

No. 19-

In the
Supreme Court of the United States

JANE DOE,

Petitioner,

v.

IOWA,

Respondent.

On Petition for a Writ of Certiorari
to the Iowa Supreme Court

PETITION FOR A WRIT OF CERTIORARI

ALEXANDER KORNIA
ROBERT J. POGGENKLASS
Iowa Legal Aid
1111 9th Street
Suite 230
Des Moines, IA 50314

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu

QUESTION PRESENTED

In Iowa, as in nearly every state, a person who has been charged with an offense, but not convicted, is entitled to have the record of the charge expunged, because it can be very hard for a person with a criminal record to find employment. Iowa appears to be the only state, however, that denies this entitlement to people who are too poor to pay the court fees associated with the charge.

The Question Presented is whether Iowa violates the Equal Protection Clause by denying expungement to people who have not been convicted of any offense, solely because they are too poor to pay court fees.

RELATED PROCEEDINGS

Iowa Supreme Court: *State v. Doe*, No. 18-1366
(May 10, 2019)

Iowa District Court, Polk County: *State v. Doe*,
No. 05771 AGCR228484 (July 18, 2018)

TABLE OF CONTENTS

QUESTION PRESENTED i
RELATED PROCEEDINGS ii
TABLE OF AUTHORITIES iv
OPINIONS BELOW..... 1
JURISDICTION..... 1
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED 1
STATEMENT 1
REASONS FOR GRANTING THE WRIT 7
I. Iowa violates the Equal Protection Clause
by denying expungement to people who
have not been convicted of any offense,
solely because they are too poor to pay
court fees. 7
II. Iowa is the only state that does this. 12
III. The Question Presented is important and
this case is a perfect vehicle for answering
it. 14
CONCLUSION 15
APPENDICES
A. Iowa Supreme Court opinion (May 10, 2019) 1a
B. Iowa District Court order (July 18, 2018) 31a
C. Iowa Code § 901C.2..... 33a

TABLE OF AUTHORITIES

CASES

<i>Burns v. Ohio</i> , 360 U.S. 252 (1959)	8, 11
<i>Fuller v. Oregon</i> , 417 U.S. 40 (1974)	5
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956)	6, 8, 11
<i>James v. Strange</i> , 407 U.S. 128 (1972)	passim
<i>Long v. District Court</i> , 385 U.S. 192 (1966)	8, 11
<i>Mayer v. City of Chicago</i> , 404 U.S. 189	
(1971)	9, 11
<i>M.L.B. v. S.L.J.</i> , 519 U.S. 102 (1996)	9, 11
<i>Nelson v. Colorado</i> , 137 S. Ct. 1249 (2017)	15
<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> ,	
411 U.S. 1 (1973)	11
<i>Smith v. Bennett</i> , 365 U.S. 708 (1961)	8, 11

STATUTES

28 U.S.C. § 1257(a)	1
Ala. Code § 15-27-12	13
Alaska Stat. § 12.62.160(b)(8)	13
Ark. Code § 16-90-1410(a)	12
Cal. Penal Code § 851.91(a)	12
Colo. Stat. § 24-72-705	12
Conn. Gen. Stat. § 54-142a(a)	13
Del. Code tit. 11, § 4372	12
Fla. Stat. § 943.0585	12
Ga. Code § 35-3-37(h)(2)(A)	13
Haw. Rev. Stat. § 831-3.2(a)	12
Idaho Code § 67-3004(10)	12
20 Ill. Comp. Stat. § 2630/5.2(b)	12
Ind. Code § 35-38-9-1	12
Iowa Code § 815.9(3)	2
Iowa Code § 815.9(6)	2
Iowa Code § 901C.2	1, 5

