FEDERAL COURT REVIEW

The Federal Court Review summarizes important decisions rendered by the United States Supreme Court, the Eighth Circuit Court of Appeals, and the United States District Court for the District of North Dakota. The purpose of the Federal Court Review is to indicate cases of interest to members of the North Dakota Bar. As a special project, Associate Editors assist in researching and writing the Federal Court Review.* The following topics are included in the Federal Court Review:

*The NORTH DAKOTA LAW REVIEW would like to thank the 2024-2025 Associate Editors Nargiz Aghayeva, Sara Haile, Katelyn Heley, Abigail Petersen and Audrey Skaar for their hard work in writing this Federal Court Review.

CONSTITUTIONAL LAW – STANDING REQUIREMENT IN TITLE IX ACTIONS

Becker v. North Dakota University System, 112 F.4th 592 (8th Cir. 2024).

In *Becker v. North Dakota University System*, four students brought suit against the North Dakota University System and sought an injunction requiring the University of North Dakota ("UND") to reinstate its women's hockey team.[1] Only two of the students had standing to assert their claim; those claims went forward while the other two did not.[2] UND eliminated its women's hockey team following the 2016-17 season, despite it being the "most prominent and popular sport among the women's athletic programs."[3] The four students brought the suit in an attempt to have the program reinstated and claimed UND violated Title IX by eliminating women's hockey, because there were no longer "comparable opportunities" for women athletes.[4]

The district court dismissed the claim due to lack of jurisdiction and found no concrete injury existed.[5] The Eighth Circuit Court of Appeals addressed the issue *de novo*.[6] First, the Eighth Circuit examined standing under Article III as the presence of standing is determinative of whether the court can hear the suit.[7] Standing requires "(1) an injury in fact, (2) a causal connection between the injury and the challenged conduct, and (3) a likelihood that a favorable decision will redress the injury."[8] The injury that plaintiffs face must also be ongoing or immediate in order for the plaintiff to get potential relief.[9]

The two students who established standing were Forsberg and Tellmann.[10] Forsberg was recruited to play on the UND hockey team, but when it was eliminated, went to play at Bemidji State University instead.[11] Tellmann was accepted to UND as a student but could not play on the hockey team because it was eliminated.[12] She won her state's hockey championship twice.[13]

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1. Becker v. N.D. Univ. Sys., 112 F.4th 592, 595 (8th Cir. 2024).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)).
8. *Id.* (citing Telescope Media Grp. v. Lucero, 936 F.3d 740, 749 (8th Cir. 2019)).
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*

The UND women's hockey program was once a champion level program, so the court found Forsberg and Tellmann's injuries resulted from the continued inability to participate on the team of their choice.[14] The court discussed how eliminating the program also foreclosed any opportunity the students had of gaining "publicly recognized titles and placements" from competing on UND's team.[15] The court recognized that these were concrete injuries sufficient to establish standing because the two students would have attended UND if the program was still available.[16] Since Forsberg had been recruited, she was already chosen to play on the team.[17] She claimed she would return to UND if the program was reinstated and would have stayed if it had not been eliminated.[18] Tellmann was in a similar situation.[19] She was accepted into UND but never attended.[20] She played hockey in high school and at the club level.[21] She was also a member of two state championship teams which suggested that she would have been capable of playing on the UND women's hockey team.[22]

The court examined the causation and redressability elements and determined those were more straightforward to establish.[23] The court found the link between the students' inability to play hockey at UND could be traced directly to elimination of the program.[24] It found reinstating the program would remedy their injury.[25] At the time of the court's opinion, Forsberg and Tellmann were also eligible to play for an additional three and four years respectively, so the proposed relief could still benefit them.[26]

The court then reviewed the other two students, Becker and Stenseth, who it determined did not have standing.[27] The court determined Becker did not satisfy the elements of standing due to a lack of information asserted in the complaint.[28] Becker had not included whether she had been admitted to UND, whether she would have been accepted on the team, or if she met the minimum standards to be accepted at UND.[29] For Stenseth, there was even

