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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 24-0353

STATE OF IOWA,
Plaintiff-Appellee,

v.

RONALD RICHARD PAGLIAI,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY,
DISTRICT COURT NO. SMAC409228 AND AGCR374900,
THE HONORABLE JUDGE TABITHA TURNER

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF IOWA, FINES AND FEES JUSTICE CENTER, AND PUBLIC JUSTICE

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<u>STATEMENTS OF INTEREST OF AMICI CURIAE</u>

The **ACLU of Iowa**, founded in 1935, is the statewide affiliate of the American Civil Liberties Union (ACLU), a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in state and federal law. The ACLU of Iowa works to ensure that the people and communities in Iowa most affected by poverty are not subjected to court debt imposition or collection practices that unlawfully discriminate against indigent defendants or burden the right to counsel. Along with its partners, the ACLU of Iowa filed an amicus brief in the preceding case to present this issue to the Court, *State v. Mathes*, No. 17-1909, 2020 WL 2267274, *1 (Iowa May 8, 2020)(unreported). The proper resolution of this case therefore is a matter of substantial interest to the ACLU of Iowa and its members.

Fines and Fees Justice Center ("FFJC") is a national center for advocacy, information, and collaboration on effective solutions to the unjust and harmful imposition and enforcement of fines and fees in state and local courts. FFJC's mission is to create a justice system that treats individuals fairly, ensures public safety, and is funded equitably.

Public Justice is a nonprofit legal advocacy organization that takes on the biggest systemic threats to justice of our time – abusive corporate power

and predatory practices, the assault on civil rights and liberties, and the destruction of the earth's sustainability. Public Justice's Debtors' Prison Project works to shrink the criminal legal system by ending the criminalization of poverty.

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

Neither party nor their counsel participated in the drafting of this brief, in whole or in part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief. The drafting of this brief was performed *pro bono publico*.

STATEMENT OF FACTS

I. Pagliai's Case

This case involves four separately numbered criminal cases, which all were resolved on February 15, 2024 in a single dispositional order. Only two cases, AGCR374090 and SMAC409228, are the subject of discretionary review here. The other two cases, AGCR369554 and AGCR375425, are the subject of a companion appeal, 24-0351, which does not directly present the issues highlighted in the Court's Order Granting Discretionary Review issued June 13, 2024.

The first case chronologically, AGCR369554 (the "Hy-Vee charge"), was filed on April 23, 2023. (Crim. Compl., AGCR369554 D0001, at 1-3.)

The criminal complaint alleged that Pagliai committed Theft 3 by stealing items from a Hy-Vee store on October 21, 2022. (*Id.* at 2-3.) The other three cases were filed on October 30, 2023. AGCR374090 (the "Price Chopper charge") alleged that Pagliai committed Theft 3 on September 10, 2023 by stealing items from a Price Chopper store. (Crim. Compl., AGCR374090 D0001, at 2-3.) AGCR375425 (the "Kohl's charge") alleged that Pagliai committed Theft 3 by stealing from a Kohl's store on October 24, 2023. (Crim. Compl., AGCR375425 D0001, at 1-2.) During this incident, Pagliai was also separately charged in SMAC409228 (the "resisting charge") with Interference with Official Acts for allegedly resisting arrest and "flailing his body around in a manner that looked like he was having a seizure." (Crim. Compl., SMAC409228 D0001, at 1-2.)

All four cases were resolved on February 15, 2024 in a single order, after Pagliai pleaded guilty to the Hy-Vee and the Kohl's charges. (Order of Disposition, SMAC409228 D0013, at 1-3.) The Price Chopper and resisting charges were dismissed. (*Id.* at 3.) According to the Dispositional Order, Pagliai was present with his attorney, and waived reporting of the plea hearing. (*Id*. at 1.)

The Dispositional Order addressed payment of "Category B Restitution," or court debt arising from a conviction for which litigants are

entitled to an ability-to-pay analysis. (*Id.* at 2-3); Iowa Code § 910.1. For the two cases resulting in convictions, Pagliai was informed he was presumed by statute to have the ability to pay the full amount of Category B Restitution, and was subsequently ordered to pay. (Order of Disposition, SMAC409228 D0013, at 2-3.) The Order informed Pagliai that he could challenge this presumption by filing an affidavit within 30 days to prove that he did not actually have the ability to pay. (*Id.* at 2.) However, in the two dismissed cases, the court simply ordered Pagliai to pay the full amount assessed, regardless of ability to pay:

DISMISSAL OF OTHER COUNTS AND CASES

☒ **DISMISSAL OF OTHER COUNTS AND CASES**. Upon the State's recommendation, the following counts/cases are dismissed: ***SMAC409228, AGCR374090***. ☐ State to pay costs. ☒Pursuant to the plea agreement adopted by the court, Defendant is ordered to pay court costs and any victim restitution associated with these counts and/or cases.

