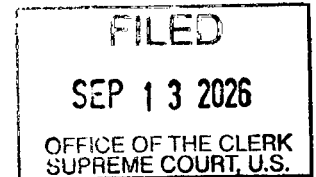


26-5620

ORIGINAL

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**



ANDREW DELANEY,
Petitioner,

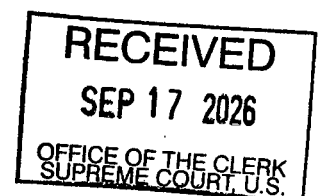
v.

HC2, INC.,
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

Andrew Delaney, Pro Se
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QUESTIONS PRESENTED

1. Whether a court of appeals may dismiss an appeal as moot without addressing a timely preserved challenge to the district court's subject-matter jurisdiction when the challenged district-court orders remain operative and the requested appellate relief includes vacatur of those orders.
2. Whether, in determining diversity jurisdiction under 28 U.S.C. § 1332, a federal court must address a prior federal appellate determination that the same United States citizen was domiciled abroad and therefore was neither a citizen of a State nor a citizen or subject of a foreign state.

LIST OF PARTIES AND CORPORATE DISCLOSURE

HC2, Inc. was Plaintiff-Appellee below. Andrew Delaney was Defendant-Appellant. Gregory Messer was a defendant in the district court but was not a party to the consolidated appeals reviewed by the Second Circuit. No other party to the proceedings in the court whose judgment is sought to be reviewed is known to Petitioner.

HC2's April 22, 2020 Rule 7.1 disclosure identified HCMC Legal, Inc. as HC2's corporate parent. Petitioner has no information indicating that a publicly held corporation owns 10 percent or more of HC2, Inc. Petitioner is not a corporation and therefore has no corporate disclosure statement of his own.

RELATED PROCEEDINGS

- *HC2, Inc. v. Delaney*, No. 1:20-cv-03178-LJL (S.D.N.Y.), Opinion and Order entered Dec. 18, 2020 (Dkt. 99).
- *HC2, Inc. v. Andrew Delaney*, Nos. 21-79 (L), 21-2920 (Con) (2d Cir.), consolidated appeals; order dismissing appeals as moot entered June 22, 2026 (Dkt. 263).
- *HC2, Inc. v. Andrew Delaney*, Nos. 21-79 (L), 21-2920 (Con) (2d Cir.), order denying panel reconsideration or, alternatively, rehearing en banc entered July 29, 2026 (Dkt. 278); mandate issued Aug. 5, 2026 (Dkt. 279).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Andrew Delaney respectfully petitions for a writ of certiorari to review the June 22, 2026 order of the United States Court of Appeals for the Second Circuit in Nos. 21-79 (L) and 21-2920 (Con), as well as the July 29, 2026 order denying panel reconsideration or, alternatively, rehearing en banc.

OPINIONS BELOW

The June 22, 2026 order of the Second Circuit dismissed the consolidated appeals as moot and denied pending motions as moot. *HC2, Inc. v. Andrew Delaney*, Nos. 21-79 (L), 21-2920 (Con), Doc. 263 (2d Cir. June 22, 2026).

On July 29, 2026, the Second Circuit denied Petitioner's motion for panel reconsideration or, alternatively, reconsideration en banc. *HC2, Inc. v. Andrew Delaney*, Nos. 21-79 (L), 21-2920 (Con), Doc. 278 (2d Cir. July 29, 2026).

The district court's December 18, 2020 Opinion and Order granted HC2's motion to dismiss Delaney's amended counterclaims. *HC2, Inc. v. Delaney*, No. 1:20-cv-03178-LJL, Dkt. 99 (S.D.N.Y. Dec. 18, 2020). The district court did not resolve Petitioner's later motion to dismiss for lack of subject-matter jurisdiction; that motion was ultimately withdrawn without prejudice when the case was stayed because of bankruptcy. See Dkt. 100; Dkt. 126.

JURISDICTION

The Second Circuit entered its order dismissing the consolidated appeals as moot on June 22, 2026. Petitioner timely sought panel reconsideration or, alternatively, rehearing en banc. The Second Circuit denied that request on July 29, 2026. The mandate issued August 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The petition is timely under Supreme Court Rule 13.3 because a timely rehearing request was denied on July 29, 2026. Supreme Court Rule 13.3 provides that when rehearing is timely sought in the lower court, the 90-day period runs from the denial of rehearing. The petition complies with Supreme Court Rules 14 and 33.1 governing the content and booklet format of a petition for a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, § 2, Clause 1 of the United States Constitution:

“The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and

Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”

28 U.S.C. § 1254(1): “Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon petition of any party to any civil or criminal case, before or after judgment or decree.”