14. *Id.* at 595-96.
15. *Id.* at 596.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 597.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*

less available information.[30] It was established that Stenseth had been accepted into UND but did not attend.[31] She had included no explanation as to why she did not attend or if she would have had there been an active hockey team.[32] The court found Stenseth also failed to establish an injury in fact.[33] Following its analysis, the court reversed and remanded in regard to dismissal of Forsberg and Tellmann's claims, but otherwise affirmed the district court's decision.[34]

30. *Id.*
31. *Id.* at 597-98.
32. *Id.* at 598.
33. *Id.*
34. *Id.*

ADMINISTRATIVE LAW – CHEVRON OVERRULED

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

In *Loper Bright Enterprises v. Raimondo*, the United States Supreme Court considered whether to overrule or clarify the doctrine established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc*.[35] *Loper Bright Enterprises* addressed the extent to which courts should defer to administrative agencies' interpretations of statutes they administer.[36]

The controversy arose after the National Marine Fisheries Service ("NMFS"), operating under the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"), implemented a rule requiring herring fishermen to pay for at-sea observers to monitor their compliance.[37] The petitioners were businesses in two parallel cases operating in the Atlantic herring fishery.[38] The plaintiffs argued that the NMFS exceeded its statutory authority by mandating fishermen cover the costs of observer programs.[39]

The MSA established a regulatory framework for managing U.S. fisheries, which included provisions for mandatory observer coverage to collect data for conservation efforts.[40] However, the petitioners contended that while the MSA authorized observer programs, it did not explicitly require or permit fishermen to bear the associated costs unless Congress expressly authorized such funding schemes.[41] Initially, NMFS covered the cost of these observers, but funding constraints prompted the agency to shift the financial burden to fishermen.[42] Specifically, the NMFS issued a rule that imposed observer-related fees of up to $710 per day, per vessel in certain circumstances, which significantly impacted the profitability of small-scale fishing operations.[43]

The U.S. Court of Appeals for the D.C. Circuit upheld NMFS's rule, reasoning that the statute's ambiguous language justified deference under *Chevron*.[44] Similarly, the First Circuit reached the same conclusion in a parallel case that involved another group of Atlantic herring fishermen.[45] Both courts found the NMFS's interpretation permissible under *Chevron's* two-

35. Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024); Chevron, U.S.A., Inc. v. Nat'l Res. Def. Council, Inc., 467 U.S. 837 (1984), *overruled by* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).
36. 603 U.S. at 369, 377-78.
37. *Id.* at 380-82.
38. *Id.* at 382.
39. *Id.*
40. *Id.* at 380-81.
41. *Id*. at 382.
42. *Id.* at 381-82.
43. *Id.* at 382.
44. *Id.* at 382-83.
45. *Id.* at 383-84.

step framework, which requires courts to defer to reasonable agency interpretations of ambiguous statutes.[46]

The Supreme Court of the United States granted certiorari to determine whether the judiciary should continue to apply *Chevron* deference.[47] Under the *Chevron* framework, courts follow a two-step process: (1) determine whether Congress has addressed the precise issue directly and if the statute's intent is clear, the inquiry ends; and (2) if the statute is silent or ambiguous on an issue, the court must determine if the agency's interpretation is "based on a permissible construction of the statute."[48]

Chief Justice Roberts delivered the opinion of the Court, joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett.[49] The Court ultimately ruled in favor of the petitioners, overruling *Chevron* and holding that courts must exercise independent judgment when interpreting statutes, even when those statutes contain ambiguities.[50]

The Court reaffirmed the principle that interpretation of the law is a judicial function under Article III.[51] Citing *Marbury v. Madison*, Chief Justice Roberts emphasized that it is "emphatically the province and duty of the judicial department to say what the law is."[52] The Court expressed concern that deference under Chevron threatened the constitutional separation of powers by shifting the judicial role to administrative agencies.[53] The Court indicated this shift is not warranted merely because the agencies may have expertise in the relevant subject matter.[54] The Court reasoned that because it had constantly reworked the framework and many lower courts applied it inconsistently, it had become "an impediment, rather than an aid."[55]

The Court also highlighted that the Administrative Procedure Act ("APA") explicitly instructs courts "to 'decide all relevant questions of law' and 'interpret . . . statutory provisions'" independently.[56] The Court emphasized that the APA reflects Congress's intent that courts, not agencies, resolve ambiguities in the law.[57]

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46. *Id.* at 379, 382-84.
47. *Id.* at 384.
48. *Id.* at 379-80 (quoting Chevron U.S.A. Inc. v. Nat'l Res. Def. Council, Inc., 467 U.S. 837, 843 (1984)).
49. *Id.* at 376.
50. *Id.* at 412-13.
51. *See id.* at 385.
52. *Id*. at 369 (quoting Marbury v. Madison, 5 U.S. 137, 177 (1803)).
53. *Id.* at 403-04.
54. *Id*.
55. *Id*. at 410.
56. *Id*. at 411 (omission in original) (quoting 5 U.S.C. § 706).
57. *Id*. at 399-400.

The opinion traced the historical practice of statutory interpretation, noting that courts traditionally relied on tools of statutory construction—such as legislative history, textual analysis, and context—before the administrative expansion during the New Deal era.[58] The Court referenced cases like *United States v. American Trucking Associations* to illustrate that courts consistently asserted their interpretive role before *Chevron*.[59]

The Court underscored the inconsistencies that resulted from the *Chevron* framework, noting that lower courts often struggled to apply its two-step process.[60] The majority pointed out that ambiguity in statutory language can be subjective and lead to unpredictable outcomes, where decisions may hinge on a judge's interpretation of whether ambiguity exists.[61] The Court also highlighted that the deference doctrine allowed agencies to alter interpretations over time, leading to instability for regulated individuals and entities.[62]

The Court addressed the argument that agencies possess technical expertise that courts may lack.[63] While acknowledging the value of agency expertise, the Court stressed that expertise does not justify granting agencies binding authority over legal interpretations.[64] Instead, the Court determined agencies' technical knowledge may be considered persuasive, but ultimate accountability for statutory interpretation rests with the judiciary.[65]

Justice Thomas and Justice Gorsuch each wrote concurring opinions.[66] Justice Thomas revisited his longstanding concerns about the expansive growth of the administrative state and the erosion of judicial authority.[67] He argued that *Chevron* represented a significant departure from the Constitution's structure, which assigns the judiciary—not administrative agencies—the power to interpret the law.[68] He underscored the necessity of restoring judicial independence to safeguard individual liberty.[69]

Justice Gorsuch highlighted the dangers of permitting agencies to interpret statutory ambiguities, describing it as a form of unchecked executive power that undermines the rule of law.[70] He emphasized that *Chevron* had led to unpredictability for regulated parties and excessive deference that

58. *See id*. at 389-90, 403.
59. *Id.* at 392 (quoting United States v. Am. Trucking Ass'ns, 310 U.S. 534, 544 (1940)).
60. *Id*. at 403.
61. *Id*. at 408-09.
62. *Id*. at 410-11.
63. *Id*. at 401.
64. *Id.* at 401-02.
65. *Id*. at 402-03.
66. *Id*. at 413-16 (Thomas, J., concurring), 416-48 (Gorsuch, J., concurring).
67. *Id*. at 413-14 (Thomas, J., concurring).
68. *Id*. at 416.
69. *Id*.
70. *See id*. at 433 (Gorsuch, J., concurring).

allowed agencies to arbitrarily change policy interpretations.[71] Justice Gorsuch urged that although proper respect for precedent is necessary to ensure the law is reliable, "that respect does not require, nor does it readily tolerate, a steadfast refusal to correct mistakes." [72]

