

No. _____

In the
Supreme Court of the United States

ROMAN ANDY JANIEC, SLAWOMIRA JANIEC,
JONATHAN ANDREW JANIEC,
Petitioners,

v.

CITY OF GLENDORA, A MUNICIPAL CORPORATION,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a municipality be held liable under 42 U.S.C. §1983 pursuant to Monell v Dep't of Soc. Servs. of City of New York, 436 U.S. 658 (1978) for a “custom or practice” of selective enforcement of the law against a “class of one”?

PARTIES TO THE PROCEEDINGS

ROMAN ANDY JANIEC, SLAWOMIRA JANIEC, JONATHAN ANDREW JANIEC were the plaintiffs in the United States District Court for the Central District of California and the appellants in the United States Court of Appeals for the Ninth Circuit.

The CITY OF GLENDORA, a municipal corporation was a defendant in the United States District Court for the Central District of California and an appellee in the United States Court of Appeals for the Ninth Circuit.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS.	ii
STATEMENT OF RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW.	1
STATEMENT OF JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.	2
REASONS FOR GRANTING THE WRIT.	4
A. A SELECTIVE ENFORCEMENT CLAIM SHOULD NOT BE BARRED UNDER A <u>MONELL</u> “CUSTOM OR PRACTICE” THEORY	4
CONCLUSION.	7
APPENDIX	
Appendix A Memorandum in the United States Court of Appeals for the Ninth Circuit (March 9, 2021).	App. 1
Appendix B Order Granting Defendant’s Motion for Summary Judgment (Dkt. 25) in the United States District Court Central District of California (February 11, 2020)	App. 6

Appendix C	Judgment in the United States District Court Central District of California (February 11, 2020)	App. 27
Appendix D	Order Denying Petition for Rehearing in the United States Court of Appeals for the Ninth Circuit (May 10, 2021)	App. 28

TABLE OF AUTHORITIES

CASES

<u>Alleghney Pittsburgh Coal Co. v Commission of Webster Cty., 488 U.S. 336 (1989)</u>	5
<u>Christie v Iopa, 176 F.3d 1231 (9th Cir. 1999).</u>	4, 6
<u>From Royal amd Warren County Indust. Park Corp. V Town of Front Royal Va., 135 F.3d 275 (1998)</u>	4
<u>Futernick v Sumpter Township, 78 F.3d 1951 (6th Cir. 1996).</u>	5
<u>Jett v Dall. Indep. Sch. Dist., 491 U.S. 701 (1989).</u>	5
<u>Monell v Dep’t of Soc. Servs. of City of New York, 436 U.S. 658 (1978).</u>	i, 3, 4, 6
<u>Sioux City Bridge Co. v Dakota County, 260 U.S. 441 (1923).</u>	5, 6
<u>Village of Willowbrook v Olech, 528 U.S. 562 (2000).</u>	4, 5

STATUTES

28 U.S.C. §1254(1)	2
42 U.S.C. §1983	2, 3

PETITION FOR WRIT OF CERTIORARI

ROMAN ANDY JANIEC, SLAWOMIRA JANIEC,
and JONATHAN ANDREW JANIEC respectfully
petition this Court for a writ of certiorari to review the
judgment of the United States Court of Appeals for the
Ninth Circuit.

OPINIONS BELOW

The Memorandum Decision of the United States Court of Appeals for the Ninth Circuit is published at 842 Fed.Appx. 129 (9th Cir. 2021) and is reproduced in the appendix hereto (“App.”) at App. 2-5. The order of the United States Court of Appeals for the Ninth Circuit denying the petition for panel rehearing and rehearing en banc is not reported and is reproduced at App. 28. The order of the United States District Court for the Central District of California granting the City of Glendora’s motion for summary judgment is not reported and is reproduced at App. 6-26. The judgment of the United States District Court for the Central District of California is not reported and is reproduced at App. 27.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Ninth Circuit issued its decision on March 9, 2021. The United States Court of Appeals for the Ninth Circuit denied the petition for panel rehearing and rehearing en banc denied review on May 10, 2021.

This petition is timely filed within 150 days of the denial of review by the United States Court of Appeals

for the Ninth Circuit. This Court has jurisdiction 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 1983.

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The Janiecs resided in the City of Glendora and successfully operated in the City an auto business that was known as Andy's Auto Center ("AAC") along the old historic Route 66 in Southern California. Andy

Janiec and Slawomira Janiec are married and their son is Jonathan Janiec.

