APPELLATE CASES

COLLATERAL CONSEQUENCES

Doe v. State [five cases consolidated] (Iowa Supreme Court, May 2020).

- **DECISION** https://www.iowacourts.gov/courtcases/9762/embed/SupremeCourtOpinion
- **STAFFING**
  - Robert Poggenklass, Central Iowa, on brief
  - Andy Duffelmeyer, Central Iowa, on brief
  - Alex Kornya, on brief and supervising appeal
- **DESCRIPTION**

  One of the biggest barriers to people seeking employment, education, and housing opportunities is the effect of criminal record, which often lingers long after the end of the case. Given Iowa's stark racial disparities in criminal justice involvement, this barrier falls especially hard on communities of color, as well as low-income people generally. Iowa's record clearance laws, which have slowly expanded over the last few years, allow some relief to juveniles, people whose criminal charges have been dismissed, people who receive deferred judgments, and people who have certain misdemeanor convictions that are eight or more years old.

  Unfortunately, one of the biggest barriers to obtaining record clearance is financial. Low-income people caught up in the criminal justice system are charged for many things that people with more substantial means are not – for example, repaying the state for the cost of appointed defense counsel, or paying a nightly fee to remain in jail before trial often due to inability to afford bail or bond. Often this debt is assessed to people who are not ever convicted of a crime – approximately $15 million was assessed between 2014 and 2019 alone in cases where all charges were ultimately dismissed. Regardless, current law requires that the debt in that case be repaid before expungement is allowed.

  In Polk and other counties, some courts began requiring that all debt that a person owed in any case – including civil fees – be paid before expungement could be granted. This overbroad reading of the law made record clearance exponentially more unattainable for people unable to start over and rebuild their lives without addressing their record. In response, Iowa Legal Aid concurrently appealed several cases with this issue, all named *State v. Doe*, arguing that the statute did not justify such treatment. The Iowa Supreme Court agreed, ruling 6-0 in an opinion by Justice McDonald that found the language of the statute only required payment of debt assessed in the case the person is seeking to expunge. Rob & Andy's work on these cases has opened new opportunities for thousands of Iowans that deserve to turn the page and move towards prosperity and redemption.

State v. Doe (Iowa Court of Appeals, August 5, 2020).

- **DECISION** https://www.iowacourts.gov/courtcases/10334/embed/CourtAppealsOpinion
- **STAFFING**
  - Adrienne Loutsch, Central Iowa
  - Alex Kornya, supervising appeal
- **DESCRIPTION**

  In *State v. Doe* (AKA Doe IV), we sought to define the meaning of a "dismissal" for the purposes of the dismissal / acquittal expungement statute at Iowa Code 901C.2. It has been a frequent occurrence over the last few years that clients, like our client in this case, will be party to cases with "abandoned" criminal case numbers that are searchable via Iowa Courts Online. In this case, this was because the charges were merged into a different, separately numbered case. While these cases are never formally dismissed, they also will never result in a conviction and are essentially abandoned by the state. Moreover, to all but a sophisticated observer familiar with criminal practice in a particular county, these artifact cases create the false impression that someone has been charged with more crimes than they had in actuality been charged with.

  We argued that these cases are effectively "otherwise dismissed," per Iowa Code 901C.2. The court of appeals agreed with our arguments, finding that to do otherwise would create danger of an inappropriate inference about someone's actual criminal record.

  As a practical matter, this case will have an impact on hundreds if not thousands of Iowans who will now be able to ensure their criminal record more accurately reflects to the layman or even at-a-glance attorney observer will not lead to the "inappropriate inferences" suggested by the Court of Appeals. This win will help to further ameliorate the collateral consequences of criminal justice system involvement, a burden which falls particularly hard in Iowa on people of color, and will contribute to expanding opportunities for housing, employment, and education.

State v. Mathes (Iowa Supreme Court, January 2020).