(*Id.* at 3.)

The specific amounts of Indigent Defense Fee Recoupment ("IDFR") costs are almost never known at the time of the disposition of a criminal case, and were not known here. The docket reflects an "indigent defense claim form" was filed in the dismissed Price Chopper case on March 18, 2024, thirty-two days after the dispositional order. (Indigent Defense Claim Form, AGCR374090 D0043.) This generic docket entry does not refer to an actual filing, but rather is the Clerk's method to note processing of a monthly update from the State Public Defender listing all amounts paid for indigent defense

for that county.

Ultimately, Pagliai was assessed the following charges:

Appellate number	Trial court number	Filing fee	IDFR	Pecuniary damage
24-0351	AGCR369554 (conv)	$100	$303.20	--
	AGCR375425 (conv)	$100	$311.30	$656.00
24-0353	SMAC409228 (dism)	$60	$0	--
	AGCR374090 (dism)	$100	$329.85	--

II. The Wider Context of Court Debt Assessed in Dismissed Criminal Cases

Despite the district court's dismissal of the Price Chopper and resisting charges, Pagliai was assessed $160 in filing fees and $329.85 in IDFR as part of a plea agreement in the two other cases. The routine use of "agreements" that include cases where no charges result in conviction is a significant problem in Iowa. Between 2014 and 2019, $15 million was assessed in IDFR for cases where all charges were dismissed. Matt Taibbi, *Public Defender Tales: Innocent, But Fined*, Racket News, Nov. 30, 2020.[1]

[1] https://www.racket.news/p/public-defender-tales-innocent-but?r=c3gim&utm_campaign=post&utm_medium=web&utm_source=linkedin

While the amount of IDFR in Iowa has steadily increased over the years, the collection rate has remained dismally low:[2]

Fiscal year	IDFR outstanding	IDFR collected	**Collection rate**
2015	$157,048,534	$5,000,235	3.2%
2016	$161,664,137	$4,709,153	2.9%
2017	$167,598,811	$3,983,668	2.4%
2018	$172,887,091	$3,439,272	1.9%
2019	$177,555,301	$3,386,888	1.9%
2020	$177,934,445	$3,545,155	2.0%
2021	$178,160,208	$3,727,955	2.1%

The Judicial Branch no longer includes IDFR subtotals in their periodic legislative reports after 2021, but available information suggests this trend continues. Lauren Gill, *Indigent Defense Can Cost Poor People Lots of Money*, The Marshall Project, Feb. 12, 2024.[3]

It is currently unknown how much of Iowa's total IDFR balance comes from cases like Pagliai's, where limitations based on ability to pay are

[2] Marea Beeman et al., National Legal Aid and Defender Association, *At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees*, July 2022, https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf, at 66.

[3] https://www.themarshallproject.org/2024/02/12/miranda-rights-indigent-defense-iowa.

purportedly waived by agreement. However, these numbers provide strong evidence that Iowa's system is not "carefully designed to insure that only those who actually become capable of repaying the state will ever be obliged to do so." *Fuller v. Oregon*, 417 U.S. 40 (1974).

III. Distinguishing this Case from *Mathes*

This Court accepted this case for discretionary review so that the parties could "brief the issue left undecided in *State v. Mathes*," i.e. whether the parties could agree to the assessment of IDFR in dismissed cases despite the lack of any legal basis to do so in statute, common law, or constitution. In *State v. Mathes*, No. 17-1909, 2019 WL 1294098 (Iowa Ct. App. 2019), the Iowa Court of Appeals held that Mathes did not have a statutory basis for pursuing an appeal, and that she had nevertheless agreed to the assessment. Ultimately, the decision was affirmed, 3-3, by operation of law. *State v. Mathes*, No. 17-1909, 2020 WL 2267274 (Iowa 2020) (unreported).

That was not the end of the story for Lori Mathes, however. After the Court's 3-3 decision, Mathes was charged almost $3,000 in additional IDFR for the appeal. *See* Taibbi, *Public Defender Tales*; *see also* Gill, *Indigent Defense*. Mathes was later able to strike these fees after further litigation. *Id*.

The Amici do not concede in any way that a court's lack of subject matter jurisdiction can be waived in formal plea proceedings. However, to the

extent this Court creates a rule of general applicability for court debt assessed in cases where all charges were dismissed, there are potentially important differences between the circumstances of Pagliai, who was subject to a formal plea agreement, and Mathes, who was not. Plea agreements require a disclosure of terms to the court on the record. Iowa R. Crim. P. 2.10(2); *Boykin v. Alabama*, 395 U.S. 238 (1969). A defendant must be made aware of the nature of the charge, the potential sentence, and that the plea must be supported by a factual basis. *Boykin*, 395 U.S. at 242-44. A presentence report must be prepared. Iowa R. Crim. P. 2.8(2)(e).