Iowa Code § 901C.2(1)(a)	3, 8
Iowa Code § 901C.2(1)(a)(2)	3, 7, 8
Kan. Stat. § 22-2410	12
Ky. Rev. Stat. § 431.076	12
La. Code Crim. Proc. art. 976	12
Me. Stat. tit. 16, § 705	13
Md. Code Crim. Proc. § 10-105	12
Mass. Gen. Laws ch. 276, § 100C	12
Mich. Comp. Laws § 28.243(3)(8)	13
Minn. Stat. § 609A.02(3)	12
Miss. Code § 99-15-59	13
Mo. Rev. Stat. § 610.105	13
Mont. Code § 44-5-202(8)	13
Neb. Rev. Stat. § 29-3523(3)(c)	13
Nev. Rev. Stat. § 179.255	13
N.H. Rev. Stat. § 651:5	13
N.J. Stat. § 2C:52-6(a)	13
2019 N.M. Laws ch. 203, § 4	13
N.Y. Crim. Proc. Law § 160.50	13
N.C. Gen. Stat. § 15A-146	13
N.D. Sup. Ct. Admin. R. 41, § 6	13
Ohio Rev. Code § 2953.52	13
Okla. Stat. tit. 22, § 18	13
Or. Rev. Stat. § 137.225	13
18 Pa. Cons. Stat. § 9121(b)(2)	13
12 R.I. Gen. Laws § 12-1-12.1	13
S.C. Code § 17-1-40(B)(1)	13
S.C. Code § 17-22-910(A)(8)	13
S.D. Codified Laws § 23A-3-27	13
Tenn. Code § 40-32-101	13
Tex. Code Crim. Proc. art. 55.01	13
Utah Code § 77-40-104	13
Vt. Stat. tit. 13, § 7603	13
Va. Code § 19.2-392.2	13

Wash. Rev. Code § 10.97.060	13
W. Va. Code § 61-11-25	13
Wyo. Stat. § 7-13-1401	13

OTHER AUTHORITY

Amanda Agan and Sonja Starr, <i>The Effect of Criminal Records on Access to Employment</i> , 107 Am. Econ. Rev. Papers & Proceedings 560 (2017)	14
Harry J. Holzer, Steven Raphael, and Michael A. Stoll, <i>Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers</i> , 49 J. L. & Econ. 451 (2006)	14
Devah Pager, <i>The Mark of a Criminal Record</i> , 108 Am. J. of Sociology 937 (2003)	14
David Thacher, <i>The Rise of Criminal Background Screening in Rental Housing</i> , 33 Law & Soc. Inquiry 5 (2008)	14

PETITION FOR A WRIT OF CERTIORARI

Jane Doe respectfully petitions for a writ of certiorari to review the judgment of the Iowa Supreme Court.

OPINIONS BELOW

The opinion of the Iowa Supreme Court (App. 1a) is published at 927 N.W.2d 656. The order of the Iowa District Court (App. 31a) is unpublished.

JURISDICTION

The judgment of the Iowa Supreme Court was entered on May 10, 2019. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of the Fourteenth Amendment provides: “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.”

Iowa Code § 901C.2 is reproduced in Appendix C, App. 33a.

STATEMENT

1. Late one evening in the spring of 2009, the Des Moines police responded to a 911 report of a woman in a duplex held at knifepoint by a man. App. 2a. When they arrived, witnesses told them that the man had fled the residence. *Id.* The police searched the area but found no one, so they entered the house to look for the man. *Id.* Petitioner Jane Doe answered the door and identified herself as the victim. *Id.* She nevertheless tried to block the police from

entering, by attempting to push one of the officers. *Id.* The police handcuffed Doe and placed her in a squad car. *Id.* When they searched the apartment, they found a man hiding in the closet. *Id.* He was the father of Doe's child. *Id.*

As it turned out, it was Doe who had asked the witnesses to report falsely that her ex-partner had fled, to protect him from being arrested. *Id.* When the police asked Doe what had happened, she claimed that *she* was the one who had pulled the knife on her ex-partner. *Id.* The police arrested Doe. *Id.* She was charged with one count of domestic abuse assault with a dangerous weapon, and one count of assault on a police officer. *Id.* at 2a-3a.

Doe requested a court-appointed attorney, because as a single mother whose only income was \$250 per month in food assistance, she could not afford to hire counsel. *Id.* at 3a. The court appointed counsel to represent her. *Id.*

Soon after, the state agreed to dismiss the charges if Doe successfully completed a family violence class. *Id.* Doe promptly did so, and the charges were dismissed. *Id.* The trial court order dismissing the charges assessed Doe \$718 in costs for the use of a court-appointed attorney. *Id.* Iowa law requires this assessment, even where the defendant is acquitted. Iowa Code § 815.9(3) ("If a person is granted an appointed attorney, the person shall be required to reimburse the state."); *id.* § 815.9(6) ("If the person receiving legal assistance is acquitted in a criminal case ..., the court shall order the payment of all or a portion of the total costs and fees incurred for legal assistance.").