- **DECISION** https://www.iowacourts.gov/courtcases/5430/embed/SupremeCourtOpinion
- **MEDIA** https://taibbi.substack.com/p/s-t-public-defenders-see-innocent
- **STAFFING**
  - Alex Kornya
  - Rita Bettis, Iowa ACLU
  - Lisa Foster, Fines & Fees Justice Center
- **DESCRIPTION**

  Court debt is a major barrier to escaping poverty, as this debt can be collected in much more harsh ways than private sector debt. This is doubly true for someone who faces debt after a criminal case is dismissed. However, the issue of people "agreeing" to waive ability to pay rights and pay hundreds or even thousands of dollars in return for dismissals of their criminal case remains a widespread issue in Iowa, despite the lack of statutory authority. Between 2015 and 2019, over $15 million in debt was assessed against people who were not found guilty of a crime, a large portion of it attributable to IDFR. If someone is convicted, at least they have the right to try to reduce the amount of debt they will owe by arguing ability-to-pay, which means people with dismissed charges usually pay more than people who are convicted.

In 2015, Mathes' was charged with possession of a small amount of marijuana. Ultimately, the charges were dismissed by the state. The court then ordered the charges to be dismissed, but assessed almost $3,000 in attorney fees against Mathes "as agreed." However, there was no actual memorialized agreement, either in writing or on the record in open court. Rather, the state just told the judge that Mathes had agreed to pay any and all debt the State said she should pay in return for dismissing the charges. More importantly, Mathes never actually agreed to these terms.

Mathes appealed the terms of the dismissal pro se, arguing that she never "agreed" to anything, and was appointed counsel on appeal to challenge the agreement. Our intermediate court of appeals ruled that she did not have a right of direct appeal in regard to a dismissed criminal case, and dismissed her appeal, but not before also opining that assessing costs in a dismissal, if by "agreement" of the parties, was also allowed by law.

Mathes' contract counsel on appeal refused to file an application for further review for her, so she again filed herself pro se. Our supreme court accepted the case, and directed a number of folks to prepare amici briefs on the issue of whether the court had subject matter jurisdiction to assess court debt in cases where all charges had been dismissed. Given Iowa Legal Aid's work in this area, we were asked by the Iowa ACLU to draft the brief. Also joining the brief was the Fines and Fees Justice Center, a national advocacy group working in this area. As you can see, we argued that there was no subject matter jurisdiction to charge court debt to people against whom all charges were dismissed based on a clear reading of the statute, and also because any statute that would purport to do so would be an unconstitutional abrogation of the presumption of innocence per the 2017 U.S. Supreme Court decision in *Nelson v. Colorado*.

Unfortunately, the court deadlocked 3-3 in this case, with Justice McDermott recusing. Christensen, Waterman, and Mansfield would have affirmed the Court of Appeals, whereas Justices Oxley, McDonald, and Appeal would have reversed. In a deadlock, there is no rationale given for why the justices would have voted as they did, so the actual issue is left for another day.

FAMILY LAW / DOMESTIC ABUSE

McGee v. McGee (Iowa Court of Appeals, August 5, 2020)

- **DECISION** https://www.iowacourts.gov/courtcases/10334/embed/CourtAppealsOpinion
- **STAFFING**
  - Joe Lyons, Waterloo
  - Alex Kornya, supervising appeal
- **DESCRIPTION**

  In *McGee v. McGee*, we represented a victim of domestic abuse in a civil protective order case. The opposing party had previously been criminally charged with assault with serious injury, stemming from an incident where he had shoved our client and she had fallen behind a couch and was injured. The opposing party was acquitted criminally, even though he admitted to shoving our client, because the jury found reasonable doubt on whether the shove was the proximate

cause of her injuries. After the acquittal, when the criminal no-contact order was lifted, the client filed for a civil protective order based on the same incident.

At the trial, the district court judge would not allow testimony or a hearing, citing the recent acquittal in the criminal case. The court rejected our arguments that the acquittal should not bar a protective order given the lower standard of proof, and the fact that our client was not a party to the prosecution brought by the State. Instead, the court spent considerable time haranguing our client on the record for "playing games to take advantage in the divorce case," and subsequently dismissed the protective order.

After representing the client at the district court, we took this case on appeal. Drawing on prior precedent, including the *Haley* case won by Northeast Iowa Regional Manager Carrie O'Connor in 2003, we were able to secure not only a reversal but also clear disapproval of the district court's actions by a unanimous panel of the Court of Appeals. Per the Court:

> [a] civil protective order is distinct from and provides different protections than a criminal protective order or dissolution order… The district court had a duty to provide [the client] an opportunity to present her exhibits and testimony to meet her burden of proof, but did not permit her to do either. The court made no findings of fact or credibility determinations for us to review. The district court relied on extraneous information from the criminal and dissolution proceedings not presented in the chapter 236 hearing and did not take judicial notice of either case… we reverse the dismissal of [the client]'s petition and remand for further proceedings before a different judge.