28 U.S.C. § 1332(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.”

Federal Rule of Civil Procedure 12(h)(3): “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

STATEMENT OF THE CASE

A. HC2 invoked diversity jurisdiction, but its complaint pleaded residence rather than Delaney’s citizenship.

HC2 commenced this action in the Southern District of New York on April 22, 2020. Its complaint invoked 28 U.S.C. § 1332(a), alleged that HC2 was incorporated in the District of Columbia with its principal place of business in Chicago, Illinois, and alleged that

Delaney was a resident of New York. The complaint asserted that the amount in controversy exceeded \$75,000. It did not allege that Delaney was a citizen of New York or otherwise identify his state citizenship. Thus, diversity jurisdiction was not established on the face of the complaint: the pleading alleged residence where § 1332 requires citizenship. The American Bar Association has likewise emphasized that a diversity pleading must allege citizenship, not merely residence. See Lorin W. Fender, *Subject Matter Jurisdiction: Diversity—Time to Cross Your “T’s” and Dot Your “I’s,”* ABA Journal (June 1, 2017).

The distinction mattered. Delaney is a United States citizen domiciled abroad. For purposes of § 1332, a person’s United States nationality does not by itself make him a citizen of a State, and domicile outside the United States does not make him a citizen or subject of the foreign state in which he is domiciled. That rule is established by this Court’s decision in *Newman-Green*.

B. Delaney challenged subject-matter jurisdiction, and the district court never resolved the challenge.

On December 18, 2020, the district court entered an Opinion and Order granting HC2’s motion to dismiss Delaney’s amended counterclaims. *HC2, Inc. v. Delaney*, No. 1:20-cv-03178-LJL, Dkt. 99 (S.D.N.Y. Dec. 18, 2020). The order did not decide subject-matter jurisdiction.

On December 28, 2020, Delaney filed a motion to dismiss for lack of jurisdiction. HC2 opposed the motion with a memorandum and declarations. Delaney filed a reply and supporting affidavit. The district court then stayed the action after Delaney filed for Chapter 7 bankruptcy and, on February 22, 2021, withdrew the jurisdictional motion without prejudice to renewal after the stay. Dkt. 100; Dkt. 126. The district court therefore never adjudicated the jurisdictional challenge.

Delaney filed a notice of appeal from the December 18 order on January 13, 2021. The jurisdictional issue was subsequently presented to the Second Circuit and remained part of the consolidated appellate proceedings. The record reflects repeated efforts by Delaney to obtain a determination of federal subject-matter jurisdiction.

Petitioner also sought extraordinary relief to obtain a jurisdictional ruling. In *In re Delaney*, No. 22-1208 (2d Cir. 2022), and No. 24-1853 (2d Cir. 2024), Petitioner sought writs of mandamus directed to the district court. The Second Circuit denied those petitions under the demanding standard governing mandamus relief; the denials did not adjudicate the merits of Petitioner's underlying subject-matter-jurisdiction challenge. See *In re Delaney*, No. 24-1853 (2d Cir. Dec. 2, 2024).

The district-court matter remained pending until February 2026—nearly six years after the April 22, 2020 filing—without Judge Liman ever adjudicating

the preserved subject-matter-jurisdiction challenge. The resulting question is not whether a court may ever dismiss a genuinely moot appeal. It is whether, after nearly six years without a district-court ruling on a preserved jurisdictional challenge, subsequent mootness permits the appellate court simply to leave the challenged district-court orders intact without resolving the asserted absence of federal jurisdiction.

C. The Supreme Court has settled the status of Americans domiciled abroad for § 1332.

In *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828–29 (1989), this Court held that a natural person must be both a citizen of the United States and domiciled within a State to be a “citizen of a State” for diversity purposes. The Court addressed a United States citizen domiciled in Venezuela and explained that such a person is “stateless” for purposes of § 1332(a)(3), while his United States citizenship prevents him from being treated as a “citizen or subject of a foreign state” under § 1332(a)(2).

The point is jurisdictional, not national. A United States citizen domiciled abroad remains a United States citizen. “Stateless” in this context describes only the person’s inability to satisfy the citizenship categories in § 1332; it does not mean that the person lacks United States nationality.

The Second Circuit has repeatedly applied *Newman-Green*. In *Cresswell v. Sullivan & Cromwell*, 922 F.2d 60, 68–69 (2d Cir. 1990), the court held that

an American citizen domiciled abroad is neither a citizen of a State nor a citizen or subject of a foreign state for § 1332 purposes. In *Herrick Co. v. SCS Communications, Inc.*, 251 F.3d 315, 322 (2d Cir. 2001), the court reaffirmed that an American citizen domiciled abroad lacks state citizenship for diversity jurisdiction. And in *Force v. Facebook, Inc.*, 934 F.3d 53, 62 (2d Cir. 2019), the Second Circuit described the rule as well established and cited *Cresswell* and *Newman-Green*.