2. Seven years later, in 2016, a new state statute took effect that for the first time allowed Iowans in Doe’s position to have their records expunged. “Prior to 2016, individuals acquitted of a crime or whose criminal charges were dismissed could not expunge the charges from their criminal records.” App. 6a. The new statute provided (and still provides) that upon the application of a defendant against whom all charges have been dismissed, “the court shall enter an order expunging the record of such criminal case,” provided that certain conditions are met. Iowa Code § 901C.2(1)(a). One of these conditions is that “[a]ll court costs, fees, and other financial obligations ordered by the court or assessed by the clerk of the district court have been paid.” *Id.* § 901C.2(1)(a)(2).

When Doe learned of this opportunity in 2018, she filed a motion to expunge the record of her case. App. 3a. She was still indigent. *Id.* at 4a. By that point she had managed to pay the state \$168 of the costs assessed for her court-appointed attorney, but she still owed \$550. *Id.* at 3a. The state conceded that Doe satisfied all the requirements for expungement, except for the complete repayment of court costs. *Id.* at 7a.

In her motion for expungement, Doe argued that it violates the Equal Protection Clauses of the federal and state constitutions to condition expungement on the payment of costs for appointed counsel. App. 32a. She observed that a person who is wealthy enough to pay for her own attorney is entitled to expungement even if she still owes money to her attorney, but that an otherwise identical person with appointed counsel is not entitled to expungement because her debt is to the state rather than to a private

party. *Id.* She argued that this disparity is unconstitutional under *James v. Strange*, 407 U.S. 128, 138 (1972), which held that the state may not discriminate against indigent criminal defendants “merely because the obligation is to the public treasury rather than to a private creditor.”

The Iowa District Court rejected Doe’s argument. App. 31a-32a. The court’s full reasoning was: “This was part of the bargain defendant negotiated. She has had several years to pay and may still obtain expungement if and when the fees are paid.” *Id.* at 32a.

3. The Iowa Supreme Court affirmed by a vote of 4-3.

The court began by noting that “[t]here is no constitutional right to expunge one’s criminal record.” *Id.* at 5a. Rather, “[e]xpungement is a matter of legislative grace.” *Id.* at 5a-6a. Because expungement is not a fundamental right, the court reasoned, and because Doe did not allege discrimination based on a suspect classification, the court would apply “the rational basis test.” *Id.* at 9a.

The court dispensed with two threshold issues raised by the state. First, the court concluded that Doe had properly alleged that Iowa treats similarly-situated people differently. “In our view,” the court explained, “the relevant groups to compare are individuals who owe fees to a private attorney and those like Doe who owe fees for court-appointed counsel.” *Id.* at 9a-10a. “Both groups owe attorney fees, yet those owing State court-appointed fees are unable to expunge their records.” *Id.* at 10a.

Second, the court concluded that Doe had properly alleged disparate treatment, not disparate impact. *Id.*

The court then held that Iowa's discrimination against indigent defendants does not violate the Equal Protection Clauses of the federal or state constitutions. The court distinguished *James v. Strange* and *Fuller v. Oregon*, 417 U.S. 40 (1974), on the ground that "[n]either *Fuller* nor *James* adjudicated a right to expungement; rather, both cases addressed constitutional challenges to the validity of the court debt." App. 14a. The court determined that Iowa's expungement statute "survives rational basis review under both the Iowa and Federal Constitutions," because "[t]he legitimate State purpose here is to encourage payment of court debt." *Id.* at 15a. The court held: "The legislature was not constitutionally required to allow expungement and could choose to condition expungement on payment of court debt to motivate defendants to pay what they owe the State." *Id.* at 16a.

The court added that the expungement statute did not permit courts to waive the fee requirement for indigent applicants. "[H]ad the legislature intended to allow courts to waive the requirement that court-appointed attorney fees be repaid prior to expungement based on a present inability to pay, it could have said so," the court explained. *Id.* at 16a-17a. "We cannot rewrite the statute to allow waiver of court debt." *Id.* at 17a.

The court thus concluded: "We hold the requirement to pay court costs found in Iowa Code section 901C.2, including for court-appointed attorney fees, is rationally related to the government interest in

collecting court debt. We reject Doe’s equal protection challenge under the United States and Iowa Constitutions.” *Id.*

Justice Wiggins, joined by Chief Justice Cady, dissented. *Id.* at 18a-20a. They determined that Iowa’s expungement statute violates the Equal Protection Clause of the Iowa Constitution. *Id.* at 18a. They did not address Doe’s claim under the federal Equal Protection Clause.

