

No. _____

In the
Supreme Court of the United States

AVON CAPITAL, LLC,
A WYOMING LIMITED LIABILITY COMPANY,

Petitioner,

v.

UNIVERSITAS EDUCATION LLC,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Tenth Circuit Court of Appeals vacated the District Court's February 11, 2021 judgment when the Tenth Circuit Court of Appeals held on July 13, 2023 and again on August 4, 2023 that the Universitas claims became moot and the District Court lost subject matter jurisdiction when the judgment registered by Universitas in the District Court expired on December 3, 2020. The questions presented are as follows:

1. Whether the Tenth Circuit erred in assuming that the District Court reacquired subject matter jurisdiction after December 3, 2020 without the filing of any claims so that the District Court could re-enter the same findings and judgment in a case that was declared moot.
2. Whether the District Court actually reacquired personal jurisdiction over Petitioner Avon-WY after December 3, 2020 without attempted or actual service of process, which is contrary to every precedent of this Court.

PARTIES TO THE PROCEEDINGS

Petitioner and Respondent/Judgment-Debtor below

- Avon Capital, LLC, a Wyoming Limited Liability Company (“Avon-WY”)

Respondent and Petitioner/Judgment Creditor-Appellee below

- Universitas Education, LLC (“Universitas”) was the appellee below.

Garnishee-Appellant below

- SDM Holdings, LLC was the Garnishee-Appellant in the appeals court, but is not a party to this petition. No further notice is required, since Petitioner’s counsel represents SDM Holdings, LLC.

CORPORATE DISCLOSURE STATEMENT

Avon-WY has no parent company or publicly issued stock and no public company owns 10% or more of its stock.

LIST OF PROCEEDINGS

U.S. Court of Appeals, Tenth Circuit

Nos. 24-6066, 24-6033, 23-6168, 23-6167, 23-6126,
23-6125, 22-6038, 21-6134, 21-6133, 21-6049, 21-6044

*Avon Capital, LLC, et al., v.
Universitas Education, LLC.*

Final Opinion: December 31, 2024

Rehearing Denial: January 27, 2025

U.S. District Court, Western District of Oklahoma

No. 14-FJ-0005-HE

Universitas Education, LLC, *Petitioner*, v. Avon
Capital, LLC, et al. *Respondents*.

Final Order: August 15, 2023

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PETITION FOR A WRIT OF CERTIORARI

Avon Capital, LLC, a Wyoming limited liability company (“Avon-WY”) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.



OPINIONS BELOW

A. Opinion for Which Review is Sought

Petitioner seeks review of the Tenth Circuit December 31, 2024 opinion which (App.1a) is reported at 124 F.4th 1231.

B. Opinions and Orders Previously Issued in this Case

1. Tenth Circuit

The July 13, 2023 opinion of the U.S. Court of Appeals for the Tenth Circuit (App.47a) is not published in the Federal Reporter but is available at 2023 U.S. App. LEXIS 17968 and 2023 WL 4533221.

The August 4, 2023 opinion of the court of appeals (App.33a) is not published in the Federal Reporter but is available at 2023 U.S. App. LEXIS 20356.

The January 27, 2025 order of the court of appeals (App.148a) is not published in the Federal Register and is not available in Lexis.

2. W.D. Oklahoma

The October 20, 2020 Report and Recommendation by the Magistrate of the District Court (App.73a) is not published in the Federal Supplement but is available at 2020 U.S. Dist. LEXIS 251679 and 2020 WL 8768520.

The February 11, 2021 order of the District Court (App.68a) is not published in the Federal Supplement but is available at 2021 U.S. Dist. LEXIS 26388 and 2021 WL 510625

The July 13, 2023 order of the District Court (App.66a) is not published in the Federal Supplement and is not available on Lexis.

The August 7, 2023 order of the District Court (App.65a) is not published in the Federal Supplement and is not available on Lexis.

The August 15, 2023 order of the District Court (App.62a) is not published in the Federal Supplement but is available at 2023 U.S. Dist. LEXIS 194507 and 2023 WL 7109680.



JURISDICTION

The judgment of the Tenth Circuit was entered on December 31, 2024. (App.1a). A timely filed petition for rehearing en banc was denied on January 27, 2025 (App.148a).

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS AND JUDICIAL RULES INVOLVED

28 U.S.C. § 1331

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

28 U.S.C. § 1332(a)

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

Fed. R. Civ. P. 8(a)

(a) Claim for Relief. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

**STATEMENT OF THE CASE**

1. On August 15, 2014, the New York District Court entered a turnover judgment in favor of Petitioner/Appellee Universitas against the named entities (“New York Judgment”). (Doc. 1) Avon-WY is not a judgment debtor named in the New York Judgment. (Doc. 1) (Doc. 85) (“The post[-]judgment turnover order issued by the District Court for the Southern District of New York referred only to Delaware and Connecticut entities, making it clear that Avon-WY was not a party to that order.”) (citing *Universitas Educ.*, 2014 U.S. Dist. LEXIS 109077 at *22.)).