Other circuits have applied the same Supreme Court rule. The First Circuit has stated that United States citizens domiciled abroad are citizens of no State and that their “stateless” status destroys diversity under § 1332(a)(3), while their United States citizenship defeats § 1332(a)(2). *D.B. Zwirn Special Opportunities Fund, L.P. v. Mehrotra*, 661 F.3d 124, 126 (1st Cir. 2011).

The Third Circuit likewise applies *Newman-Green*. In *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179, 183–84 (3d Cir. 2008), it held that an American citizen domiciled abroad is neither a citizen of a State nor a citizen or subject of a foreign state for diversity purposes. And in *Freidrich v. Davis*, 767 F.3d 374, 378 (3d Cir. 2014), the court applied the rule to an American citizen domiciled in Germany and treated him as “stateless” for purposes of diversity jurisdiction.

The Eleventh Circuit applied the same rule to Petitioner himself. In *Delaney v. Daily Journal Corp.*, No. 22-10788-GG, slip op. at 1–2 (11th Cir. Feb.

13, 2023), the court stated that “Andrew Delaney was a United States citizen domiciled in the Republic of the Philippines” and therefore was “neither a citizen of a State under 28 U.S.C. § 1332(a) nor a citizen or subject of a foreign state.” The court cited *Newman-Green* and *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1341 (11th Cir. 2011).

The Eleventh Circuit’s decision is directly relevant because it adjudicated Petitioner’s domicile and the resulting § 1332 consequence. It held that Delaney was a United States citizen domiciled in the Philippines and therefore was neither a citizen of a State nor a citizen or subject of a foreign state for diversity purposes.

D. The Second Circuit dismissed the consolidated appeals as moot without deciding the jurisdictional question.

On June 22, 2026, the Second Circuit dismissed the consolidated appeals as moot. Its order cited *Lake Coal Co. v. Roberts & Schaefer Co.*, 474 U.S. 120, 120 (1985) (per curiam), and *LaForest v. Honeywell International Inc.*, 569 F.3d 69, 74 (2d Cir. 2009). The order did not decide whether the district court had subject-matter jurisdiction when it entered the December 18, 2020 order. *HC2, Inc. v. Andrew Delaney*, Nos. 21-79 (L), 21-2920 (Con), Doc. 263 (2d Cir. June 22, 2026).

Delaney sought panel reconsideration or, alternatively, rehearing en banc. On July 29, 2026, the Sec-

ond Circuit denied that request. *HC2, Inc. v. Andrew Delaney*, Nos. 21-79 (L), 21-2920 (Con), Doc. 278 (2d Cir. July 29, 2026). The court again did not resolve the preserved jurisdictional challenge or address *Delaney v. Daily Journal Corp.*

REASONS FOR GRANTING THE PETITION

I. The petition presents an important question concerning the interaction between mootness and subject-matter jurisdiction.

Federal courts have an independent obligation to determine whether subject-matter jurisdiction exists. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Subject-matter jurisdiction cannot be created by consent or waiver, and the Court has repeatedly required federal courts to establish their jurisdiction before exercising the judicial power. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). Rule 12(h)(3) likewise requires dismissal whenever a federal court determines that it lacks subject-matter jurisdiction.

The jurisdictional inquiry is also tied to the facts existing when the action was commenced. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570–71 (2004). And an objection to subject-matter jurisdiction may be raised at any stage. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006). The practical stakes are not hypothetical. The American Bar Association has noted that defective diversity pleading can result in years of litigation before a

reviewing court is required to address subject-matter jurisdiction. See Lorin W. Fender, *Subject Matter Jurisdiction: Diversity—Time to Cross Your “T’s” and Dot Your “I’s,”* ABA Journal (June 1, 2017).

Petitioner does not contend that every appeal remains live merely because a jurisdictional objection was raised. The narrower issue is whether an appellate court may terminate an appeal as moot without addressing a preserved challenge to the district court’s subject-matter jurisdiction when the challenged orders remain operative and the appellant seeks relief directed to those orders. The Second Circuit’s disposition resolved the Article III question of mootness but left the statutory jurisdiction of the district court unresolved.

That distinction matters. Mootness asks whether a live controversy remains before the appellate court. Subject-matter jurisdiction asks whether the federal court possessed adjudicatory authority under the Constitution and Congress’s jurisdictional statutes. The Court has not squarely addressed the precise procedural sequence presented here: a preserved challenge to the lower court’s federal jurisdiction, followed by intervening events that cause the court of appeals to deem the appeal moot, while the challenged lower-court orders remain on the docket.

II. The Second Circuit's reliance on *Lake Coal* and *LaForest* does not resolve the distinct jurisdictional issue.

Lake Coal and *LaForest* address the power of a court of appeals to dismiss an appeal when intervening events eliminate a live controversy. Petitioner does not dispute that general proposition. The question is what a court should do with a preserved challenge to the jurisdiction of the district court whose orders are being reviewed.

The difference is not semantic. Article III mootness and statutory subject-matter jurisdiction are separate limitations on federal judicial power. The Court has recognized that jurisdictional inquiries concern the authority of the court itself. *Ruhrgas*, 526 U.S. at 583. A rule governing moot appeals should not silently answer a different question concerning whether the lower federal court possessed jurisdiction when it acted.

This case therefore presents an opportunity for the Court to establish a workable rule without disturbing the ordinary doctrine of mootness: when an appeal becomes moot, an appellate court may dismiss it, but the Court should clarify whether and when the appellate court must address a preserved jurisdictional challenge, or otherwise provide a jurisdictional disposition that does not leave the challenged lower-court orders standing without resolution of the asserted lack of federal authority.

III. The petition presents the settled Supreme Court rule governing United States citizens domiciled abroad.

The second question arises directly from *Newman-Green*, not from a disputed lower-court doctrine. The Court held that a natural person must be both a United States citizen and domiciled within a State to be a citizen of a State under § 1332. 490 U.S. at 828–29. A United States citizen domiciled abroad is therefore not brought within § 1332(a)(2) merely because the person lives in a foreign country; United States citizenship prevents that result. *Id.* at 829.

The rule has been consistently applied by the circuits. *Cresswell*, 922 F.2d at 68–69; *Herrick*, 251 F.3d at 322; *Force*, 934 F.3d at 62; *D.B. Zwirn*, 661 F.3d at 126; *Swiger*, 540 F.3d at 183–84; *Freidrich*, 767 F.3d at 378. There is no need to manufacture a circuit split where none exists. The importance of this case is that the rule was applied to Petitioner personally by the Eleventh Circuit in *Delaney v. Daily Journal Corp.*

IV. *Delaney v. Daily Journal Corp.* makes the jurisdictional question concrete.

Delaney v. Daily Journal Corp. is not merely a case containing a general statement of law. The Eleventh Circuit applied *Newman-Green* to Petitioner and expressly determined his domicile and the resulting § 1332 consequence. It remanded so that the district court could determine subject-matter jurisdiction and recognized that diversity jurisdiction did not exist be-

cause Delaney was a United States citizen domiciled in the Philippines.

Petitioner asks the Court to address whether a federal court may simply leave such a directly relevant prior federal appellate determination unaddressed when it is presented as part of a subject-matter-jurisdiction challenge. The question is particularly important because the same individual cannot simultaneously be treated, for the same § 1332 inquiry, as a citizen of a State and as a United States citizen domiciled abroad without an explanation grounded in the law governing domicile.

V. The case presents a clean and recurring federal jurisdiction question.

The issue is recurring: Americans living abroad routinely appear in federal litigation, and jurisdictional challenges can remain unresolved while later events affect the live controversy. The petition therefore concerns both § 1332 and the obligation of federal courts to identify the limits of their adjudicatory power.

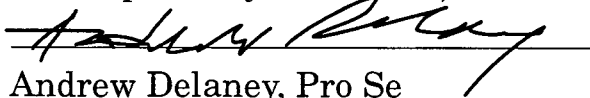
The record supplies a concrete vehicle. HC2 invoked diversity jurisdiction, but its complaint did not establish diversity on its face because it pleaded Delaney's residence rather than his state citizenship. In Petitioner's Florida litigation, the Eleventh Circuit confronted the threshold jurisdictional issue presented by the operative complaint and remanded for the district court to determine subject-matter jurisdiction; the district court thereafter concluded

that jurisdiction was lacking because Delaney was a United States citizen domiciled in the Philippines. *Delaney v. Daily Journal Corp.*, No. 22-10788-GG, slip op. at 1–2 (11th Cir. Feb. 13, 2023). Delaney then filed a motion to dismiss for lack of jurisdiction in this case; HC2 opposed it; the district court never adjudicated it; Petitioner sought mandamus relief seeking a jurisdictional ruling; and, after the district-court matter had remained pending for nearly six years, the Second Circuit dismissed the consolidated appeals as moot without resolving the challenge. This case asks whether subsequent mootness may leave operative district-court orders in place after federal jurisdiction was timely challenged and never adjudicated.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court should vacate the Second Circuit's June 22, 2026 judgment and remand for a disposition that addresses the preserved subject-matter-jurisdiction challenge, including the governing rule of *Newman-Green* and the Eleventh Circuit's application of that rule in *Delaney v. Daily Journal Corp.*

Respectfully submitted,



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