Justice Appel also dissented. *Id.* at 20a-30a. He concluded that Iowa’s expungement statute “fails scrutiny under the Equal Protection Clause of the Fourteenth Amendment.” *Id.* at 28a.

Justice Appel first disagreed with the majority’s reliance on the lack of any constitutional right to expungement. *Id.* at 23a-24a. He pointed out that there are purely statutory rights that cannot be withheld from the indigent without violating the Equal Protection Clause, such as the right to an appeal. *Id.* at 24a-25a (citing, among other cases, *Griffin v. Illinois*, 351 U.S. 12 (1956) (plurality opinion)). “Here,” he observed, “the legislature has drawn a line between similarly situated groups that only fences out people whose indigence required court-appointed counsel.” *Id.* at 25a.

Justice Appel concluded that “[t]he key United States Supreme Court case on the issue before us is *James v. Strange*.” *Id.* *James*, he explained, also involved a state statute that discriminated against indigent defendants who owed fees for appointed counsel. *Id.* at 25a-26a. In *James*, “[a] unanimous Court struck down the Kansas statute as a violation of equal protection.” *Id.* at 26a. Justice Appel noted that “the *James* Court recognized the state’s interest

in recouping expenses but dismissed it as a rational reason for the discrimination.” *Id.* at 27a. Rather, *James* held that a state may not “impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.” *Id.* at 27a (quoting *James*, 407 U.S. at 138).

Justice Appel concluded: “I would simply follow what I see are the dictates of *James*. Because section 901C.2(1)(a)(2) irrationally discriminates among similarly situated debtors, I would find it invalid as applied to the situation presented by Doe.” App. 29a.

REASONS FOR GRANTING THE WRIT

Nearly every state allows a person who has been charged with an offense, but not convicted, to have the record of the charge expunged, because it can be very hard for people with a criminal record to find employment. But Iowa appears to be the only state that denies this entitlement to those who are too poor to pay the court fees associated with the charge. The Court should grant certiorari and reverse, because Iowa’s uniquely harsh policy violates the Equal Protection Clause by denying indigent criminal defendants access to an important judicial proceeding.

I. Iowa violates the Equal Protection Clause by denying expungement to people who have not been convicted of any offense, solely because they are too poor to pay court fees.

In Iowa, “upon application of a defendant” in a criminal case, “the court shall enter an order ex-

punging the record of such criminal case” if the defendant was acquitted or if all charges were dismissed. Iowa Code § 901C.2(1)(a). But this remedy is available only if “[a]ll court costs, fees, and other obligations ordered by the court or assessed by the clerk of the district court have been paid.” *Id.* § 901C.2(1)(a)(2). This requirement cannot be waived for indigent defendants who are too poor to pay the fees. App. 16a-17a. As a result, expungement is beyond the reach of indigent Iowans.

Iowa is violating the Equal Protection Clause. It has been well established for more than half a century that a state may not deny access to criminal or quasi-criminal proceedings based on the ability to pay. *See, e.g., Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (plurality opinion) (“Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.”); *id.* at 24 (Frankfurter, J., concurring in the judgment) (“The State is not free to produce such a squalid discrimination. If it has a general policy of allowing criminal appeals, it cannot make lack of means an effective bar to the exercise of this opportunity.”); *Burns v. Ohio*, 360 U.S. 252, 257 (1959) (“[O]nce the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty.”); *Smith v. Bennett*, 365 U.S. 708, 709 (1961) (“We hold that to interpose any financial consideration between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws.”); *Long v. District Court*, 385 U.S. 192, 194 (1966) (per curiam) (“[H]aving established a

post-conviction procedure, a State cannot condition its availability to an indigent upon any financial consideration.”); *Mayer v. City of Chicago*, 404 U.S. 189, 197 (1971) (“The invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay is not erased by any differences in the sentences that may be imposed.”); *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 (1996) (“Nor may access to judicial processes in cases criminal or quasi criminal in nature turn on ability to pay.”) (citation and quotation marks omitted).

Nor may a state deny access to criminal proceedings by imposing harsher monetary obligations on indigent defendants than on similarly-situated non-indigent defendants. In *James v. Strange*, 407 U.S. 128 (1972), the Court considered a Kansas statute that, like the Iowa scheme at issue here, charged indigent defendants for the cost of providing appointed counsel. The Kansas statute stripped “from indigent defendants the array of protective exemptions Kansas has erected for other civil judgment debtors,” including the exemption of wages from garnishment. *Id.* at 135. The Court explained:

The indigent’s predicament under this statute comes into sharper focus when compared with that of one who has hired counsel in his defense. Should the latter prove unable to pay and a judgment be obtained against him, his obligation would become enforceable under the relevant provisions of the Kansas Code of Civil Procedure. But, unlike the indigent under the recoupment statute, the code’s exemptions would protect this judgment debtor.