On November 7, 2014, Appellee Universitas registered the New York Judgment with the United District Court for the Western District of Oklahoma. (Doc. 1).

On February 11, 2021, the District Court entered its Order granting summary judgment in favor of Universitas. (App.68a)

On July 13, 2023 and again on August 4, 2023, the Tenth Circuit Court of Appeals vacated the District Court's February 11, 2021 judgment when the Tenth Circuit Court of Appeals held that the Universitas claims became moot and the District Court lost subject matter jurisdiction when the judgment registered by Universitas in the District Court expired on December 3, 2020. (App.47a, 33a)

On August 7, 2023, Universitas attempted to refile the New York Judgment that previously expired on December 3, 2020 with the District Court by filing a notice of refiling judgment. (Doc. 511 (Notice (other) by Universitas Education LLC of *Refiling Judgment*)).

On August 15, 2023, the District Court entered an order finding that the District Court reacquired subject matter jurisdiction when Universitas re-filed the New York Judgment before the mandate was issued and readopted the prior final order effective when the mandate was issued. (App.62a)

The mandate was issued on September 28, 2023.

2. Universitas never filed a petition or other pleading asserting alter ego liability against Avon-WY. Critically, no pleading asserting causes of action against Avon-WY were filed after the District Court lost subject matter jurisdiction. Additionally, no attempted service of process on Avon-WY, and no actual service of process on Avon-WY, ever occurred after the District Court lost subject matter jurisdiction.

On appeal, Avon-WY's issues included the District Court's lack of subject matter jurisdiction after December 3, 2020 when the claims became moot and also the lack of personal jurisdiction because Avon-WY was never served and was never attempted to be served.

The December 31, 2024 published Opinion of the panel rejected Avon-WY's argument that the District Court failed to follow the law of the case based upon the holding that the claims became moot and the District Court lost subject matter jurisdiction on December 3, 2020. (App.1a) This Opinion does not address Avon-WY's appellate issues III and IV that after the District Court lost subject matter jurisdiction, no claims were filed that are necessary to establish subject matter jurisdiction and there was no personal jurisdiction because there was no service of process on Avon-WY after December 3, 2020.

Avon-WY's Petition for Rehearing asked on page 11 that the Tenth Circuit "amend its December 31, 2024 opinion consistent with decisions issued by the Supreme Court and this Court which require proper pleading standards and service of process of a pleading. This Court must not allow the *Universitas II* Opinion (a published opinion) to be cited in support of the rule that an appellate court can disregard the protections afforded to all litigants under Article III of the United States Constitution, Rule 3, Rule 8 and related due process protections."

On January 27, 2025, Avon-WY's Petition for Rehearing was denied. (App.148a)



REASONS FOR GRANTING THE PETITION

The District Court did not have subject matter jurisdiction after December 3, 2020. (App.60a) After the District Court lost Article III jurisdiction and the case became moot, no new claims were filed by Universitas against Avon-WY. Without claims filed by a plaintiff, the District Court cannot possess subject matter jurisdiction.

Further, the District Court also lost personal jurisdiction over Appellants, who were no longer a party to any case or controversy when the claims (actually, Universitas never filed a petition asserting claims against Avon-WY before or after December 3, 2020) became moot on December 3, 2020. This is because there was no attempted or actual service of process on Avon-WY.

I. THE DECISION BELOW IS WRONG.

A. The District Court Lost Subject Matter Jurisdiction on December 3, 2020.

The Court of Appeals held in its August 4, 2023 Opinion that the District Court did not have jurisdiction to enter the February 11, 2021 Order granting Universitas' motion for summary judgment which entered final judgment on Avon-WY. (App.33a) Key language in the August 4, 2023 Opinion is as follows:

We vacate the district court's February 11, 2021 order for lack of jurisdiction; *we find the underlying dispute was moot at the time of decision due to the expiration of Universitas's Western District of Oklahoma judgment.*

(App.46a).

“A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up). As the issue in this case *was no longer live* and *Universitas lacked a legally cognizable interest* in the outcome once its *judgment expired in December 2020*, the case became *moot* and the district court *lacked Article III jurisdiction to enter its order, rendering the order void*.

