdictional conflict recently settled by this court’s 9-0 decision in *Hain Celestial Group, Inc. v. Palmquist*, 607 U.S. __ (Feb. 24, 2026). As in *Hain*, Respondents - New York City Transit Authority (“NYCTA”), Transportation Workers Union Local 100 (“Local 100”), here improperly created jurisdiction by removing this labor action to federal court, only to immediately move for dismissal based on a lack of subject-matter jurisdiction.

The lower court committed a fundamental error of law by dismissing Petitioner’s claims for failure to state a claim, despite NYCTA and Local 100’s own admission that the court lacked subject-matter jurisdiction. Under 28 U.S.C. § 1447(c) and *Royal Canin U.S.A., Inc. v. Wullschleger* (2024), a remand is mandatory, not discretionary; the court had no choice but to remand if it lacked jurisdiction. Because subject matter is non-waivable and cannot be created through procedural error, the lower court’s judgment is a nullity that lingers through judgment in direct violation of the *Hain* -

Celestial rule. This maneuver causes inherent and irremediable prejudice by stripping a plaintiff of their chosen forum and day in court, constituting a dual violation of the Fourteenth Amendment (Due Process and Equal Protection). Furthermore, NYCTA and Local 100's failure to respond to this Court's initial request leaves these claims of fraud upon the Court un rebutted. The Court's decision to call for a response confirms the Petition was not initially viewed as frivolous. The lower court should have recognized its lack of jurisdiction over a public employee. NYCTA and Local 100 did not respond to this Court 12/22/2025.

Under *Hazel-Atlas Glass Co. v Hartford-Empire Co.* 322 U.S. 388 (1944), this Court has the inherent power to vacate a judgment obtained through a wrong against the institution set up to administer justice. Because the lower Court stepped outside of its jurisdiction to issue a merits dismissal, Nelson is entitled to a writ of Mandamus. As Justice Marshall established in *Marbury v. Madison*, 5 U.S. 137 (1803), it is emphatically the province and duty of the judicial department to say what the law is. A court acting without jurisdiction is not declaring what the law is, but instead violating the separation of powers. This judicial overreach requires correction under *Cheney v United States District Court*, 542 U.S. 367 (2004), or in the alternative, a summary vacatur under 28 U.S.C. Article 2106. (Attached is Clerk's letter to Nelson dated April 28, 2026, Exhibit A).

In light of these substantial grounds, the intervening authority of Hains Celestial, and the fact that Nelson has not been sanctioned under *Martin v. District of the Columbia Court of Appeals*, Nelson respectfully requests that the application to proceed in forma pauperis be granted, and the January 26, 2026, order be vacated. And this matter be reinstated for a decision on the merits.

**II. Intervening Circumstances and Reasons for Granting Reconsideration
(attached Exhibit C, order 01/26/2026)**

1. After the filing of the initial petition, this Court issued its unanimous decision in *Hain Celestial Group, Inc., Palmquist*, 607 U.S. __ (February 24, 2026). The Court held that no principle of law allows a court to manufacture subject matter jurisdiction through its own mistakes, and that jurisdictional defects lingering through judgment must be vacated. This intervening authority directly supports Nelson's claim that the District Court's dismissal with prejudice was an ultra vires act that must be corrected via mandamus. Although Nelson initially used a Section 301 label, federal subject-matter jurisdiction cannot be waived or created by a party's labeling error. As the Circuit Court eventually acknowledged by citing 29 U.S.C Article 152(2), Respondents are a political subdivision exempt from federal labor law. Under the unanimous 9-0 holding in *Hain Celestial* (2026), a district court's-

decision to proceed to the merits based on a jurisdictional mistake results in a void judgment. The court had a mandatory duty to remand once the statutory exclusion was clear, regardless of the complaint's label. The Circuit Court erred in holding that a complaint's explicit reliance on a statute can create federal jurisdiction where none exists as a matter of law. Subject matter jurisdiction is a question of statutory power, not a question of pleading labels. Under 29 U.S.C. Article 152(2). NYCTA and Local 100 (derivative) are political subdivisions expressly excluded from the reach of Section 301. Per the unanimous holding in *Hain Celestial Group, Inc. v. Palmquist* (2026), a district court cannot create jurisdiction through its own mistake of a party. Because the court lacked the statutory power to hear a labor claim against a political subdivision, the removal was a jurisdictionally void from the outset, regardless of the label used in the complaint.

1. The Statutory Exemption under NLRA Article 152 is

Non-Discretionary.

Nelson's claim is grounded in the plain text of 29 U.S.C. Article 152(2), which excludes any State or Political Subdivision thereof from the definition of an employer. Because the respondents are a political subdivision, the New York Transit Authority ("NYCTA"), and Local 100 Transportation Workers ("Local 100"), a labor organization, the District Court lacked subject-matter jurisdiction

under Section 301. To ignore this Statutory mandate constitutes an unconstitutional application of federal law and a usurpation of power that justifies the extraordinary remedy of mandamus.