Faraj v. Faraj (Iowa Court of Appeals, April 15, 2020**) / Faraj v. Polk County District Court** (Iowa Supreme Court, December 2019)

- **DECISIONS**
  - https://www.iowacourts.gov/courtcases/9306/embed/CourtAppealsOpinion [Main]
  - Cert decision
- **STAFFING**
  - Margaret Weirich, Central Iowa
  - Alex Kornya, supervising appeal
- **DESCRIPTION**

  This case involved both an appeal of a protective order, and a certiorari action filed to The protective order was appealed after Margaret won at trial on the merits. Margaret successfully obtained a domestic abuse protective order for our client at trial, but the other side appealed. In the meantime, the opposing party had also violated the protective order, and so a contempt action was filed to enforce it. Unfortunately, during the contempt proceedings, the district court ruled that the underlying appeal had implicitly stayed any enforcement of the protective order, including this contempt. This effectively deprived her client of protection from her husband, who had subjected her to severe physical abuse throughout their relationship.

Margaret filed an emergency petition for certiorari with the Iowa Supreme Court, and days later a three justice panel (Wiggins, Waterman, Christensen) summarily reversed the district court's decision, sustained the writ, and remanded the matter to the district court to hear the merits of the contempt proceeding. Margaret's client was now able to enforce her protective order.

On the appeal of the protective order, on de novo review, the court found the respondent's allegations of self-defense were not credible. More importantly for our clients as a whole, the court also refuted respondent's argument that the failure of the police to arrest him after the assault meant our client did not meet her burden, saying that "there is nothing in Iowa Code chapter 236 that requires a party seeking relief from domestic abuse to prove the perpetrator was arrested for or charged with any crime… [c]onsequently, it is irrelevant that the police officers responding to [client]'s call for help failed to arrest or charge [respondent]." A good quote indeed. The court then rejected respondents remaining two arguments. Finally, on the issue of whether the visitation and custody provisions of the order were in the best interests of the children, Margaret successfully argued that the respondent failed to preserve error.

Gonzalez v. Laboy (Iowa Court of Appeals, decision issued September 2, 2020)

- **DECISION** https://www.iowacourts.gov/courtcases/10400/embed/CourtAppealsOpinion
- **STAFFING**
  - Arianna Eddy, Cedar Rapids – Lead counsel
  - Carrie O'Connor, Dubuque – Supervisor
- **DESCRIPTION**

Our client fled a serious domestic abuse situation in Indiana to come to Iowa. Once here, she filed for a civil protective order. After a hearing on the protective order, the court concluded Gonzalez "failed to meet her burden to prove immediate risk of physical harm because [Laboy] resides in another state and not in Iowa" – approximately a six hour drive.

We appealed, and the case was assigned to the Iowa Court of Appeals. Unfortunately, we were unable to overcome the district court's credibility findings and the district court was affirmed. However, in doing so, the court rejected the initial reasoning of the district court about the geographic location of the respondent: "We agree with Gonzalez that the court incorrectly required her to prove a current immediate risk of physical harm and the sole fact that Laboy lived in a different state was an insufficient basis to deny the petition."

While this case was not a positive outcome for this client, the language in this decision can now be used to persuade courts in future hearings to look at the whole picture of a person's safety and risk of injury or death, and not focus on one fact out of context.

Adam v. Adam (Filed May 20, 2021, reply brief pending)

- **STAFFING**
  - Charles Pierce, Iowa City
  - Chris Luzzie, supervising appeal
- **DESCRIPTION**

  This case, currently on appeal and being briefed, is a divorce with an odd procedural twist. The plaintiff sought an annulment, rather than a divorce, even though the parties have had a long relationship (largely with our client living in Ethiopia) and share an adult child. Our client counterclaimed for a divorce, and was ultimately given a divorce rather than an annulment by the district court. Given that the parties currently have no property or minor children, the only practical effect of annulment over a divorce involves immigration ramifications.

  The case is currently being briefed and we hope for a decision in early 2022.