Id. at 136-37. The Court held that this disparity violated the Equal Protection Clause: “[T]o impose these harsh conditions on a class of debtors who were provided counsel as required by the Constitution is to practice ... a discrimination which the Equal Protection Clause proscribes.” *Id.* at 140-41. As the Court explained, a state may not “impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.” *Id.* at 138.

Iowa is committing the same violation. Had Jane Doe owed a debt to private counsel she retained with her own funds, she would have been entitled to expungement. But she was not affluent enough to retain counsel. Her debt was to the state for appointed counsel, so it rendered her ineligible for expungement. Iowa is doing exactly what the Equal Protection Clause proscribes. It is imposing harsher “conditions on a class of debtors who were provided counsel,” *id.* at 140, than on otherwise identical debtors who retained counsel with their own money. Iowa is imposing “discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.” *Id.* at 138.

Below, the Iowa Supreme Court erred in three related ways.

First, the court erred by trying to fit this case into the tiers of scrutiny that are applied in other areas of Equal Protection jurisprudence. In the cases involving the denial of access to criminal and quasi-criminal proceedings based on ability to pay, the Court has never employed the tiers of scrutiny. Unlike other kinds of wealth discrimination, which are permissible if they bear a rational relationship to a

legitimate state purpose, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973), pricing indigents out of the criminal justice system violates the Equal Protection Clause without regard to the rationality of doing so. *See id.* at 20-22 (distinguishing *Griffin* and subsequent cases involving access to the criminal justice system). As the Court has explained, the principle underlying the *Griffin* line of cases “is a flat prohibition” against denying indigents access to the criminal justice system. *Mayer*, 404 U.S. at 196. For this reason, the Court has never assessed the strength of the state’s interest in excluding the indigent or the degree to which limiting entry to the well-heeled will advance that interest. Rather, the Court has always held that closing the courthouse doors to the indigent in criminal and quasi-criminal cases violates the Equal Protection Clause full stop. *M.L.B.*, 519 U.S. at 124; *James*, 407 U.S. at 138-40; *Mayer*, 404 U.S. at 197; *Long*, 385 U.S. at 194; *Smith*, 365 U.S. at 710; *Burns*, 360 U.S. at 257; *Griffin*, 351 U.S. at 19.

Second, even if the rational basis test were appropriate in this context, the court below erred in accepting as a permissible state interest the desire to collect money from the indigent. That was the state’s asserted interest in all the Court’s cases in this area, from *Griffin* onwards, but the Court has never accepted it as a valid reason to deny access to criminal proceedings based on defendants’ ability to pay.

Third, the court below erroneously distinguished *James v. Strange* on the ground that *James* merely concerned “the validity of the court debt,” App. 14a, rather than the state’s invidious distinction between indigent and non-indigent defendants in the means

by which court debt was collected. In fact, *James* held that a state violates the Equal Protection Clause by imposing harsher debt-collecting conditions on indigent defendants with appointed counsel than on non-indigent defendants with retained counsel. “[T]o impose these harsh conditions on a class of debtors who were provided counsel as required by the Constitution,” *James* made clear, “is to practice ... a discrimination which the Equal Protection Clause proscribes.” *James*, 407 U.S. at 140-41.

II. Iowa is the only state that does this.

Iowa appears to be the only state that denies expungement to people who have not been convicted of any offense, solely because they are too poor to pay the court fees associated with the charge.

In most states, people who have not been convicted of an offense are entitled to expungement of the charge without regard to whether they have paid court fees associated with the charge.¹ See Ark. Code § 16-90-1410(a); Cal. Penal Code § 851.91(a); Colo. Stat. § 24-72-705 (eff. Aug. 2, 2019); Del. Code tit. 11, § 4372; Fla. Stat. § 943.0585; Haw. Rev. Stat. § 831-3.2(a); Idaho Code § 67-3004(10); 20 Ill. Comp. Stat. § 2630/5.2(b); Ind. Code § 35-38-9-1; Kan. Stat. § 22-2410; Ky. Rev. Stat. § 431.076; La. Code Crim. Proc. art. 976; Md. Code Crim. Proc. § 10-105; Mass. Gen. Laws ch. 276, § 100C; Minn. Stat. § 609A.02(3);

¹ Some states refer to the remedy as “sealing” rather than “expungement,” but as a practical matter the terms are synonyms, because under either name the public is unable to find out that the applicant has been charged with an offense. When a criminal record is “expunged,” often the record does not cease to exist, but is rather kept sealed from the public.

