

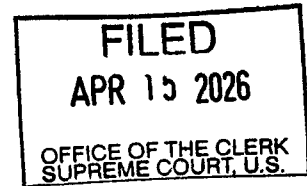
25-7682

No.

In The

Supreme Court of the United States

ORIGINAL



Dana Escoffier,

Petitioner,

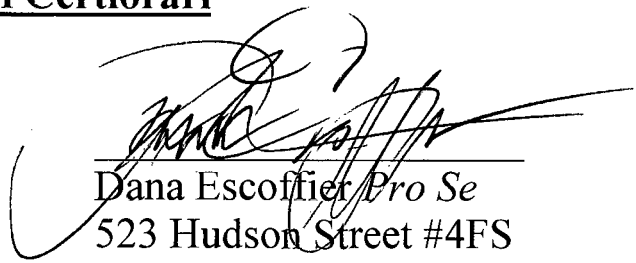
v.

Whole Foods Market Group, Inc.,

Respondent.

On Petition For Writ of Certiorari to United States District Court,
2nd Circuit and United States Court of Appeals, 2nd Circuit To The
United States Supreme Court

Petition For Writ of Certiorari


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Questions Presented For Review

1. Pursuant to FRCP Rule 56 (c)(1)(A), when there is a genuine dispute as to material fact, summary judgment cannot be granted. Should the USDC 2nd Circuit have dismissed plaintiff's case by granting summary judgment to the defendant when there are genuine issues of material fact in dispute? No.
2. On appeal, the plaintiff requested appointment of pro-bono counsel. The Court of Appeals 2nd Circuit denied request for appointment for pro-bono counsel and dismissed plaintiff's appeal. Should Court of Appeals 2nd Circuit have dismissed plaintiff's appeal without any briefing having been submitted when the time to submit the appeal had not expired? No.
3. Court of Appeals 2nd Circuit did not examine plaintiff's meritorious arguments that would have been presented on appeal. Was the USCA 2nd Circuit just, fair, neutral and impartial by

dismissal of plaintiff's appeal before submission of plaintiff's Brief for the appeal? No.

4. By way of faithful execution of Law by trier-of-fact, was the dismissal of plaintiff's case prejudicial to plaintiff/Appellant? Yes.
5. Can the the USDC and USCA, 2nd Circuits assume and conclude there is no probative value to a pro se plaintiff's case and dismiss the plaintiff's case arbitrarily without fact finding? No.

Pursuant to Rule 14 of the Rules of the Supreme Court of the United States;

Pursuant to Rule 14 (b) (i)

Dana Escoffier v. Whole Foods Market Group, Inc.

Pusuant to Rule 14 (b) (ii) and Pursuant to Rule 29.6, and as known to the plaintiff, the defendant is a non-governmental corporation and is the corporation itself and rightful owner and Amazon an affiliate.

Pursuant to Rule 14 (1) (b) (iii), the proceedings in the USDC 2nd Circuit ;

(a) Case filed in NY Supreme Court May 16, 2022, Index No. 100516/2022.

Notice of removal to Federal Court, Docket No. 1:22-cv-6588,
under 28 U.S.C. ss1332, diversity of citizenship of parties, filed
Aug. 16, 2022

Dana Escoffier,
plaintiff,

v.
Whole Foods Market Group, Inc.,
defendant. (APP. A)

(b) USDC So. Dist. NY, Dana Escoffier v. Whole Foods Market
Group, Inc., Docket No. 22-cv-6588 (AS) Opinion and Order
dated 06/13/2024. (APP. A)

(c) USDC So. Dist. N.Y., Dana Escoffier v. Whole Foods Market
Group, Inc., Docket No, 22-cv-6588 (AS) ORDER. (APP. B)

(d) USCA for the Second Circuit, Dana Escoffier v. Whole Foods
Market Group, Inc., Docket No. 24-1790, Nov. 17, 2025,
ORDER. (APP. C)

(e) USCA for the Second Circuit, Dana Escoffier v. Whole Foods
Market Group, Inc., Docket No. 24-1790, dated September 24,
2025, ORDER. (APP. C)

(f) Supreme Court of the United States, Dana Escoffier v. Whole
Foods Market Group, Inc. Request for Extension of Time and
GRANTED by Justice S, Sotomayor, dated Januery 16, 2026 .

(APP. D)

Pursuant to Rule 14.1 (d); In the Opinion and Order of Hon. A.

Subramanian, his Honor states, "The fight took place in a New York ..."

