

No. _____

In the
Supreme Court of the United States

KRISTY JIMENEZ; an individual,
Petitioner-Applicant,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 775, a labor chapter of an unincorporated
labor organization; SERVICE EMPLOYEES
INTERNATIONAL UNION an unincorporated labor
organization; and DON CLINTSMAN, in his official
capacity as Washington State Department of Social
and Health Services; JAY INSLEE, in his official
capacity as Governor of the State of Washington;
Respondents.

**Application to the Hon. Justice Elena Kagan for
an Extension of Time Within Which to File a
Petition for a Writ of Certiorari to The United
States Court of Appeals for The Ninth Circuit**

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*Counsel for Petitioner-
Applicant*

Pursuant to Supreme Court Rule 13(5), the above-captioned Petitioner-Applicant hereby moves for an extension of time of 60 days, up to and including May 10, 2024, for the filing of a Petition for a Writ of Certiorari.

In support of this request, Petitioner-Applicant Kristy Jimenez (“Jimenez”) states as follows:

1. The United States Court of Appeals for the Ninth Circuit issued its opinion on October 23, 2023 (Exhibit 1), and issued its order denying rehearing en banc on December 12, 2023 (Exhibit 2). The mandate issued December 20, 2023. Unless an extension is granted, the deadline for filing a petition for certiorari will be March 11, 2024. Applicants are filing this application at least ten days before that date, in accordance with Supreme Court Rule 13.5. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. Jimenez was never a union member and never signed any agreement with the union in her job as an

in-home healthcare worker. Despite this fact, the union, Service Employees International Union Local 775, which negotiated on her behalf, and her public employer, took money from their lawfully earned wages for over a year for use in political speech without her affirmative consent. These nonconsensual deductions were taken directly pursuant to a statutory scheme in Washington. See RCW 41.56.113; RCW 41.80.100(2)(c) and (g) (the State “shall” deduct dues from an employee’s wages upon mere “notice” from the union of the employee’s authorization, and the State “shall rely on information provided by” the union “regarding the authorization and revocation of deductions.”).

3. This Ninth Circuit panels’ decision presents an issue of exceptional importance as to whether public employees suffering compelled speech injuries related to nonconsensual union dues deductions can seek relief pursuant to 42 U.S.C. § 1983. It also exacerbates a conflict of authority with Supreme Court precedent

and Seventh Circuit case law with respect to the issue of state action in the context of nonconsensual union dues. In *Janus*, the Supreme Court made clear both government officials and unions operating under state deduction systems and without contractual authorization or affirmative consent are state actors under Section 1983 when they take and spend a public employee's lawfully earned wages on objectionable political speech. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486 (2018).

4. Petitioner's Counsel of Record, Ms. Shella Alcabes, has been on maternity leave since December 25, 2023, and will not be returning to work until April 15, 2024, which is more than one month after the original due date of this pending Petition. Ms. Alcabes also has substantial argument and briefing obligations when she returns from maternity leave, including two other petitions for writ of certiorari in *Hubbard v. Service Employees International Union, Local 2015, et al.*, No. 21-16408 (9th Cir. 2024) (due

March 11, 2024), and *Kant, et al., v. Service Employees International, et al.*, No. 22-55904 (9th Cir. 2024) (Due March 11, 2024),¹ oral argument in *Parde v. Service Employees International, 721, et al.*, No. 22-03320 (C.D. Cal. 2023), *appeal docketed*, No. 23-55021 (9th Cir. Jan. 11, 2023) (pending May or June 2024 date), oral argument in *Freedom Foundation v. DCAS*, No. 152725/22 (NY Sup. Dec. 6, 2022), *appeal docketed*, No. 2023-01154 (NY App Div. Mar. 6, 2023) (scheduled April 16, 2024), and oral argument in *Freedom Foundation v. Jefferson*, No. EF2022-00002775 (NY Sup. Jan. 20, 2023) *appeal docketed*, No. CA-23-00339 (NY App Div. Feb. 24, 2023) (scheduled April 17, 2024).

5. WHEREFORE, for the foregoing reasons, and in order to cogently prepare for the pending Petition, Petitioner-Applicant requests an extension of time up

¹ Requests for extensions will also be filed in *Hubbard v. Service Employees International Union, Local 2015, et al.*, No. 21-16408 (9th Cir. 2024) (due March 11, 2024), and *Kant, et al., v. Service Employees International, et al.*, No. 22-55904 (9th Cir. 2024) (due March 11, 2024).

to and including May 10, 2024, be granted within which Petitioner-Applicant may file a petition for a Writ of Certiorari.

Dated: February 20, 2024

Respectfully submitted,



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Counsel for Petitioner-Applicant

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capacity as Governor of the State of Washington,
Respondents.

Certificate of Service

I declare under penalty of perjury under the laws of the Supreme Court of the United States that on February 20, 2024, I Shella Alcabes, a member of the Supreme Court Bar, electronically filed with the Supreme Court of the United States the foregoing document, Application or Extension of Time to File Petition for Writ of Certiorari, and caused a true and correct copy of the same to be delivered via email to the following:

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Shella Alcabes
Shella Alcabes

EXHIBIT 1

FILED

OCT 23 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KRISTY L. JIMENEZ,

Plaintiff-Appellant,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 775,
a local chapter of an unincorporated labor
organization; et al.,

Defendants-Appellees.

No. 22-35238

D.C. No. 1:21-cv-03128-TOR

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted October 19, 2023**
San Francisco, California

Before: W. FLETCHER, NGUYEN, and R. NELSON, Circuit Judges.

Appellant Kristy Jimenez lives in Washington State and provides in-home health services to several of her family members. Until May 2021, she paid union

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

dues to Appellee SEIU Local 775. She brings claims under 42 U.S.C. § 1983 against all Appellees, a claim under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act against Appellees SEIU Local 775 and SEIU International, and two state law claims. The district court granted a motion to dismiss Jimenez’s claims against Appellees the Governor of Washington and the Acting Secretary of the Washington Department of Social and Health Services (the “State Defendants”). The court also granted a motion for judgment on the pleadings regarding Jimenez’s claims against SEIU Local 775 and SEIU International. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The § 1983 claims against SEIU Local 775 and SEIU International fail for lack of state action. *See Belgau v. Inslee*, 975 F.3d 940, 946–49 (9th Cir. 2020); *Wright v. Serv. Emps. Int’l Union Loc. 503*, 48 F.4th 1112, 1121–25 (9th Cir. 2022).

2. Jimenez lacks standing to seek prospective relief against the State Defendants. Her dues deductions stopped before she filed suit, and the district court did not err in finding that Jimenez has not shown that future injury is sufficiently likely to warrant prospective relief.

3. Jimenez’s RICO allegations, accepted as true, do not show that either SEIU Local 775 or SEIU International acted with “the specific intent to defraud”

required for the alleged predicate offense of wire fraud. *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014). The facts alleged do not “tend to exclude a plausible and innocuous alternative explanation” for the unauthorized deductions she alleges. *Id.* at 998. The district court thus properly dismissed Jimenez’s RICO claim.

4. The district court appropriately dismissed Jimenez’s claims with prejudice. “Dismissal with prejudice . . . is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment.” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). The allegations in Jimenez’s complaint show that SEIU Local 775 and SEIU International are not state actors and that Jimenez lacks standing to pursue her claims against the State Defendants. With regard to her RICO claim, Jimenez has proposed to amend her complaint, but only to fix a typographical error. She has not argued to us that there is any additional information she would include in an amended complaint that would address that claim’s deficiencies.

AFFIRMED.

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KRISTY L. JIMENEZ,

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Defendants-Appellees.

No. 22-35238

D.C. No. 1:21-cv-03128-TOR
Eastern District of Washington,
Yakima

ORDER

Before: W. FLETCHER, NGUYEN, and R. NELSON, Circuit Judges.

The panel has voted to deny the petition for rehearing en banc (Dkt. No. 56) and Judge W. Fletcher has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is denied.