Henson v. Fitzgerald (Filed September 2021, appellant brief pending)

- **STAFFING**
  - Joe Basque, Council Bluffs
  - Alex Kornya / Ericka Petersen, supervising appeal
- **DESCRIPTION**

  Iowa Legal Aid successfully obtained a civil domestic abuse protective order for our client, and the respondent has appealed. This case involves two important issues of first impression. One is procedural, and deals with whether formal discovery (extensive written questions and requests for documents) is allowed in domestic abuse protective orders. The other issue is whether the firearms restrictions for respondents in domestic abuse protective orders passes muster under the Second Amendment.

HOUSING

***No Boundry v. Hoosman*,** (Iowa Supreme Court; decision issued January 2021)

- **DECISION** https://www.iowacourts.gov/courtcases/8386/embed/SupremeCourtOpinion
- **ORAL ARG**. https://www.youtube.com/watch?v=CVN13XD6Umo
- **STAFFING**
  - Todd Schmidt, Dubuque – Oral argument
  - Alex Kornya – Brief
  - Michelle Jungers – Trial attorney
- **DESCRIPTION**

  Our client was facing the loss of the home that he owned over $200 in unpaid property taxes, due to significant disabilities arising from a brain injury. Cornell not only had difficulty understanding how to navigate his property taxes, he also didn't know what to do when served with an eviction petition, and ultimately defaulted. Michelle Jungers, the managing attorney of our Waterloo office, filed a last-minute motion to set aside default and raced to Friday order hour in Black Hawk County to try to save Cornell's home. Unfortunately, the trial court did not allow Michelle to make

a record, nor did the trial court allow her to submit medical reports showing that Cornell had significant and legally relevant limitations related to his disability.

We raced against the clock to get an appeal on file, but the sheriff was quicker. Cornell was so distraught as his life was being dismantled on his front lawn that he had a heart attack and had to be hospitalized. Despite our efforts, he remained homeless for the two years that his appeal was pending.

We forged ahead with our appeal, which was assigned to the Iowa Court of Appeals. oral argument was held in December 2019. In January 2020, the court unanimously upheld the trial court's decision. The court of appeals found that Cornell could not get the default set aside because he had not proved his affirmative defense (the extended right to redeem), that he had not proved that he had a legal disability, and that he had willfully ignored the rules of civil procedure. All of this despite the trial court not allowing a record to be made at the hearing. The court of appeals also rejected the GAL arguments on largely the same grounds of proof.

The Supreme Court accepted the case for further review. The case was set for oral argument, and was argued in December 2020 by before a six justice court (Justice McDermott recusing). The Court unanimously reversed both the trial court and court of appeals, finding that Cornell had made a prima facie showing sufficient to justify a set aside of the default judgment. In the decision, the Court found that movants in a set aside of a default are not required to prove their case, only to show that there is a prima facie argument that the case could turn out differently if it was reopened for a trial on the merits. The court also found that the exhibits submitted were sufficient to establish a case for good cause to set aside the default, based on Cornell's disability. Finally, the Court disagreed with the Court of Appeals that Cornell had willfully defied the rules of civil procedure, given the evidence of his cognitive impairments. Cornell finally had his opportunity to have his day in court.

Jenkins v. Clark (Notice of appeal / discretionary review app filed Nov. 3, 2021)

- **STAFFING**
  - Frank Tenuta, Sioux City – lead counsel
  - Alex Kornya – Supervising appeal
- **DESCRIPTION**

  In this very newly filed case, our client had purchased a home on land contract. This is a way of buying property where a buyer pays installment payments directly to a seller, instead of taking full title and paying a mortgage lender who financed that transaction. This form of buying property is much less favorable to the buyer, and rife with abuse. For example, unlike in a foreclosure, where you can realize at least some equity if you have paid down the principle, if someone defaults on a land contract they can lose their entire investment through a process called "forfeiture" – no matter how much they have already put into the home. Also, if done correctly, the contract seller can use the very quick summary eviction process under Iowa law, which is much faster and provides far fewer protections than a mortgage foreclosure.

In this case, our clients had put $10,000 down on a home purchased through land contract, but have been struggling to make payments during the pandemic. An earlier notice of forfeiture demanded payment, which the clients were able to make, but then the sellers issued a new notice that included debts from a year or more after their last notice to cure. In general, evictions are heard in small claims court. However, there is also a longstanding rule that any case dealing with issues of title to real property can only be heard by a district court. In this case, the small claims court agreed that it could not hear issues of title, but also found that the forfeiture was conclusive simply because the seller gave our client a notice of forfeiture, and could not be challenged as a defense in the eviction. This was appealed to a district associate court, which affirmed the small claims court.

We filed a combined notice of appeal & application for discretionary review on November 3, 2021. A stay was granted by the Supreme Court on November 4, 2021. We await the initial jurisdiction decisions as to whether this is an appeal of right or must be considered for review by the Court.

MINOR GUARDIANSHIP

In the interest of P.M. (Decision October 6, 2021, Iowa Court of Appeals)

- **DECISION** https://www.iowacourts.gov/courtcases/13805/embed/CourtAppealsOpinion
- **STAFF**
  - Teri Schmitz, Waterloo – lead counsel
  - Ericka Petersen supervising appeal
- **DESCRIPTION**

Shortly after the birth of their child, BMR's partner was suddenly and unexpectedly deported, and later murdered. BMR not only faced the traumatic loss of her partner and father of her child, but also the person she relied upon for childcare while she worked. She sought the help of family during this trying time and the baby's paternal aunt offered to care for him while BMR prepared for life as a newly single mother. However, when she tried to bring her baby home, the aunt stopped answering her calls and refused to answer the door. The aunt then served BMR with a guardianship petition.

During the pendency of the case, the new minor guardianship statute came into effect. The new statute included extra protections for natural parents in many ways, but also removed language which had historically been interpreted as the historical, constitutionally rooted presumption that a fit parent should have custody and care of her child. Relying on the language of the new statute, the district court denied the application for guardianship, and the baby was returned to BMR. The aunt appealed. Teri had to navigate complicated strategy decisions to ensure the constitutional issues regarding the fundamental rights of parents were preserved, while also advocating for the court of appeals to affirm the district court's decision. The court of appeals did ultimately affirm the district court's decision on purely statutory grounds.

In the interest of L.Y. (Iowa Legal Aid as amicus; pending before the Iowa Supreme Court on further review)

- **ORAL ARG.** https://www.youtube.com/watch?v=c3wf0KRyU1E
- **STAFF**
  - Ericka Petersen, on brief and oral argument
  - Frank Tenuta, Sioux City, on brief
- **DESCRIPTION**

  SW was 16 years old when her daughter was born. For the first four years of the child's life she lived with the child's father and his parents while caring for her daughter. When her relationship with her daughter's father ended, she decided to allow the child to stay at the father's parents' home for stability, while she sought to establish a home and income to bring her daughter home with her. She was asked to sign an affidavit consenting to a guardianship. She was told it would be temporary, but it was not, and it took many years for her to be able to afford an attorney to end it.

  When she was finally able to obtain counsel, SW filed an application to terminate the guardianship. During the pendency of the case, the new minor guardianship statute went into effect. The new statute included extra protections for natural parents in many ways, but also removed language which had historically been interpreted as the historical, constitutionally rooted presumption that a fit parent should have custody and care of her child. The juvenile court granted SW's application seemingly reading the parental preference into the new statute. The guardians appealed. The court of appeals determined, with little analysis, that the parental preference no longer existed under the new statute and reversed the juvenile court. SW asked for and was granted further review by the Iowa Supreme Court. Iowa Legal Aid filed a motion requesting the opportunity to file a brief as amicus on behalf of its client BMR (above), and argued that the parental preference was constitutionally required. At the request of SW's attorney, Iowa Legal Aid filed a motion requesting time for oral argument, and was granted 5 minutes. The case has been submitted and is now pending decision before the Iowa Supreme Court.

Affirmative Cases

COLLATERAL CONSEQUENCES

Champagne & Thomas vs. Linebarger, Goggan, Blair, & Sampson. (Southern District of Iowa)

- **STAFFING**
  - Alex Kornya
  - Leslie Bailey, Public Justice
  - Toby Marshall, Terrell Marshall P.C. [Seattle]
  - Ericka Petersen
  - John He, Public Justice
- **MEDIA**
  - https://www.desmoinesregister.com/story/news/crime-and-courts/2020/09/18/lawsuit-iowa-court-debt-collected-illegally-millions-routed-private-firm/5825963002/
- **DESCRIPTION**

  This case involved an issue of first impression anywhere in the nation – does the law that regulates the conduct of debt collectors cover private companies collecting fines, user fees, and other court debt for a governmental entity? In a first of its kind case, Iowa Legal Aid and co-counsel from California and Seattle argued that they were. In this case, our complaint alleged that Linebarger, Goggan, Blair, and Sampson violated these statutes by collecting unenforceable debts not reduced to judgment, and threatening that our clients could be jailed upon nonpayment when that was not an available remedy at law.

  As of July 2021, the parties have reached a full confidential settlement of all claims, but the matter of attorney fees under FDCPA, IDCPA, and 1983 remains outstanding.

EMPLOYMENT

West et al. v. Butikofer. (U.S. Dist. Court, Northern District of Iowa – Decision issued late 2019)

- **DECISION** 2020 WL 5245226 [only available through PACER / Westlaw]
- **STAFF** Lorraine Gaynor, Farmworker Project
- **DESCRIPTION**

  This was an excellent win for three Farmworker Rights Project clients who came to the US as H2A workers from South Africa, and established new law involving civil damages for human trafficking violations. Lead counsel Lorraine Gaynor secured a $247,049.58 judgment on these clients' behalf, under both the Fair Labor Standards Act (FLSA) and the Trafficking Victims Protection Reauthorization Act (TVPRA), including punitive damages for the TVPRA violations. Even though this was a default judgment, there was a significant issue to be won in this case – specifically,

whether the damages standards in *Arriaga v. Florida Pacific Farms, L.L.C.*, 305 F.3d 1228 (11th Cir. 2002) would apply in an Eighth Circuit court.

Arriaga set important precedent for farmworkers and has been adopted in many circuits – and now by at least one court in Iowa. The basic principle of *Arriaga* is that employers using the H-2A visa program must reimburse employees for pre-employment expenses during the employee's first workweek to the extent the expenses leave the employee's earnings that week below the FLSA minimum wage. Lorraine was successful, the Court adopted the reasoning of *Arriaga*, the first court in the Eighth Circuit to do so.

In addition, the Court awarded emotional distress damages under the TVPRA without expert witnesses and based solely on the plaintiffs' own testimony and other evidence introduced at trial; and $200 in TVPRA damages for each day they worked for the employer, noting with approval that this amount was awarded to H-2A trafficking victims in *Medina-Arreguin v. Sanchez*, 398 F.Supp.3d 1314 (S.D. Ga. 2019), a case the court viewed as similar to the one at bar.

FAMILY

Babcock v. Babcock, Hague Convention Case (U.S. Dist. Court, Southern Dist. of Iowa – Decision May 2021)

- **DECISION** 503 F.Supp.3d 862 [only available through PACER / Westlaw]
- **STAFF** Lorraine Gaynor, Farmworker Project
- **DESCRIPTION**

The Hague Convention on the Civil Aspects of International Child Abduction protects parents in signatory countries from having a valid custody order in one country be thwarted because the other parent removes the child to a different country. Iowa Legal Aid is on a referral list from the United States Department of State to be referred cases from outside of the U.S. where someone has a Hague claim but insufficient funds to hire an attorney in the U.S. These cases are brought exclusively in federal court and somewhat rare, especially in Iowa. Iowa Legal Aid has done three in the last decade.

In this case, our client was a Canadian National, and the other parent of the parties shared child lived in Iowa. There was a valid custody decree in Canada, but after a summer visit in Iowa the other parent refused to return the child and filed a new custody case in Iowa. Ultimately, after a contested trial before Senior Judge Pratt in U.S. District Court in Davenport, the Court held that the child must be returned pursuant to the Canadian custody decree.

HOUSING

Jackson et al. v. Crestwood Apartments Cooperative (Scott County District Court)

- **STAFF**
  - David Loetz, Ottumwa
  - Molly McDonnell, Davenport
  - Anna Lynch, Davenport
  - Alex Kornya
- **MEDIA**
  - https://qctimes.com/news/local/govt-and-politics/iowa-legal-aid-files-lawsuit-against-crestwood-management-company/article_655064bc-fd4b-5fe9-b0c3-86bf16067625.html
- **DESCRIPTION**
  In a situation widely covered in local media in the Quad Cities, the Crestwood Apartments was ultimately condemned by the City of Davenport for extensive habitability issues, including holes in structures, infestation with vermin & insects, flooding, mold, and structural damage. Iowa Legal Aid represents a group of tenants in a case seeking damages for the conditions of the apartments. Currently this case is in the opening stages of litigation.

Klossner v. Impact Communities (U.S. District Court, Northern District of Iowa / 8th Circuit, currently on appeal)

- **STAFF**
  - Todd Schmidt, Dubuque
  - Alex Kornya
  - Tom Kennedy, Kennedy Hunt, P.C.
  - Sarah Jane Hunt, Kennedy Hunt, P.C.
  - Mary Anne Quill, Kennedy Hunt, P.C.
- **DESCRIPTION**
  Klossner v. Impact Communities involves the intersection of two major issues of interest for us – preserving the rights of individuals with disabilities to have maximal access to safe and adequate housing, and protecting manufactured homeowners from the predatory business practices of large investment companies currently buying up MHPs across the nation.

  It has unfortunately become common practice for large investment companies like the defendant in this case, Impact Communities, to purchase manufactured housing parks and immediately begin to implement steep rent increases and other policies that make it difficult if not impossible for disabled and other low-income homeowners to stay in their homes. As these residents have often purchased these homes, and because "mobile homes" are generally not mobile based on cost of moving or condition, being forced out of a park based on lot rent also means losing the only significant asset that person has or may ever have.

  In Dubuque, Impact Communities acquired a large MHP called Table Mound back in 2017. Over a short period of time, the rents increased to the extent that many residents could no longer afford to live there. In response, the City of Dubuque changed their Section 8 administrative plan to allow

for housing choice vouchers to pay lot rent. However, this attempt to protect vulnerable residents was met with indifference by Impact, who simply refused to accept the vouchers.

Along with our cocounsel, Kennedy Hunt P.C. [a firm physically based in Missouri that pursues Fair Housing claims across the nation], we filed a case in the U.S. District Court for the Northern District of Iowa on behalf of Sue Ellen Klossner, a resident of Table Mound. The case raised several claims, including a rejection of a reasonable accommodation request that Ms. Klossner be allowed to pay her rent through Section 8 due to her disability. The Fair Housing claim was bifurcated from the rest of the trial, and tried at the beginning of August 2021 before Judge C.J. Williams.

On October 4, 2021, we received a favorable judgment from the district court, which found that in these circumstances Impact was required to take our client's Section 8 voucher as a reasonable accommodation. The matter was appealed by Impact to the Eighth Circuit in November 2021.

Acosta et al. v. Vilsack et al. (U.S. Dist. Court, Northern Dist. Iowa, complaint filed October 2021)

- **STAFF**
  - Grant Beckwith, Sioux City
  - Ericka Petersen
  - Alex Kornya
  - Gideon Anders, National Housing Law Project
  - Kate Walz, National Housing Law Project
  - Marco Segura, National Housing Law Project
- **DESCRIPTION**

  Five tenants living in Northpark Apartments in Storm Lake contacted Iowa Legal Aid when they received notices about large rent increases that they could not afford. The complex had been subsidized through USDA's Section 515 multifamily affordable housing program since 1985. The program is intended to provide safe, decent, and affordable housing to the country's rural poor. In 2021, a new owner applied to prepay the USDA loan which contained many use restrictions designed to protect tenants and keep rent affordable. The Rural Development Division (RD) of the USDA approved the prepayment without going through the required regulatory analysis which includes consideration of the impact such approval would have on minorities and the availability of other affordable housing in the area. The majority of Northpark tenants are minorities, and affordable housing in the Storm Lake area is extremely scarce.

  Even with prepayment approval, use restrictions remained in place to protect existing tenants. Those restrictions not only require rent to remain at its previous affordable rate for existing tenants, but provide other protections for tenants such as prohibiting evictions except for good cause. Nonetheless, the new owner informed the tenants that they were raising rent, and gave some tenants notice of eviction if they did not pay the higher, unaffordable rent amount. The owner and RD also worked to persuade tenants to secure RD Vouchers to help them pay the new, higher rent. These vouchers provide far fewer protections for tenants and will ultimately put tenants at serious risk of losing their housing altogether. The tenants who are all very low-income are likely to face a prolonged period of homelessness. Some of the tenants have disabilities which

would severely exacerbate the risks of homelessness, including exposure to Covid-19 in a communal setting such as a homeless shelter.

Iowa Legal Aid is working with co-counsel from the National Housing Law Project, including the national expert in this area. The complaint was filed in early October in the Northern District of Iowa, and Judge CJ Williams was assigned to the case. The parties are currently negotiating a possible preliminary injunction, which would allow the tenants to continue to pay their previous rent amount during the pendency of the case.