@ p.1 paragraph 3 and @ p.3 paragraph 2 (**App. A**); there was never a fight, the plaintiff was attacked by an angry out-of control person. His Honor misinterpreted the time lapse video. Plaintiff's account of what occurred, @ p.4 paragraph 4, is accurate. However, his Honor states in Opinion and Order that "The video shows none of this" (**App.A**). This underscores plaintiff's point of fact regarding time lapse video; it is favorable to defendant and is prejudicial to plaintiff because it is NOT an accurate depiction of what occurred which would otherwise be shown in real time video. Time lapse video was prejudicial to plaintiff's case. His Honor demonstrated bias in Opinion and Order when his Honor states "...the bag is a roller bag that the woman is using as her cart", @ p.4, paragraph 2 (**App. A**). The bag was an abandoned bag and was sitting in the aisle. His Honor was not inside the head of the woman

alleged to own the bag to know that she was using a roller bag as as "her cart". His Honor's assumption is flawed and flawed assumptions end up with wrong analysis; assigning a characterization when there is no proof is prejudicial.

His Honor relied on time lapse video to draw conclusions. Time lapse video excludes voluminous detail and information and by such exclusion created a prejudice against the plaintiff. It was not fair, nor was the USDC being neutral, especially as to making assumptions and drawing conclusions from those assumptions. His Honor non-objectively created and imposed a script which violated neutrality for jurisprudence, His Honor's Opinion and Order is rife with bias and prejudice that does not lend itself to a position of neutrality by a trier-of-fact. Time lapse video was an asymmetrical representation of the assault event.

His Honor hastily granted s summary judgment even though the plaintiff presented in plaintiff's Opposition to Summary Judgment that there are genuine issues of material fact in dispute. The genuine issues

material facts in dispute cannot be ignored when a summary judgment is requested, but is then granted when there is factual dispute. The trier-of-fact must examine the pleadings, not make the pleadings. The USDC must not govern the case, but must allow the law and the facts to prevail in decision making.

In the District Court's OPINION, (**App.B**) his Honor states, " Plaintiff did not proceed *in forma pauperis* in this Court... ", it appears his Honor overlooked the NY Supreme Court's granting *in forma pauperis* to plaintiff. The case was transferred from NY Supreme Court to USDC with *in forma pauperis* application having been already granted. (*Notice of Removal*, (**App. A**). Where the plaintiff's affidavit was deficient, pursuant to FRAP 24(a)(1), this was corrected and was, initially, an oversight.

Pursuant to Rule 14 (1) (e) ((ii)

The Supreme Court of the United States, by request of the plaintiff, granted an extension of time to submit the plaintiff's petition

for Petition for Writ of Certiorari, which was granted on January 16, 2026 by Justice S. Sotomayor. The terms of the extension were to and including April 16, 2026. (APP. D)

Pursuant to Rule 14 (1) (e) (iv)

The statutory provision to confer on SCOTUS jurisdiction to review a petition for a writ of certiorari for a Judgment or Opinion or Order that is in question is pursuant to 28 U.S.C. ss1254(1)

Pursuant to Rule 14 (1) (g)

Facts material to consideration of the questions presented:

(a) Guaranteed under the United States Constitution/Bill of

Rghts are the civil liberties of speech; freedom of speech

guarding against abuse or infringement of the rights contained or

implied in the U.S. Constitution; liberty and justice for all.

(b) Where there are factual disputes as to parties conduct, a case cannot be resolved at summary judgment . The materiality of facts is determined by looking at substantive law that defines the elements of the

claim. See Anderson, 477 U.S. at 248, Nidds v. Schindler Elevator Corp. 113, F. 3rd 912, 916 (9th Circ. 1996); Hernandez v. Johnson 833 F. 2nd 1316, 1318 (9th Circ. 1987). In *Anderson* the issues of fact are for a jury to decide. In *Nidds v. Schindler* granting summary judgment only when there is no genuine issue of material fact(s) in dispute.

(c) Pursuant to the 5th Amendment of the U.S.Constitution: due process and that laws are applied equally;

(d) Pursuant to the 14th Amendment of the U.S.Constitution, it mandates States cannot deny to any person within its jurisdiction the equal protection of the laws.

(e) The integrity of the U.S. Constitution must be upheld for all its citizens, not reserved for only a few.

Pursuant to Rule 14 (g) (i)

The plaintiff raised the issue of prejudicial time lapse video ESI (Electronic Stored Information) and genuine issues of material fact in dispute in plaintiff's Opposition to defendant's request for summary

judgment in the USDC So, Dist N.Y. Time lapse (ESI) utilized momentary captured images. Momentary captured ESI is fraught with gaps in time which omit crucially important images for fact finding and cannot be considered significant probative evidence. See Anderson, 477 U.S. at 249-50, Sanchez v. Vild 891 F. 2d 240, 242 (9th Circ. 1989), Franklin v. Murphy 745 F. 2d 1221, 1235 (9th Circ. 1984).

Plaintiff argues that because of U.S. Constitutional violations and that the USDC erred, the Supreme Court of the United States has jurisdiction for a petition for Writ of Certiorari. (APP. A)

The plaintiff raised the issue of genuine issues material dispute as factul issues in Plaintiff's Opposition to a summary judgment in the USDC So. Dist. N.Y; that a summary judgment cannot be granted when there are genuine issues of material fact in dispute. Even with wide latitude, time lapse ESI does not allow a test of the validity of cross examination as there is an assymetrical representation of alleged facts which is a genuine issue of material facts in dispute.

The USDC So. Dist. N.Y. disregarded this fact and issued a summary judgment to the defendant; the fact that the USDC relied on video that was 'time lapse' video and favorable to the defendant, and which omitted crucial facts, was prejudicial to plaintiff. The Opinion and Order of the USDC is rife with references to time lapse video.

(APP. A)

Pusuant to Rule 14.1 (g) (ii)

A review of United States Court of Appeals was/is sought, the basis for federal jurisdiction of the USCA 2nd Circuit and the basis of the court in the first instance was the interstate addresses of the defendant and that of the plaintiff.

The USCA denied plaintiff's appeal before any briefing was submitted. The denial of the appeal was denial of free speech as there was no opportunity for the plaintiff to be heard. The plaintiff had filed motion for *reconsideration en banc*, but was denied. The plaintiff did, in fact, present an arguable basis for appeal that was based on fact and law;

summary judgment cannot be granted when there are genuine issues of material fact in dispute. The plaintiff also presented, as an argument, the basis and facts of law; the defendant had a responsibility to keep plaintiff safe while on its premise. A business has a duty to keep persons safe on its premises at all times. Duty is the action to be done or not done by the person or entity in obligation of it.

The fact overlooked by the USDC is that during interaction between business personnel o defendant, there was an effete attempt to quell the out-of control perpetrator of the assault. The defendant, already on notice of the assault, also assaulted the plaintiff (omitted from self-serving time lapse video) and continued to allow the perpetrator of the assault to assault the plaintiff continually while the defendant personnel held plaintiff. To not allow any autonomy of plaintiff while the perpetrator of the assault allowed to reach over defendant personnel, restraining the plaintiff, and allow continued to assault plaintiff with no restraint of the perpatrator

who continued to be violent and out of control was contributory negligence. The USDC, USCA were either biased or overlooked issues of fact, much of which is omitted from time lapse video, but would have been shown in real time video which defendant did not submit as evidence. The USDC believed scripted issues it created, making the case more about faith than facts. Courts are for fact finding.

(APP. A)

The plaintiff filed a motion in the Court of Appeals 2nd Circuit for appointment of pro-bono counsel (it had been asked of the plaintiff the Court, several times, why he did not have an attorney). The Court of Appeals 2nd Circuit denied the request and dismissed plaintiff's case without any briefing having been submitted for the appeal. After some inquiry of court staff, Plaintiff had been told, "They do this all the time, they dismiss pro se cases" and was also told "You can file a case and after its dismissed, you have the option and right to appeal", this preemptive allegation of pro se filings was/is concerning.

The plaintiff's filing Petition for Writ of Certiorari is because the plaintiff's case was dismissed without briefing having been submitted for consideration and review. The plaintiff's case has merit because the dismissal of the plaintiff's case was premature by way of a granting of summary judgment by the USDC 2nd Circuit. The dismissal was preemptive of plaintiff's argument that there are genuine material issues of fact in dispute that do not warrant a dismissal of the case by granting of summary judgment. Plaintiff raised this as an issue of fact in the USDC 2nd Circuit in plaintiff's Opposition papers before case was dismissed. For reasons aforementioned, the plaintiff filed a notice of appeal in the USCA 2nd Circuit, The notice for an appeal was dismissed.

Liberty and justice for all, pursuant to the U.S. Constitution/Bill of Rights, lends itself for allowance of an appeal; it is a faithful execution of the law and citizens right. The USCA 2nd dismissal of plaintiff's notice of appeal was, respectfully, premature.

Plaintiff raised the point of argument that genuine issues of material

fact are in dispute and that summary judgment cannot be granted while genuine issues of material fact are in dispute. This was overlooked, or ignored, and should have been considered as a matter of law before summary judgment was granted. This issue was raised in the USDC 2nd Circuit and was grounds for plaintiff to appeal the case to USCA 2nd Circuit.