In short, there are few contractual relationships that require as much court supervision and procedural protections as plea bargaining. This Court should keep in mind that most of the cases where IDFR is assessed in dismissed criminal cases happen without any of these formalities–exactly as happened to Lori Mathes.

ARGUMENT

I. INTRODUCTION

Under current Iowa Code, there is no fact pattern under which IDFR or other costs can be lawfully assessed against a defendant in a dismissed criminal case. No statutory authority permits an Iowa court to impose IDFR in a dismissed case. Any statute that would purport to allow for such costs

would be an unconstitutional burden on the presumption of innocence, basic due process, and the right to counsel. *See Nelson v. Colorado*, 581 U.S. 128 (2017); *Fuller v. Oregon*, 417 U.S. 40; *Giaccio v. State of Pa.*, 382 U.S. 399 (1966). Alternatively, an order for IDFR or other costs in a dismissed criminal case would constitute an illegal sentence.

A challenge to the trial court's jurisdiction is reviewed for correction of errors at law. Iowa R. App. P. 6.907; *State v. Bruegger*, 773 N.W.2d 862, 869 (Iowa 2009). However, challenges to the constitutionality of a statute are reviewed de novo. *State v. Tripp*, 776 N.W.2d 855 (Iowa 2010).

While Amici agree in the result Pagliai seeks, their argument differs in several significant respects. First, Amici frame the issue here as in *Mathes*, i.e. not an appeal of a plea agreement but rather an agreement within a dismissed case to pay IDFR. Second, Amici distinguish between the terms and concepts of "authority" and "subject matter jurisdiction" because the difference between them is the central question of this case. Third, the term "Category B Restitution," added to Iowa Code 910.1 in 2020, only applies to debt associated with a "criminal [case] in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered." Iowa Code § 910.2(1); *see also* Supervisory Order, *In the Matter of Interim Procedures Governing Ability to Pay Determinations and Conversion of*

Restitution Orders, at 1 n.1 (Iowa July 7, 2020). Fourth, Amici take no position on how a court's lack of jurisdiction to enter debt in a dismissed case otherwise affects the validity of the plea agreement.

II. THE COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO ENTER A JUDGMENT FOR COURT DEBT IN A DISMISSED CRIMINAL CASE.

"'Subject matter jurisdiction' refers to the power of a court to deal with a class of cases to which a particular case belongs." *In re Estate of Falck*, 672 N.W.2d 785 (Iowa 2003). "Subject-matter jurisdiction over a claim is conferred either constitutionally or statutorily." *State v. Propps*, 897 N.W.2d 91 (Iowa 2017). As explained below, neither code, constitution, nor common law confer subject matter jurisdiction to the district court to assess IDFR or other court costs for dismissed charges.

A. Iowa Code Does Not Allow Taxation of IDFR to the Defendant For Dismissed Charges.

In Iowa, costs are only taxable to the extent provided by statute, and such statutes are in "derogation of the common law." *Woodbury Cnty. v. Anderson*, 164 N.W.2d 129, 133 (Iowa 1969). In other words, Iowa courts do not have an inherent right to order reimbursement for costs absent explicit statutory authority. While prior versions of the Code provided for state recovery of IDFR in dismissed cases, the legislature repealed that language in

2012. S.F. 2231, 84th Gen. Assemb. (Iowa 2012).

1. The Text of Section 815.9 Does Not Allow IDFR to be Assessed in Dismissed Cases.

As amended in 2012, section 815.9 only authorizes the state to recover IDFR in three situations—conviction, acquittal, or in a case other than a criminal case. Iowa Code §§ 815.9(5), (6). "[W]hen the terms and meaning of a statute are plain and clear, we enforce the statute as written." *State v. Wickes*, 910 N.W.2d 554 (Iowa 2018). When the language is clear, the Court does "not search for meaning beyond the statute's express terms. *State v. Iowa Dist. Ct. for Johnson Cnty.,* 730 N.W.2d 677, 679 (Iowa 2007) (quotation and citation omitted). Because the plain text of the statute unambiguously does not authorize the assessment of IDFR in dismissed criminal cases, the district court had no jurisdiction to do so. *See Woodbury Cnty.*, 164 N.W.2d at 133.

2. The Legislative History of Section 815.9 Demonstrates Legislative Intent Not to Assess IDFR in Dismissed Cases.

While the plain text resolves the issue, the history of IDFR in Iowa further demonstrates the Legislature did not intend to assess costs in dismissed cases. The current Code is the result of a 2012 amendment that repealed prior statutory authorization of IDFR in dismissed cases. Such an omission, resulting from the repeal of a prior statute, is construed as evidence of legislative intent. *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) ("Intent

may be expressed by the omission, as well as the inclusion, of statutory terms."); *Wieslander v. Iowa Dep't of Transp.*, 596 N.W.2d 516, 522 (Iowa 1999) ("The repeal of a statute typically destroys the effectiveness of the statute, and the repealed statute is deemed never to have existed."). Thus, the omission of dismissed cases from Section 815.9 was intentional.

In 1969, the Iowa Supreme Court held in *Woodbury County* that courts had no inherent power to tax costs absent express statutory authority, which is "especially true" when, as here, costs are imposed against a non-convicted party in a criminal matter. 164 N.W.2d at 136 (considering acquitted defendant). Five years later, the United States Supreme Court held in *Fuller* that the assessment of IDFR was constitutional, including as a condition of probation, but only if defendants were afforded protections ensuring that the repayment requirement would only attach to those who had the ability to pay without hardship. 417 U.S. 40.

Pursuant to *Fuller*, the *Woodbury County* rule was modified in *State v. Rogers*, which authorized courts to assess IDFR as a condition of probation without a specific authorizing statute. 251 N.W.2d 239 (Iowa 1977). The *Rogers* Court held that the ability to assess IDFR was within the broad powers to set conditions of probation. *Id*.

Five years later, the Legislature first codified IDFR recovery in cases

resulting in a criminal conviction. S.F. 2280, 69th Gen. Assemb. (Iowa 1982); Iowa Code § 910.2. The next year, the Legislature codified Chapter 815, governing appointment of indigent counsel. S.F. 495, 70th Gen. Assemb. (Iowa 1983). For the first decade of its existence, Chapter 815 only allowed recovery of costs outside a conviction under narrow circumstances—specifically, when the person was not indigent and could actually afford counsel. Iowa Code § 815.10(2) (1983).

In 1993, the Legislature enacted section 815.9A, which for the first time explicitly allowed recovery of IDFR outside of a conviction, irrespective of any finding that the defendant was not truly indigent. S.F. 266, 75th Gen. Assemb. (Iowa 1993); Iowa Code § 815.9A (1993). The statute specifically authorized recovery of IDFR when "the person is acquitted or the charges are dismissed." *Id*. The statute also imposed caps on recovery. For people between 100% and 150% of federal poverty guidelines, the statute directed that at least $100 would be collected, and those over 150% of poverty guidelines would have to pay at least $200. *Id*. In 1996, this statute was amended to provide that the IDFR order constituted a judgment. H.F. 2458, 76th Gen. Assemb. (Iowa 1996). The amendment also added a third tier for recovery, i.e. people over 185% of poverty guidelines had to pay at least $300 in IDFR. *Id*.

In 1999, Iowa Code 815.9A was repealed, and language allowing courts

to order IDFR was inserted into section 815.9. S.F. 451, 78th Gen. Assemb. (Iowa 1999).

> 3. If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person…
>
> 4. If the case is a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than the date of sentencing, or if the person is acquitted **or the charges are dismissed**, within thirty days of the acquittal or dismissal.

Iowa Code § 815.9 (1999) (emphasis added). In the next decade, the only change made to the relevant statutory language was an amendment forbidding courts from issuing wage assignments to collect IDFR until after the conclusion of the case. S.F. 2301, 79th Gen. Assemb. (Iowa 2002).

In 2009, the Iowa Supreme Court decided two cases that limited assessment and collection of IDFR. First, in *State v. Sluyter*, this court held that IDFR could not be collected via contempt proceedings. 763 N.W.2d 575, 585 (Iowa 2009). Before Sluyter's trial, one count was dismissed, and he was acquitted of the others. *Id*. at 577. After trial, Sluyter was assessed IDFR and ordered to pay installments on threat of contempt. *Id*. at 577-78. On certiorari, the Iowa Supreme Court found that neither the court's inherent power of contempt, nor the statute allowing for contempt for non-payment of fines and surcharges, provided the court with the power to use contempt to collect

IDFR. *Id*. at 582. The Court reasoned that the district court was limited to civil collection methods rather than criminal contempt proceedings in such cases. *Id.* ("[B]ecause Sluyter was not convicted of the criminal charges, the cost judgment entered against him could not have been 'part of the fine to be imposed as penalty for an offense.'"). The Court likewise rejected the State's statutory argument because it found the legislative history "indicat[ed] a conscious decision by the legislature to restrict the contempt power to criminal liabilities." *Id.* at 583.

