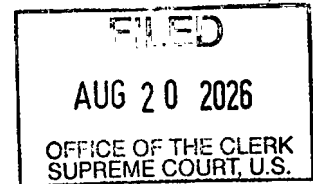


ORIGINAL

No. 26-543



IN THE
SUPREME COURT OF THE UNITED
STATES

MOSHE AZOULAY,
Petitioner,

v.

SANTIAGO ALONSO VAZQUEZ, SALVADOR
SANTIAGO BACILIO, TELESFORO TORRES,
AND JOSE GONZALEZ,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), and *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016), permit burden shifting and extrapolation of individual wage damages without a period-specific finding that the employees first produced evidence of uncompensated work sufficient to support a just and reasonable inference, particularly where contemporaneous payroll, wage, and weekly tip records exist and the governing state regulation requires substantial evidence and weekly recording of any tip allowance.

PARTIES TO THE PROCEEDING

Petitioner Moshe Azoulay was the defendant-appellant below and is proceeding pro se.

Respondents Santiago Alonso Vazquez, Salvador Santiago Bacilio, Telesforo Torres, and Jose Gonzalez were the plaintiffs-appellees below.

The corporate defendants below were 142 Knickerbocker Enterprise Corp., doing business as WOW Car Wash; George Auto Spa Corp.; and Mocha Management, LLC. They did not join Moshe Azoulay's appeal and are not petitioners here.

RELATED PROCEEDINGS

Vazquez v. Azoulay, No. 24-2870, United States Court of Appeals for the Second Circuit, summary order entered July 8, 2026; petition for panel rehearing denied July 28, 2026.

Vazquez v. 142 Knickerbocker Enterprise Corp., No. 1:13-cv-06085-EK-PK, United States District Court for the Eastern District of New York, final judgment entered October 7, 2024.

Alonso Vazquez v. Azoulay, No. 19-1820, United States Court of Appeals for the Second Circuit, summary order entered December 10, 2020.

TABLE OF CONTENTS

Question Presented	i
Parties to the Proceeding	ii
Related Proceedings	ii
Table of Authorities	iv
Opinions Below	1
Jurisdiction	1
Statutory and Regulatory Provisions Involved	2
Statement of the Case	4
Reasons for Granting the Petition	6
Conclusion	9

TABLE OF AUTHORITIES

Cases

Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946) i, 6-9

Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442 (2016) i, 6, 7, 9

Statutes and Regulations

28 U.S.C. § 1254(1) 1, 2

28 U.S.C. § 1331 1

28 U.S.C. § 1367 1

29 U.S.C. §§ 201 et seq. 1

New York Labor Law § 198(3), 663(3) 2, 9

12 N.Y.C.R.R. §§ 142-2.5, 142-2.6, 142-2.7 2, 3, 4, 6, 8, 9

Rules

Federal Rule of Civil Procedure 60(b) 4

Supreme Court Rule 13.3 1

PETITION FOR A WRIT OF CERTIORARI

Petitioner Moshe Azoulay petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's summary order entered July 8, 2026 is unpublished. The district court's amended memorandum and order was entered October 7, 2024 and is reported at 2024 WL 4437164. The Second Circuit denied panel rehearing on July 28, 2026. The relevant orders are reproduced in the appendix.

JURISDICTION

The Second Circuit entered judgment on July 8, 2026. Petitioner timely sought panel rehearing, which the court denied on July 28, 2026. This petition is timely under Supreme Court Rule 13.3 because it is filed within 90 days after denial of rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1). The district court had federal-question jurisdiction under 28 U.S.C. § 1331 because the complaint asserted claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and supplemental jurisdiction over the New York Labor Law claims under 28 U.S.C. § 1367.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

28 U.S.C. § 1254 provides, in pertinent part:

“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.”

New York Labor Law § 198(3) provides, in pertinent part:

“Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years.”

New York Labor Law § 663(3) provides, in pertinent part:

“Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years.”

During the periods relevant to this case, 12 N.Y.C.R.R. § 142-2.5(b)(1) provided:

Tips, or gratuities, may be considered a part of the minimum wage, subject to the following conditions:

(i) the particular occupation in which the employee is engaged is one in which tips have customarily and usually constituted a part of the employee's remuneration;

(ii) substantial evidence is provided that the employee received in tips at least the amount of the allowance claimed. An example of substantial evidence is a statement signed by the employee that he actually received in tips the amount of the allowance claimed; and

(iii) the allowance claimed by the employer is recorded on a weekly basis as a separate item in the wage record.

12 N.Y.C.R.R. § 142-2.6(a) provided, in pertinent part:

Every employer shall establish, maintain and preserve for not less than six years, weekly payroll records which shall show for each employee:

(3) wage rate;

(4) the number of hours worked daily and weekly, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10;

(6) the amount of gross wages;

(7) deductions from gross wages;

(8) allowances, if any, claimed as part of the minimum wage;

(9) net wages paid.

12 N.Y.C.R.R. § 142-2.7 provided, in pertinent part:

“Every employer shall furnish to each employee a statement with every payment of wages, listing hours worked, rates paid, gross wages, allowances, if any, claimed as part of the minimum wage, deductions and net wages.”

STATEMENT OF THE CASE

A. The car-wash employment and amended wage calculation

This case concerns a low-volume hand car wash in New York. The employees rotated among washing, vacuuming, drying, cashiering, and direct customer service. The operative amended complaint invoked the Miscellaneous Industries and Occupations Wage Order, 12 N.Y.C.R.R. Part 142.

The district court's March 20, 2024 order initially used the Hospitality Industry Wage Order, Part 146, and its written-notice requirement. Respondents moved under Rule 60(b), acknowledged that Part 142 governed, and submitted revised calculations. The October 7, 2024 amended order substituted Part 142, removed written notice as the basis for denying the credit, and recalculated damages. The final ruling allowed a tip credit from April 14, 2012 forward for weeks in which the records showed that the applicable tip threshold was met, but denied the credit for the earlier period because no admitted weekly tip records for that period had been identified.

At trial, respondents relinquished their federal minimum-wage and overtime claims. Trial Tr. 489:13-16. The final minimum-wage and overtime awards therefore rested on the NYLL. The FLSA retaliation claim remained, alongside an NYLL retaliation claim;

the monetary retaliation awards were imposed under the NYLL.

B. Tip-distribution findings

Petitioner disputed retaining tips and maintained that employees conducted a separate sales activity involving towels and bottles. The district court nevertheless credited Torres's testimony that petitioner received two tip shares placed in envelopes admitted as Trial Exhibit 58. The court treated employee merchandise sales as distinct from the alleged tip shares and rejected petitioner's denial after comparing his trial and deposition testimony. The court also found that two managers possessed actual hiring and supervisory authority. The court of appeals reviewed these findings for clear error and affirmed them.

The tip-misappropriation and manager findings rested substantially on credibility determinations. This petition does not ask the Court to reweigh those determinations. It focuses on the distinct legal framework governing proof, extrapolation, and the treatment of contemporaneous wage-and-tip records.

C. Retaliation proceedings

In 2018, the district court denied respondents' motion for summary judgment on their FLSA and NYLL retaliation claims because factual disputes required trial. That ruling did not dismiss the claims. After trial, a different district judge credited additional evidence, found retaliation, and awarded each respondent \$3,000 in NYLL punitive damages. The court of appeals expressly rejected petitioner's assertion that the claims had previously been dismissed and affirmed the trial findings.

D. The decision below

The Second Circuit affirmed in a five-page nonprecedential summary order. It stated that the district court relied on respondents' testimony where petitioner's records contained gaps and credited petitioner's records where it considered them adequate. It also stated that the district court declined to extrapolate for certain periods when evidence was insufficient. The order did not identify a uniform threshold for deciding when the initial burden required by *Anderson* and *Tyson Foods* had been met, nor did it address petitioner's contention that the weekly wage-and-tip records required separate evaluation under Part 142.

Petitioner timely sought panel rehearing. The filed petition specifically argued that the contemporaneous weekly payroll and tip records, employee acknowledgments, and Paychex materials had to be evaluated under Part 142's substantial-evidence and weekly-recording requirements. The panel denied rehearing without explanation on July 28, 2026.