Miss. Code § 99-15-59; Nev. Rev. Stat. § 179.255; N.H. Rev. Stat. § 651:5; 2019 N.M. Laws ch. 203, § 4 (eff. Jan. 1, 2020); N.C. Gen. Stat. § 15A-146; N.D. Sup. Ct. Admin. R. 41, § 6; Ohio Rev. Code § 2953.52; Okla. Stat. tit. 22, § 18; Or. Rev. Stat. § 137.225; 12 R.I. Gen. Laws § 12-1-12.1; S.C. Code §§ 17-1-40(B)(1), 17-22-910(A)(8); S.D. Codified Laws § 23A-3-27; Tenn. Code § 40-32-101; Tex. Code Crim. Proc. art. 55.01; Utah Code § 77-40-104; Va. Code § 19.2-392.2; Wash. Rev. Code § 10.97.060; W. Va. Code § 61-11-25; Wyo. Stat. § 7-13-1401.

In many other states, there is no need for expungement, because the public has no access (or highly restricted access) to records relating to a charge that did not result in a conviction. *See* Alaska Stat. § 12.62.160(b)(8); Conn. Gen. Stat. § 54-142a(a); Ga. Code § 35-3-37(h)(2)(A); Me. Stat. tit. 16, § 705; Mich. Comp. Laws § 28.243(3)(8); Mo. Rev. Stat. § 610.105; Mont. Code § 44-5-202(8); Neb. Rev. Stat. § 29-3523(3)(c); N.J. Stat. § 2C:52-6(a); N.Y. Crim. Proc. Law § 160.50; 18 Pa. Cons. Stat. § 9121(b)(2); Vt. Stat. tit. 13, § 7603.

Alabama is the only state that, like Iowa, conditions expungement on the payment of court fees for defendants who were not convicted of an offense. In Alabama, however, indigent defendants are exempt from this requirement by statute. Ala. Code § 15-27-12.

Iowa is thus the only state that denies expungement of a criminal charge to people who have not been convicted of an offense, solely because they lack the means to pay the court fees associated with the charge.

III. The Question Presented is important and this case is a perfect vehicle for answering it.

This issue is important, because employment is the path out of poverty, but employers are often unwilling to offer jobs to people with criminal records. The consensus among researchers is that a criminal record is a substantial barrier to employment. *See, e.g.,* Amanda Agan and Sonja Starr, *The Effect of Criminal Records on Access to Employment*, 107 *Am. Econ. Rev. Papers & Proceedings* 560 (2017); Harry J. Holzer, Steven Raphael, and Michael A. Stoll, *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 *J. L. & Econ.* 451 (2006); Devah Pager, *The Mark of a Criminal Record*, 108 *Am. J. of Sociology* 937 (2003). Because landlords often screen prospective tenants for criminal records, a criminal record also makes it much more difficult to find a place to live. *See* David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, 33 *Law & Soc. Inquiry* 5 (2008).

By denying the remedy of expungement to the indigent, Iowa makes it virtually impossible to escape indigency once one has been charged with an offense—even where the defendant is acquitted or the charge is dismissed, as in this case. Jane Doe has not been convicted of any crime, but she has been branded for life with a criminal record solely because she cannot afford to pay \$550 in court fees.

Because Iowa is the only state that discriminates against the indigent in this way, there cannot be a lower court conflict on the Question Presented. Nevertheless, the Court has granted certiorari in compa-

rable situations, where a single state is violating the Constitution in a unique fashion. In *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), for example, Colorado was the only state that refused to refund court fees when a conviction was reversed. The Court granted certiorari to correct Colorado's error.

Our case is a perfect vehicle for likewise correcting Iowa's error. The state agrees that Doe has satisfied all the requirements for expungement except for the payment of court fees. App. 7a. The issue is as cleanly presented as it could possibly be. If the Court reverses the judgment below, Jane Doe will be entitled to have her criminal record expunged, just like otherwise identical non-indigent people in Iowa.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ALEXANDER KORNIA
ROBERT J. POGGENKLASS
Iowa Legal Aid
1111 9th Street
Suite 230
Des Moines, IA 50314

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu