

No. _____

**In The
Supreme Court of the United States**

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JOSE ANDRADE,

Petitioner,

vs.

CITY OF HAMMOND; HAMMOND BOARD OF
PUBLIC WORKS AND SAFETY,

Respondents.

◆

**On Petition For A Writ Of Certiorari
To The Indiana Supreme Court**

◆

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Indiana Supreme Court decided an issue – without determining the effect of ex post facto law, which affected petitioner’s property and due process rights under the Fifth (5th) and Fourteenth (14th) Amendments of the United States Constitution.

Whether the Indiana Supreme Court was foreclosed from considering facts presented in the record of the lower court due to any waiver by petitioner’s attorney(s) – which constituted ineffective representation thereby denying petitioner’s right to counsel under the Sixth (6th) Amendment of the United States Constitution.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner – Jose Andrade respectfully requests that a writ of certiorari issue to review the order of the Indiana Supreme Court which denied petitioner’s petition to transfer from the Indiana Court of Appeal.



OPINION BELOW

The Indiana Supreme Court’s order denying petitioner’s petition to transfer from the Indiana Court of Appeal, on March 7, 2019, appears in App. 1 to this Petition.



STATEMENT OF JURISDICTION

This Court’s jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a). The Indiana Supreme Court’s opinion below was issued on March 7, 2019. This petition is timely filed under Rule 13.1.



CONSTITUTIONAL PROVISIONS

The 5th Amendment to the United States Constitution provides in relevant part: “No person shall . . . be deprived of life, liberty, or property, without due process of law . . .” The 6th Amendment provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense . . .” The 14th Amendment provides,

in relevant part: “. . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . . ”



STATEMENT OF THE CASE

1. Petitioner’s dwelling in question was constructed in 1927. Petitioner purchased said property in 1998. The dwelling was divided into five (5) separate apartments *before* petitioner purchased it. The City of Hammond, Indiana (the “City”) adopted the building code on or about 1981. The City cited petitioner with violating said Code on May 10, 2013. The federal questions sought to be reviewed were raised in the lower court’s ruling on March 28, 2018 setting forth the following: “7. Curtis Vosti, former counsel for the Plaintiff, testified that he served subpoenas directed to Hammond’s Chief of Inspectors, Kelly Kearney, seeking “regulations/ordinances and/or statutes used to support the Defendants’ position that 6609 Jefferson contained illegal framing, illegal support beams, and other violations”. 8. Kearney bought [sic] no responsive documents to the January 12, 2017 hearing. 9. At the judicial review hearing Kelly Kearney admitted that he maintained in his office copies of all building codes adopted by the City of Hammond, and he further admitted that he possessed these responsive documents in October, November and December of 2016, and continued to possess responsive documents in January, 2017. 10. The City of Hammond presented no credible explanation why the 1927 City of Hammond Building code was not

produced to Plaintiff affording the Plaintiff the opportunity to impeach the expert opinions of the Hammond building inspectors. 11. The Hammond building inspectors offered opinion testimony to the Board in 2017 that the Plaintiff's building "does not meet any Code for multi-family dwellings in 1927", but the failure to produce the Code, as subpoenaed by the Plaintiff, precluded any cross examination as to the grounds for those opinions.' App. 27.

2. On March 9, 2017, the City of Hammond Board of Public Works and Safety issued a Finding and Decision in favor of respondents. On March 28, 2018, the Indiana Lake Superior Court issued a Judgment in favor of respondents. On November 15, 2018, the Indiana Court of Appeals affirmed the lower Court's order. On March 7, 2019, the Indiana Supreme Court issued an Order denying the petition to transfer. On June 5, 2019, petitioner filed a petition for writ of certiorari with the United States Supreme Court. Supreme Court Rule 13.1 and 28 U.S.C. § 1257(a) are the basis sought for review of an order from the Indiana Supreme Court.



REASONS FOR GRANTING THE WRIT

The fundamental rights of petitioner under the 5th and 14th Amendments of the United States Constitution have been violated in that the court ruled in favor of the respondents by allowing a fine for ostensibly violating a city building code and ordering petitioner to remodel his property to conform with the

city's code. The records reflect that the petitioner's building in question was constructed on or about 1927. App. 4. The city adopted said Code on or about 1981. The enforcement of said Code as it is being applied to a dwelling that was built *prior* to the adoption of said Code represents an enforcement of an *ex post facto* law. Such enforcement is deemed illegal and improper and therefore violates petitioner's 5th and 14th Amendment rights under the United States Constitution regarding property and due process. An *ex post facto* law is a "law passed after the occurrence of a fact or commission of an act which retrospectively changes the legal consequences or relations of such fact or deed. The Constitution Article 1 Section 10 says that the states are forbidden to pass any *ex post facto* law".

<https://dictionary.thelaw.com/ex-post-facto-law/>

Further, petitioner's building is located in an area that has been zoned by respondent to maintain double-occupancy dwellings however respondent ordered petitioner to convert his building to a single-occupancy dwelling thereby overreaching their own zoning requirements. App. 10-11. It should be noted that petitioner's building in question herein was converted to a five (5) unit dwelling *prior to* petitioner's purchase of said building **and** *prior to* respondent's adoption of the Codes for which petitioner was cited as violating.

Question #2 speaks to the Indiana appellate court ruling which is replete with statements regarding petitioner's waiving several issues. Such waivers affected

petitioner's position regarding the issues presented to the court. A specific waiver referred to the respondent's refusal to provide petitioner's requested discovery regarding the testimony of respondent's witnesses. The lower court *allowed* the trial to go forward without requiring respondent to provide the requested discovery thereby adversely affecting petitioner's defense. App. 27. "The government's withholding of evidence that is material to the determination of either guilt or punishment of a criminal defendant violates the defendant's constitutional right to due process." See *Brady v. Maryland*, 373 U.S. 83 (1963). The Supreme Court has held that part of the right to counsel is a right to effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 688 (1984).

Finally, this petition for a writ of certiorari should be granted because the Indiana Supreme Court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court in that petitioner's fundamental rights under the 5th and 14th Amendment have been violated as well as petitioner's right to effective counsel.



CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

June 5, 2019

Respectfully submitted,

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