REASONS FOR GRANTING THE PETITION

I. The decision permits burden shifting without a clearly identified finding that respondents satisfied the threshold required by *Anderson* and *Tyson Foods*.

Anderson begins with the employee's burden to prove that he performed work for which he was not properly compensated. 328 U.S. at 686-87. Only when an employer's records are inaccurate or inadequate may an employee use evidence showing the amount and extent of work as a matter of just and reasonable inference, at which point the burden shifts. *Id.* at 687-

88. *Tyson Foods* reaffirmed that representative proof is permissible only when it is reliable and could sustain the required finding in an individual action. 577 U.S. at 454-57.

Here, the district court used different sources for different employees and periods. It credited contemporaneous records in some periods, used testimony or extrapolation in others, and declined to extrapolate where it found the proof insufficient. The court of appeals approved that approach generally, but it did not identify the evidence establishing uncompensated work or the just-and-reasonable inference for each period in which damages were extrapolated. That omission matters because the relaxed method is not a substitute for the employee's threshold showing.

Petitioner does not ask this Court to decide witness credibility. The legal question is whether the burden may shift before the court identifies the threshold evidence and explains why the inference used for a particular employee and period is reasonable. Without that discipline, a rule created to prevent an employer from benefiting from inadequate records becomes a license to disregard existing records or to extend testimony beyond the period it reliably proves.

II. The case presents a recurring question about the limits of representative and inferential wage proof.

Wage cases frequently involve incomplete records, mixed payroll systems, cash payments, employee-created logs, and testimony covering different portions of an employment period. *Anderson* and *Tyson Foods* permit approximation, but they also

require reliability and a reasonable inference. The decision below leaves unclear what findings a court must make before moving from particular evidence to an award for another period.

The need for a clear boundary is especially strong where, as here, only four individual employees sought damages and the record contained employee logs, third-party paystubs, employer records, and weekly wage-and-tip sheets. Requiring an express period-by-period threshold determination would preserve *Anderson's* remedial purpose while preventing approximation from replacing proof.

III. The Part 142 records make this case a concrete vehicle for deciding the question.

The final district-court order correctly recognized that the car wash was governed by Part 142, not the Hospitality Industry Wage Order. It allowed a tip allowance beginning April 14, 2012 for weeks in which the evidence met the regulatory threshold, but denied an allowance for earlier periods. Petitioner's filed rehearing petition directed the panel to weekly records listing hours, compensation, and a separate tip amount; signed employee acknowledgments; and third-party Paychex records.

Part 142 required the court to determine whether substantial evidence showed that an employee received the tips used for an allowance and whether the allowance was recorded weekly as a separate wage-record item. 12 N.Y.C.R.R. § 142-2.5(b)(1). Those requirements provide an objective framework for assessing the records. Yet the summary order addressed hours and pay in general terms without

separately explaining the legal treatment of the weekly tip records under Part 142.

The issue affects more than the base wage calculation. Any lawful allowance changes the minimum-wage deficiency and may alter overtime, NYLL liquidated damages, prejudgment interest, and the degree of success relevant to fees. Review is therefore warranted, or at minimum the judgment should be vacated and remanded for an explanation applying *Anderson*, *Tyson Foods*, and Part 142 to the preserved record issue.

IV. The petition does not rely on the incorrect proposition that the limitations period ended when the complaint was filed.

For clarity, petitioner does not contend that the six-year NYLL limitations period barred recovery for employment continuing after November 2013. The complaint was filed November 1, 2013, making November 1, 2007 the backward cutoff, see NYLL §§ 198(3), 663(3), and the operative pleading alleged employment continuing into 2014. The question is the evidentiary basis for the damages awarded within the permissible period, not whether all post-filing work was time-barred.

CONCLUSION

The petition for a writ of certiorari should be granted. Alternatively, the Court should vacate the judgment and remand for application of the threshold proof and reasonable-inference requirements of *Anderson* and *Tyson Foods* to the contemporaneous records and each disputed damages period.

Dated: August 18, 2026

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