Beginning in 2012 and continuing to the time of the filing of this case, the Janiecs claim that the City took systematic and unlawful code enforcement actions against the Janiecs in order to drive them out of business and the City by way of unlawful inspections of AAC and their personal residence in violation of their Fourth Amendment rights and in the process issued numerous repetitive administrative citations to them refusing to provide an administrative appeal process for the citations in violation of their procedural due process rights. App. 6-8.

The City was successful in its policy to drive the Janiecs out of business as the repetitive administrative citations caused their landlord, George Dye to terminate their lease. App. 8.

On April 7, 2017, the Janiecs filed a federal civil rights complaint against the City under 42 U.S.C. §1983 claiming that the City's actions violated their civil rights under various provisions of the United States Constitution including the Equal Protection Clauses of the Fourteenth Amendment. The district court granted the City's motion for summary judgment finding that the numerous administrative citations issued against the Janiecs was insufficient to raise an issue of a "policy, custom, or practice" under to Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658 (1978) to hold the City liable. App. 20-21.

On appeal, the Ninth Circuit affirmed the district court's grant of summary judgment in favor of the City,

holding that under its case law “this singling out of Janiec is insufficient to establish ‘custom or practice’ Monell liability.” App. 3-4 (citing Christie v Iopa, 176 F.3d 1231, 1235 (9th Cir. 1999) (“Plaintiffs cannot satisfy the requirement of a longstanding practice or custom, because they allege to the contrary that a county official has singled them out for unique treatment”).

A petition for panel rehearing and rehearing en banc was filed and which the Ninth Circuit denied.

REASONS FOR GRANTING THE WRIT

A. A SELECTIVE ENFORCEMENT CLAIM SHOULD NOT BE BARRED UNDER A MONELL “CUSTOM OR PRACTICE” THEORY

In Village of Willowbrook v Olech, 528 U.S. 562 (2000), the Court affirmed that the Equal Protection Clause protects individuals, as well as vulnerable groups and fundamental rights from within state action. *Id.*, at 565-566. This approach is referred to as a “class of one” claim. *Id.*, at 564. Under this theory, individuals like the Olechs, who have been victimized by state or local officials, but who do not have a claim under a traditionally recognized Equal Protection category, can file a claim in federal court under 42 U.S.C. §1983. These claims arise when a state or local government inequitably administers a state statute or local ordinance. They often occur in the context of land use, zoning, and the provision of governmental services. See From Royal and Warren County Indust. Park Corp. V Town of Front Royal Va., 135 F.3d 275, 277-79 (1998) (claiming that municipality’s failure to

provide sewer services implicated the Equal Protection Clause).

Claims for selective enforcement can also arise in the context of a criminal prosecution or regulatory enforcement action. See Futernick v Sumpter Township, 78 F.3d 1951, 1056 (6th Cir. 1996).

The Court has held that to show a challenged practice is a “custom,” the practice must be “persistent and widespread” such that it “constitutes the standard operating procedure of the local governmental entity.” Jett v Dall. Indep. Sch. Dist., 491 U.S. 701, 737 (1989) (internal quotation marks omitted), but the Court has not held that that operating procedure cannot be directed against a single individual. While the Court has yet to expressly rule on the issue of whether a selective enforcement claim can be based on a theory of municipal custom or practice against one individual, the nature of such a claim is consistent and should not be barred.

Prior to Olech, the Court had in effect long recognized successful equal protection claims brought by a “class of one,” where the plaintiff alleges he has been intentionally treated differently from others similarly situated and there is no rational basis for the difference in treatment. See Sioux City Bridge Co. v Dakota County, 260 U.S. 441 (1923); Allegheny Pittsburgh Coal Co. v Commission of Webster Cty., 488 U.S. 336 (1989);

In so doing, the Court has explained that “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person

within the State's jurisdiction against intentional and arbitrary discrimination, **whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.**" Sioux City Bridge Co., at 445 (internal citations omitted)(emphasis added).

If an individual were solely subjected to hundreds of thousands or millions of dollars of unfounded multiple fines over a period of years, a municipality would be shielded under Christie from a Monell claim based a theory of custom or practice because it was only directed against him, the very basis of the equal protection claim. This is directly contrary to the purpose of the Equal Protection Clause of the Fourteenth Amendment and the protections guaranteed under 42 U.S.C. §1983 to protect against improper execution of the laws whether by a formal policy or informal execution of the laws by the city's agents

The Ninth Circuit's holding in Christie in effect bars a "class of one" equal protection claim under Monell based on a widespread pattern or practice against an individual.

The Court is respectfully requested to grant the petition to clarify this important question of constitutional law.

CONCLUSION

For the foregoing reasons, Petitioners request the Court to grant their petition for a writ of certiorari.

Respectfully submitted,

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