(App.45a) (footnote omitted) (emphasis added). This Court’s August 4, 2023 order is “binding precedent under the doctrine[] of law of the case . . . ” (App. Vol. 16 at 3989 (Doc. 510) (Order and Judgment Dated August 4, 2023)).

Accordingly, Avon-WY was no longer a party to any case or controversy when all claims became moot on December 3, 2020. (App.45a) (“Universitas lacked a legally cognizable interest in the outcome once its judgment expired in December 2020, the case became moot and the District Court lacked Article III jurisdiction to enter its order, rendering the order void.”)). As of December 3, 2020, when the District Court lost jurisdiction, the case ceased to exist.

A court without jurisdiction lacks authority to act. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). “If an intervening circumstance deprives the plaintiff of a ‘personal stake in the outcome of the lawsuit,’ at any point during litigation, the action can

no longer proceed and must be dismissed as moot.” *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-478 (1990); If at any point during litigation, the action can no longer proceed because the claims have become moot, “[the moot claims] must be dismissed.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016) (quoting *Genesis*, 569 U.S. at 72 (quoting *Lewis*, at 494 U.S. at 477-478)).

B. Even If the New York Judgment Could Properly Be Re-Filed in the Same Case, the District Court Could Not Reacquire Subject Matter Jurisdiction After December 3, 2020 Because No Petition or Claims Were Filed Against Avon-WY.

This Court’s *Arbaugh* Opinion sets forth the requirement that subject matter jurisdiction be established by a pleading containing a colorable claim:

The basic statutory grants of federal-court subject-matter jurisdiction are contained in 28 U.S.C. §§ 1331 and 1332. Section 1331 provides for “federal-question” jurisdiction, § 1332 for “diversity of citizenship” jurisdiction. A plaintiff properly invokes § 1331 jurisdiction when she pleads a colorable claim “arising under” the Constitution or laws of the United States. *See Bell v. Hood*, 327 U.S. 678, 681-685, 66 S. Ct. 773, 90 L. Ed. 939 (1946). [A plaintiff] invokes § 1332 jurisdiction when [the plaintiff] presents a claim between parties of diverse citizenship that exceeds the required jurisdictional amount, currently \$ 75,000. *See* § 1332(a).

Arbaugh v. Y & H Corp., 546 U.S. 500, 513 (2006).

The requirement that a plaintiff plead the basis for federal jurisdiction appears in Federal Rule of Civil Procedure 8(a)(1), which requires the complaint to provide “a short and plain statement of the grounds for the court’s jurisdiction.” Because Universitas failed to file a pleading after the District Court lost subject matter jurisdiction on December 3, 2020, Universitas failed to meet the requirements of Rule 8(a)(1) and there is no subject matter jurisdiction.

C. Because Avon-WY Was Never Served with Process, the District Court Lacked Personal Jurisdiction Over Avon-WY.

The December 31, 2024 Opinion does not address this appellate issue, and Avon-WY requested that the panel address this argument on page 11 of Avon-WY’s Petition for Rehearing.

“Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.” *Omni Capital Int’l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (cit. omitted). The requirement that a court have personal jurisdiction represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

Federal Rule of Civil Procedure 12(b)(2) provides that a defendant may move to dismiss a complaint for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). When the case became moot and the District Court lacked Article III jurisdiction, and the case and

controversy became moot, the District Court also lost personal jurisdiction over Avon-WY. *See Fed. R. Civ. P.* 12(b)(2).

II. THE QUESTIONS PRESENTED WARRANT THIS COURT'S REVIEW, AND THIS CASE IS AN EXCELLENT VEHICLE FOR RESOLVING THE ISSUES.

Until the December 31, 2024 Opinion, it has been axiomatic that a plaintiff is required to file a petition and properly plead sufficient facts to establish subject matter jurisdiction. Somehow, the District Court acquired subject matter jurisdiction without Universitas filing any claims after December 3, 2020.

Further, the December 31, 2024 Opinion also creates a new “discretion” exception to what was previously well-settled law holding that when a case becomes moot it is dismissed. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 n.2 (1950) (collecting cases). The new exception is that the appellate court has “discretion” even if a case does not fall within the scope of previously established exceptions. (App.1a) And, apparently, this new “discretion” exception has no limits, as there is no limitation upon this exception for the District Court to follow prior precedent and avoid an erroneous view of the law. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 90 (2014); *Cooter & Gell v. Hartmarx*, 496 U.S. 384, 403, 405 (1990).

Finally, the Tenth Circuit’s and the District Court’s refusals to address the lack of personal jurisdiction because there was no service of process after December 3, 2020 is galling. It is time to “lay down the law” and make it 100% crystal clear that there is no personal jurisdiction if a defendant is not served with process.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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