That same year, the Iowa Supreme Court also decided *State v. Dudley*, dealing with both IDFR and other court costs. 766 N.W.2d 606 (Iowa 2009). After Dudley was acquitted, the trial court *sua sponte* ordered that Dudley pay IDFR. *Id*. at 611. Overruling an initial constitutional challenge, the court further ordered that Dudley pay in monthly installments and that failure to do so could result in contempt. *Id*. On review, this Court held that the lack of a prerequisite ability to pay analysis was a violation of Dudley's constitutional right to counsel. *Id*. The Court compared Iowa Code 815.9 as applied to an acquitted defendant against the protections that preserved the statute examined in *Fuller*. *Id*. at 613-14. This Court determined that the failure to accord an ability-to-pay limitation in section 815.9 did not, as required by *Fuller*, "insure that only those who actually become capable of repaying the

state will ever be obliged to do so." *Id*. at 614, quoting *Fuller*, 417 U.S. at 53.

Finally, responding to *Dudley*, the Legislature amended Iowa Code 815.9 to substantially its current form in 2012. S.F. 2231, 84th Gen. Assemb. (Iowa 2012). The provision "[i]f a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person" was retained in the new version of the statute. Iowa Code § 815.9(3). However, in passing the current version of section 815.9, the legislature deleted the prior statute's authorization to assess IDFR in dismissed criminal cases. *Id*.[4] To the extent that the omission of dismissals of criminal cases conflicts with the general language of Iowa Code 815.9(3), the specific language prevails. Iowa Code § 4.7. This history demonstrates that the legislature's omission of dismissed cases was intentional. There is no statutory basis to assess IDFR in dismissed cases.

3. Construing Section 815.9 to Allow for the Imposition of IDFR Leads to Absurd Results.

Because the text of the statute does not authorize imposition of IDFR

[4] Section 815.9(4) does retain an artifact from the prior version of the statute that says, "[i]n a criminal case, the report shall be submitted within a reasonable period of time after the date of sentencing, acquittal, **or dismissal.**" (emphasis added). However, this language, which merely governs when the report is submitted, does not authorize assessment of IDFR, and cannot overcome the fact that the language in section 815.9 limiting when IDFR can be assessed was intentionally deleted.

in dismissed cases, the Court can only read such authority into the statute where its omission would lead to "absurd results." *See Brakke v. Iowa Dep't of Nat. Res.*, 897 N.W.2d 522, 538-39 (Iowa 2017). In this case, the Legislature's omission of dismissed cases is not absurd; to the contrary, to broaden section 815.9 to allow for the imposition of IDFR in dismissed cases would be.

While good arguments exist to challenge the imposition of IDFR cases in acquittals, there are rational, legitimate reasons to distinguish between acquittals and dismissals in the assessment of costs. First, the costs expended for the defense of someone who is acquitted at a jury trial are generally much higher than those which are dismissed before trial. Second, and more importantly, the imposition of IDFR in a dismissed case carries additional constitutional concerns,[5] especially given that dismissals are often resolved by agreements that may bypass necessary constitutional protections such as ability-to-pay limitations. In fact, allowing IDFR in dismissed cases would mean that people who are guilty of no crime are likely to pay far more than those who are convicted. Omitting dismissed criminal cases from the IDFR requirement, as the legislature has done, obviates those constitutional concerns.

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[5] *See* section I.D. of this brief.

Iowa Code 815.9 provides that a court has jurisdiction to order IDFR in acquittals,[6] criminal convictions, and cases other than criminal cases, but only has the authority to do so to the extent that the litigant has the ability to pay. In contrast, the statute provides for no situation where IDFR can be ordered in a dismissed criminal case, regardless of the litigant's ability to pay, depriving the court of subject matter jurisdiction. Given that distinction, the order entered against Pagliai was void.

B. There is Also No Statutory Basis for Costs Other Than IDFR in a Dismissed Criminal Case.

In addition to IDFR, Pagliai was also charged $100 in filing fees in a dismissed case. Unlike IDFR, there has never been even historical statutory language that would permit these costs in a dismissal or an acquittal. Tracking common law, the Code provides that "costs shall be recovered by the successful against the losing party." Iowa Code § 625.1. In *Woodbury County*, this Court found that this rule applies in the context of criminal cases. 164 N.W.2d at 135. *Dudley* also addressed court reporter fees, noting that the statute allowing these costs to be taxed in a conviction had no analog for cases without a conviction. 766 N.W.2d at 624.

Costs like court reporter fees and filing fees cannot be collected absent

[6] *But see* section I.C., addressing *Nelson v. Colorado*, 581 U.S. 128 (2017).

statutory authority. Like IDFR, there is no clear statutory authority to impose either of these fees in a dismissed case. The court's inclusion of these fees in this case was in excess of jurisdiction, rendering this order void.

C. Charging Court Debt of Any Kind in a Dismissed Case is a Violation of the Presumption of Innocence Under *Nelson v. Colorado.*

A statute that purports to give subject matter jurisdiction to a court to assess costs against exonerated defendants would be constitutionally void. This Court must avoid construing statutes in a manner which would render them unconstitutional whenever possible. *See, e.g., In re Guardianship of Kennedy*, 845 N.W.2d 707 (Iowa 2014) (declining to construe guardianship statute to allow involuntary sterilization without judicial review, because doing so would raise serious due process concerns). Because interpreting the statute to authorize imposition of costs against exonerated persons would raise serious constitutional concerns under *Nelson*, this Court should construe it to avoid those infirmities, or else find the statute unenforceable as unconstitutional.

In 2017, the United States Supreme Court addressed the imposition of monetary obligations against exonerated defendants in *Nelson*. 581 U.S. at 131-35. *Nelson* examined Colorado's Exoneration Act, which addressed the aftermath of convictions that were later reversed. *Id*. at 133-34. In relevant

part, the Act provided that a defendant later exonerated upon appeal had to prove their innocence by clear and convincing evidence in a separate civil action to obtain a refund of any court debt paid as a result of their earlier conviction. *Id*.

Upon a challenge by Shannon Nelson, the Colorado Supreme Court upheld the statutory procedure. *Id*. at 132. In doing so, the court reversed the decision of the state's intermediate appellate court, which had ruled that restitution, fees, and costs … "must be tied to a valid conviction." *People v. Nelson*, 369 P.3d 625, 627, 628 (Colo. App. 2013). The Colorado Supreme Court held that, notwithstanding the lack of a valid conviction, the process laid out in the Exoneration Act "provide[d] sufficient process for defendants to seek refunds of costs, fees, and restitution that they paid in connection with their conviction." *People v. Nelson*, 362 P.3d 1070, 1078 (Colo. 2016).

The United States Supreme Court reversed the Colorado Supreme Court, 7-1. Writing for a six-justice majority, Justice Ginsburg explained that Colorado's scheme "offends the Fourteenth Amendment's guarantee of due process." 581 U.S. at 130. Per *Nelson*, a state "may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions." *Id*. at 136 (emphasis in original).

Applying the balancing test of *Mathews v. Eldridge* to the process for

obtaining a refund under the Exoneration Act, the Court found that the test weighed decidedly in favor of Nelson. *Id*. at 135, citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). On the first prong of the test, the nature of the private interest of the individual, the Court found an "obvious interest in regaining the money paid to [the State]." *Id*. at 135. In doing so, the Court stated that the presumption of innocence was "[a]xiomatic and elementary," and "lies at the foundation of our criminal law." *Id*.

The second prong, risk of erroneous deprivation, was in the majority's view "unacceptable." *Id.* at 139. In part, this was because the Act conditioned recovery on proving innocence by clear and convincing evidence, was cost prohibitive for smaller amounts, and simply not available for misdemeanors. *Id*. at 137. The Court went a step further, and stated that "to get their money back, defendants should not be saddled with *any* proof burden… [i]nstead, they are entitled to be presumed innocent." *Id*. at 137. Finally, the Court found that the third prong of *Mathews*, government interest, also weighed decidedly in favor of Nelson, finding that Colorado "has no interest in withholding from Nelson… money to which the State currently has zero claim of right." *Id*. at 139.

In his concurrence, Justice Alito disagreed with the majority's application of *Mathews*, and instead would have held that the proper

framework was under *Medina v. California*, 505 U.S. 437 (1992). *Id*. at 140 (Alito, J., concurring). Because the case involved "state procedural rules which… are part of the criminal process[,]" Justice Alito viewed the less stringent due process requirements of *Medina* as controlling. *Id.* Under *Medina*, a state rule of criminal procedure "violates the Due Process clause of the Fourteenth Amendment only if it offends a fundamental and deeply rooted principle of justice." *Id*., citing *Medina*, 505 U.S. at 445. Even under this lower standard, Justice Alito found that the Colorado statute was unconstitutional. *Id.* at 142.

Even Justice Thomas, the sole dissenting vote in *Nelson*, did not propose that Colorado had any right to exact monetary sanctions from an exonerated defendant. His dissent focused solely on his view that such defendants no longer had an ownership interest in funds already collected, limiting the right to recover of those funds and requiring no more process than that afforded by the Exoneration Act. *Id*. at 149 (Thomas, J., dissenting).

As a whole, the decision in *Nelson*—majority, concurrence, and dissent —is built upon the axiomatic and elementary principle that is the heart of Pagliai's challenge. *See, e.g., id.* at 136 ("[T]he presumption of innocence "lies at the foundation of our criminal law."), *citing Coffin v. United States*, 156 U.S. 432, 453 (1895); s*ee also State*

v. Lindsey, 302 N.W.2d 98, 102-03 (Iowa 1981) (on the necessity of the instruction on the presumption of innocence); *see also* Iowa Code § 701.3 ("Every person is presumed innocent until proven guilty."). The presumption of innocence prohibits monetary sanctions against a non-convicted defendant in a criminal case. Any statute that purports to do so is invalid on due process grounds.

D. Section 815.9 As Applied in the Present Case is Also Void for Vagueness under *Giaccio v. State of Pa*.

The United States Supreme Court has also found statutes assessing costs to exonerated defendants void for vagueness and due process grounds. In *Giaccio v. State of Pennsylvania*, after being acquitted of a criminal charge, Jay Giaccio was nevertheless "sentenced" to pay the costs of his prosecution. 382 U.S. 399, 400 (1966). This sentence was in accordance with a statute allowing a jury to determine, post-acquittal, whether the defendant or the state should pay the costs of prosecution. *Id*. at 400-01. The statute imposed no criteria to guide the jury, and required the defendant to be imprisoned until costs were paid. *Id*. at 401. Prior to *Giaccio*, Pennsylvania appellate courts had filled the statutory void by suggesting a jury instruction that imposing costs on an acquitted defendant was appropriate if they found "misconduct of some kind as a result of which he should be required to pay some penalty short of conviction." *Id*. at 404.

The Supreme Court unanimously reversed. *Id.* at 405. Writing for a seven justice majority, Justice Black rejected the state appellate court's determination that the statute was "'not a penal statute[…] but rather as compensation to a litigant for expenses[,]'" since "there is no doubt that [the statute] provides the State with a procedure for depriving an acquitted defendant of his liberty and his property[.]" *Id*. at 402. The Court then found both the statute and the suggested jury instructions to be impermissibly vague, as "[i]t would be difficult if not impossible for a person to prepare a defense against such general abstract charges as 'misconduct,' or 'reprehensible conduct.'" *Id.* at 404.

In concurrence, Justice Stewart opined that to "punish a defendant after finding him not guilty… violates the most rudimentary concept of due process of law." *Id.* at 405 (J. Stewart, concurring). Justice Fortas' concurrence stated succinctly that "the Due Process Clause of the Fourteenth Amendment does not permit a State to impose a penalty or costs upon a defendant whom the jury has found not guilty of any offense with which he has been charged." *Id.* (J. Fortas, concurring). Each of these concurrences are echoed in the majority, concurrence, and dissent in *Nelson*.

In *Woodbury County*, this Court held that "[i]t would be constitutionally permissible for the legislature to include a provision that expenditures made

under this section be taxed as part of the costs against a defendant convicted either as a result of jury trial or plea of guilty." 164 N.W.2d at 133-34. "On the other hand, the permissibility of taxing such expenditures as a part of the costs against a defendant acquitted is somewhat doubtful in view of [*Giaccio*]." *Id.* at 134. This observation holds even more true today, in light of subsequent holdings in *Fuller* and *Dudley*. In the absence of ability to pay requirements, or really any standards whatsoever, the system for imposing IDFR and costs on defendants in dismissed cases is completely arbitrary – like the statute struck down in *Giaccio*.

E. Allowing Assessment of IDFR Without a Later Right to Modify is a Violation of Right to Counsel and Equal Protection under *Fuller v. Oregon*.

Because Iowa's laws only permit an individual to modify payment plans "during the period of probation, parole, or incarceration," a holding that allowed IDFR in dismissed cases would violate *Fuller's* requirement that collection of IDFR is only permissible when the debt can be later modified.

In *Fuller*, the Supreme Court held that IDFR collection statutes do not violate the right to counsel so long as the "statute is carefully designed to insure that only those who actually become capable of repaying the State will ever be obliged to do so." 417 U.S. at 53. The Oregon statute *Fuller* upheld had several features that section 815.9 lacks. This is especially true where

there is no finding of criminal culpability. To the extent that this Court determines that there is statutory authority to allow for Pagliai to be assessed IDFR in his dismissed cases, that statute would be invalid as an impermissible burden on the right to counsel.

In addition to the requirement that ability-to-pay be assessed at imposition, the statute upheld in *Fuller* provided a defendant could modify the IDFR debt at any time, if circumstances changed. *Id*. at 45-46. The ability to later modify IDFR is constitutionally necessary for at least two reasons. First, a defendant's circumstances can change over time—hopefully for the better, but frequently for the worse. Second, without objective standards for what constitutes reasonable ability to pay, the reality in Iowa is that these assessments are often based on guesswork about a person's future earning capacity. Without the ability to correct course when initial assumptions prove incorrect, or when the underlying premises about earning capacity change, Iowa's recoupment scheme is unconstitutional. *Dudley*, 766 N.W.2d at 614-15, citing *Fuller*, 417 U.S. at 53.