2. Fraud Upon the Court and Separation of Powers

As raised in the Circuit Court, the removal of this case based on a known statutory exemption constitutes a fraud upon the court. Under the doctrine of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), it is a duty of the judiciary to stay within its constitutional bounds. By failing to remand the case under 28 U.S.C. § 1447(c) and instead dismissing with prejudice, the lower court violated the separation of powers, and the master of the complaint rule was reaffirmed in *Royal Canin U.S.A., Inc. v. Wulscleger*, 604 U.S. 22 (2025). (fraudulent Removal).

4. Unconstitutional Deprivation of Property: Dismissal with Prejudice by a Court Lacking Subject-Matter Jurisdiction

The Court's dismissal with prejudice was a manifest error of law because, absent Section 301 jurisdiction over a political subdivision, the Court lacked the Article III power to reach the merits. Applying 28 U.S.C Article 1331 to bar Plaintiff's claims permanently, rather than remanding under Article 1447 (c), is an unconstitutional exercise of judicial power that violates the Fourteenth Amendment's Due Process Clause.

5. Fraud Upon the Court and the Suppression of the “Just Cause” Contract

The lower court’s judgment is a legal nullity because it was obtained through a fraud upon the court that subverted the integrity of the judicial process.

Specifically, the intentional suppression of the just cause contract, which was an established part of the record in the New York City Transit Authority Supplemental Appendix SA -14 (November 14, 2022, Exhibit A, to Amended Verified Complaint Transit Authority, Article II, Section 2.1-Grievance and Arbitration Procedures.), in the Second Circuit. This constitutes an unconscionable scheme by an officer of the court to deceive the judiciary regarding its subject matter jurisdiction. This suppression led the court to ignore the Section 301 political subdivision exception, a clear and indisputable bar to federal jurisdiction.

Nelson has acted with the utmost diligence required by *Coney Island Auto Parts Unlimited, Inc. v. Burton*, 607 U.S. ____ (2026), decided on January 20, 2026. Docket No. 24-808, unanimous ruling, having moved the District Court under Rule 60 (b) to vacate the judgment for lack of subject matter jurisdiction. Despite the prompt challenge, the District Court entered an order denying Rule 60 (b) on November 1, 2023, thereby allowing a jurisdictional defect to linger through judgment in direct violation of the standard clarified in *Hain Celestial* (2026).

6. THE JUST CAUSE STATE CLAIM AND LACK OF FEDERAL QUESTION JURISDICTION

Nelson's underlying claim is for breach of a just cause clause found within the parties' collective bargaining agreement. Because NYCTA and Local 100 (derivative) are a political subdivision exempt from Section 301 of the LMRA, this is strictly a state-law cause of action that does not trigger federal question jurisdiction.

Under the controlling authority of *The Hain Celestial Group, Inc. v. Palmist*, No. 24-724 (Feb 24, 2026), no court has the power to manufacture jurisdiction through its own mistakes. Because this jurisdictional defect lingered through judgment, despite Nelson's ("Petitioner") Rule 60 (b) challenge, the district court's actions were ultra vires, and its final order is void ab initio. Furthermore, under *Royal Canin U.S.A, Inc. v. Wullscheleger* (2025), Petitioner is the master of the complaint and has an indisputable right to have this state claim heard in state court.

7. Violation of the Mottley Rule: improper Dismissal on the merits by a Court Lacking Jurisdiction. The lower court's dismissal for failure to state a claim under Rule 12 (b)(1) constitutes a direct violation of the well-pleaded Complaint Rule(the MottleyRule). Under *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908), federal jurisdiction must appear on the face of the complaint and

cannot be manufactured by NYCTA or Local 100, by a 12 (b) (1) defense, or by a misapplied federal label. Although the amended complaint was labeled as a Section 301 Labor Management Wrongful Discharge claim, this label did not and could not trigger federal question jurisdiction under 28 U.S.C. Article 1331 or the Removal Statute, 28 U.S.C. Article 1441. Because the defendant is an exempt political subdivision, Section 301 is legally inapplicable as a matter of law. As this Court clarified in *Royal Canin (2025)* and *The Hain Celestial Group, Inc, v Palmquist* (Feb. 24, 2026), a jurisdictional defect that lingers through judgment cannot be cured by a misapplied Section 301 label when the statutory power to hear a labor dispute involving a political subdivision and its employees' labor organization. Accordingly, pursuant to 28 U.S.C. Article 2106, this Court should exercise its broad authority to vacate the judgment and require such further proceedings as may be just under the circumstances. The Circuit Court's failure to recognize this label failed to meet the requirements of Article 1331; this is a jurisdictional error that should never have escaped the Circuit Court's notice.