Pursuant to Rule 14.1 (h); The plaintiff respectfully makes request for review for petition for writ of certiorari because the District Court amplified its bias and allowed prejudice to plaintiff's case to prevail. The USDC amplified its reliance on time lapse video, which is not an accurate accounting of the event(s) that occurred, whereas real time video does present an accurate representation of the event and is not absent of 'scenes' and depicts all events and behaviours as they occurred in real time. Real time video does not present prejudice to either party. Time lapse video is prejudicial to plaintiff and is of benefit to defendant because it is self-serving for the defendant; it tips the scales for justice.

The USCA 2nd Circuit dismissed plaintiff's case without there having been a briefing submitted by plaintiff. The USCA never allowed for any of plaintiff's arguments to be heard, in spite fact that plaintiff had provided to the USCA the merits for plaintiff's arguments. The USCA summarily rejects *pro se* litigants without justification and as a pattern as was expressed to plaintiff by court personnel. This is patently unfair when seeking justice and inconsistent with the right to free speech and is unconstitutional.

(APP. C)

Pursuant to Rule 10: a most compelling reason the plaintiff respectfully seeks a petition for a writ of certiorari is the USCA departed from the accepted and usual course of judicial proceedings by not allowing a brief to be filed and has affirmed the USDC dismissal of the plaintiff's case when there remains genuine issues of material fact in dispute which conflicted with granting of a summary judgment. The U.S. Court of Appeals dismissed plaintiff's appeal without any briefing.

Respectfully, both the USDC and USCA were prejudicial to

plaintiff.

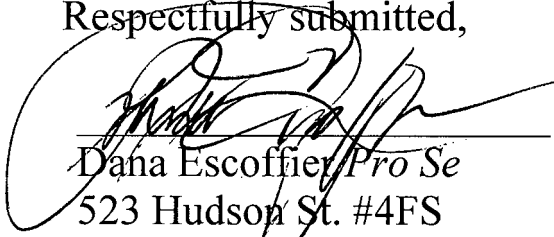
(APP. A, B, C)

CONCLUSION

The plaintiff respectfully request the U.S. Supreme Court of the United States grant the plaintiff the right to appeal and for any other and such further relief this Court deems just, fair and equitable.

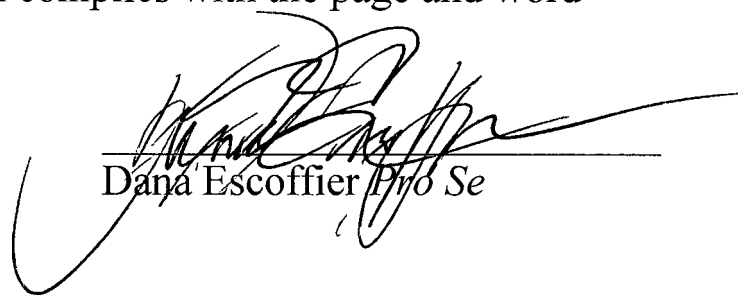
Dated: New York, New York
June 17, 2026

Respectfully submitted,



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This petition for writ of certiorari complies with the page and word limitations.



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DECLARATION OF DANA ESCOFFIER

Dana Escoffier declares under penalty of perjury, pursuant to 28 U.S.s1746, as follows:

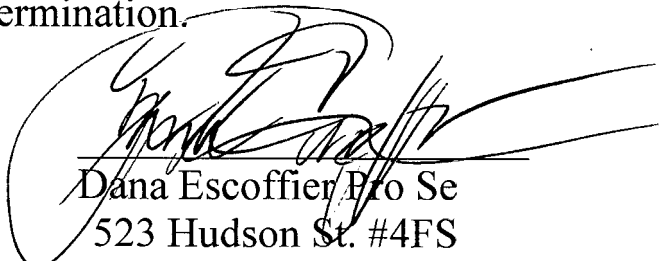
I am the plaintiff in the above titled action. I submit this declaration, under oath, in support of plaintiff's Petition for Writ of Certiorari.

Plaintiff opposes dismissal of plaintiff's action by the U.S. Court of

Appeals 2nd Circuit and dismissal of plaintiff's action by a Summary Judgment granted by USDC Southern District of N.Y. Pursuant to FRCP Rule 56 (c)(f), there is genuine dispute of material fact, therefore the moving party is not entitled to summary judgment as a matter of law..

Plaintiff states, through this declaration, that there are genuine material issues of fact in dispute and that there are facts plaintiff can show that support plaintiff's claim and would require the Court to hear the merits of the case and that of the disputed genuine material factual issues is necessary for merits determination.

Dated: New York, New York
June 17, 2026



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