Section 910.7 provides a very limited right to later modify IDFR only to those who are both convicted and remain under the supervision of the state. "At any time **during the period of probation, parole, or incarceration**, the offender or the office or individual who prepared the offender's restitution plan

may petition the court on any matter related to the plan of restitution or restitution plan of payment[.]" Iowa Code § 910.7(1) (emphasis added). The statute provides that a court has complete discretion whether to schedule a hearing, or not, without setting a standard that would require ability to pay to be reassessed upon a showing of changed circumstances. *Id.*; *see also State v. Blank*, 570 N.W.2d 924, 926 (Iowa 1997). This relief is not available to someone who is assessed IDFR and is never under state supervision, is assessed IDFR in a non-criminal case, is acquitted, or—like Pagliai—has all charges dismissed.

In 1985, the version of section 815.9, then in effect, survived constitutional challenge because it was deemed in *Fuller* to have all of the features that preserved the constitutionality of the statute. *State v. Haines*, 360 N.W.2d 791, 794-96 (Iowa 1985). However, *Haines* was decided under a previous statute that only assessed IDFR upon conviction. *Id*. at 792-93. Moreover, the defendant in *Haines* was under state supervision, and thus at the time of his appeal could take advantage of the limited relief provided by section 910.7. *Id*. at 792. As applied to Haines, former section 815.9 was arguably constitutional. As applied to Pagliai, current section 815.9 is not.

While the validity of Pagliai's purported "waiver" of his initial ability-to-pay determination remains in question, it is also irrelevant in light of *Fuller*,

because the right to an ability-to-pay assessment is ongoing and not simply limited to the moment that it is first made. Given that the Code provides no mechanism for Pagliai to exercise that ongoing right, to the extent that the statute is found to confer jurisdiction, the statute is an invalid burden on the right to counsel.

III. IN THE ALTERNATIVE, THE ASSESSMENT OF COSTS AGAINST A DEFENDANT IN A DISMISSED CRIMINAL CASE IS AN ILLEGAL SENTENCE.

Although an award of IDFR in a dismissed case is necessarily not a "sentence," without a finding of criminal culpability, these large cash assessments on indigents has a punitive effect. People owing IDFR can have their wages garnished and are denied the ability to expunge otherwise eligible cases from their record. *See, e.g., State v. Doe*, 927 N.W.2d 656, 665 (Iowa 2019). "[J]udges may only impose punishment authorized by the legislature within constitutional constraints." *State v. Louisell*, 865 N.W.2d 590, 598 (Iowa 2015). It is a "well-established principle that sentences imposed without statutory authorization are illegal and void." *Id*. at 597. An illegal sentence may be challenged at any time. Iowa R. Crim. P. 2.24(5); *see also Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) (same).

Illegal sentences are "not subject to the usual concepts of waiver, whether from a failure to seek review or other omissions of error

preservation." *State v. Ohnmacht*, 342 N.W.2d 838, 843 (Iowa 1983). Parties cannot agree to an illegal sentence:

> Surely it should not lie within the authority of bargaining counsel and a willing judge to thus reshape the parameters of allowable punishment. If Howell were to prevail upon either of these contentions we would be left the anomalous situation in which parties could make their own law whenever a judge could be persuaded to allow it.

State v. Howell, 290 N.W.2d 355, 358 (Iowa 1980).

If a court may order IDFR in a criminal case where all counts have been dismissed merely because the parties agree, despite no statutory authority to do so, could the court also impose a fine if the parties present it as an agreement? Victim restitution? A term of incarceration? Precedent is clear that these absurd results would be illegal sentences, in excess of the court's jurisdiction, and thus void and challengeable at any time.

CONCLUSION

The judgment against Pagliai is void, either as entered by a court without subject matter jurisdiction, or alternatively as an illegal sentence. Under any of these theories, the decision of the district court must be reversed.

Respectfully submitted:

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*Application for Admission Pro Hac Vice Pending

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Motion was served on the following parties by the following methods:

1. Defendant-Appellant, through counsel, Erin M. Carr, via EDMS.
2. State-Appellee, via EDMS and through deposit in the U.S. mail, to:
   Criminal Appeals Division
   Iowa Attorney General
   Hoover Building
   1305 E. Walnut
   Des Moines, IA 50319

on the 14th day of October, 2024.

/s/Rita Bettis Austen
Signature of server

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