Section III.: The Transcript Proves Lack of Subject Matter Jurisdiction.

1. The District Court Transcript of the initial Conference is attached as Exhibit J, and it contains dispositive admissions that strip the federal court of jurisdiction.

[United States District Court Eastern District Of New York, 22-cv-6112(RPK)(LB)]

October 27, 2022, Brooklyn, New York, Transcript Of Civil Cause For Initial Conference Before The Honorable Lois Bloom, United States Magistrate Judge.

During this hearing, the Political Subdivision (NYCTA) explicitly admitted that Federal Question Jurisdiction was improper. See Page 23,24:, lines 4,5,6, “and New York City Transit wants to preserve as a point of law that it is subject to the state law and not Federal law on this issue”. See page 24: lines 7,8,9,10, The Magistrate Judge specifically observed that NYCTA’S legal position “painted them into a corner”.

2. Conflict with Removal:

Despite this admission, NYCTA removed the case under Section 301 of the LMRA, only to immediately move for dismissal based on a lack of subject-matter jurisdiction.

3. Application of Royal Canin: Under the recent holding in *Royal Canin U.S.A. Inc. v Wullschleger* (2025), when a case is stripped of its federal character, the federal court’s power to decide the dispute dissolves. Because NYCTA admitted on the record and Local 100 joined in that this was a state claim, the federal court was required to remand, not to dismiss with prejudice. This evidence proves that Nelson’s claims are grounded in the established Supreme Court precedent and are not frivolous under Rule 39.8.

4, The District Court Erroneously Denied Relief Under Rule 60 (b).

Despite NYCTA and Local 100 admission and lack of subject matter jurisdiction, the District Court denied Nelson's Rule 60 (b) motion, Exhibit C. This was a violation of the inflexible jurisdictional rules established in *Celestial* (2026) and *Royal Canin* (2025).

CONCLUSION

For the reason set forth above, and to prevent a Manifest Miscarriage of justice, Nelson respectfully moves this Court to:

- 1. Vacate the order**, dated January 26, 2026, which denied leave to proceed in forma pauperis and dismissed the petition under Supreme Court Rule 39.8. As established by the intervening and controlling authority of *Hain Celestial Group, Inc. v. Palmquist*, 607 U.S. __ (Feb 24, 2026), the underlying motion presents a non-frivolous, substantial question of federal jurisdiction that the lower court overlooked. The District Court lacked subject matter jurisdiction under 28 U.S.C. Article 1331, as Federal Question Jurisdiction exists only for civil action arising under the Constitution, laws, or treaties of the United States.
- 2. Grant leave to proceed in forma pauperis**, as Petitioner has demonstrated both financial indigency and a good faith legal basis for this challenge are-

based on recent Supreme Court Precedents.

3. Grant summary reversal, or in the alternative, a writ of mandamus.

Pursuant to the Court's broad authority under 28 U.S.C. Article 2106, the Court must vacate the district court's void judgment and remand this case to the state court. Such relief is required in the interest of justice to correct a merit-based dismissal entered without subject matter jurisdiction. Because NYCTA and Local 100 are both explicitly exempt from the National Labor Relations Act (NLRA) Under 29 U.S.C. Article 152(2), an absolute jurisdictional bar existed from the outset, rendering any Section 301 Removal is legally impossible. Under *The Hain Celestial Group, Inc. v. Palmquist* (Feb.24, 2026), this jurisdictional defect cannot be ignored, and The resulting judgment is void ab initio.

4. Vacatur of the void Judgment and Order for Remand

Under the 9-0 principle in *Hain Celestial*, a federal court cannot cure a lack of subject-matter jurisdiction by reaching the merits of the case. In this instance, the court lacked Federal Question Jurisdiction because Section 301 of the LMRA is inapplicable to a political subdivision. This Jurisdictional defect was further compounded by Fraud Upon the Court and the application of an unconstitutional statute, rendering the judgment void.

As Hain confirms that jurisdictional defects lingering through the judgment requires a vacatur; this Court must vacate the dismissal.

5. Grant the motion for reconsideration of the January 26, 2026, Order.

The Justice and the integrity of the judicial process, as protected under Hazel-Atlas Glass Co. v Hartford-Empire Co., and Hain Celestial Group, Inc. v. Palmquist requires that this jurisdictional error be corrected.



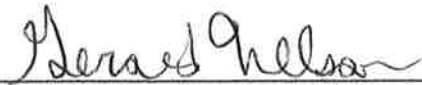
Respectfully submitted,

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Dated May 12, 2026

Certificate of Good Faith

I hereby certify that this Motion for Reconsideration is restricted to the grounds specified in Rule 44.2, specifically the intervening and controlling decision of The Hain Celestial Group, Inc. v. Palmquist (Feb. 24, 2026), and is presented in good faith and not for delay.



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