Justice Kagan, joined by Justice Sotomayor and in part by Justice Jackson, dissented.[73] The dissent argued that Congress often drafts statutes with the expectation that agencies will fill in gaps, particularly in highly technical or policy-driven regulatory schemes.[74] Justice Kagan contended that removing *Chevron* deference undermines the pragmatic partnership between Congress and administrative agencies and risks judicial overreach in complex regulatory matters.[75] Justice Kagan also noted that courts may lack the technical expertise required to interpret statutes in specialized fields, making judicial second-guessing of agency decisions problematic in some contexts.[76] She warned that the decision could lead to greater regulatory uncertainty and undermine agencies' ability to effectively implement congressional intent.[77]

The Court's decision to overrule *Chevron* redefines the balance of power between the judiciary and administrative agencies.[78] It reinforces the judiciary's exclusive role in statutory interpretation and limits agencies' ability to rely on implied delegations of authority in ambiguous statutes.[79] The ruling is expected to reshape administrative law significantly and may restrict the scope of regulatory authority unless explicitly granted by Congress.

71. *Id*. at 438-40.
72. *See id*. at 446.
73. *Id*. at 448 (Kagan, J., dissenting).
74. *See id*. at 459-60.
75. *Id*. at 478-79.
76. *See id*.
77. *Id*.
78. *See id.* at 412-13 (majority opinion).
79. *See id.*

OIL AND GAS LAW – INTERPRETING SURFACE USE AGREEMENT

Mikkelson Land, LLLP v. Continental Resources, Inc., 108 F.4th 1042 (8th Cir. 2024).

In *Mikkelson Land, LLLP v. Continental Resources, Inc.*, the United States Court of Appeals for the Eighth Circuit addressed whether the Surface Use Agreement ("SUA") between the parties unambiguously authorized Continental Resources, Inc. ("Continental") to install water pipelines across a designated area.[80] The agreement specified the terms under which Continental could access the property, including the installation of pipelines and compensation for land use.[81] The dispute centered around whether the SUA authorized Continental to install water pipelines not explicitly outlined in the agreement's accompanying plan map ("Exhibit C").[82]

In 2012, Mikkelson Land, LLLP ("Mikkelson") and Continental entered into the SUA, which granted Continental the right to use the surface estate for its operations.[83] This included a broad easement as well as the ability to install pipelines for oil, gas, water, and other resources under certain conditions.[84] Exhibit C depicted proposed pipeline locations, but the SUA also provided compensation terms for "future" water pipelines, suggesting the possibility of additional installations beyond those initially planned.[85] Subsequently, in 2015, the parties executed an addendum that expanded Continental's rights, granting easements for any operations deemed necessary at Continental's discretion.[86] This addendum stipulated that Mikkelson would receive additional compensation for the expanded rights.[87]

In 2018, Continental began constructing the Boulder Gathering System, a network of water pipelines to transport freshwater and saltwater used in hydraulic fracturing and oil production.[88] Despite notifying Mikkelson of its intent and compensating it according to the SUA's terms, Mikkelson objected, arguing that the SUA did not authorize these pipelines because they were not included in Exhibit C.[89] Mikkelson then initiated legal action in

80. 108 F.4th 1042, 1044 (8th Cir. 2024).
81. *Id.* at 1044-46.
82. *Id.* at 1047-48.
83. *Id.* at 1044.
84. *Id.* at 1044-46.
85. *Id.* at 1045, 1047.
86. *Id.* at 1046.
87. *Id.* (emphasis added) ("Mikkelson *granted* Continental expanded rights in exchange for $100,000.").
88. *Id.*
89. *Id.* at 1046-47.

2020, asserting several claims of breach of contract, a claim of trespass, and a claim for injunctive relief.[90]

The federal district court granted Continental's motion for summary judgment.[91] It concluded that the SUA unambiguously authorized the installation of water pipelines, as evidenced by provisions allowing for "future" pipelines and specifying payment terms.[92] The court also emphasized that the 2015 addendum granted Continental broad rights to carry out necessary operations, further supporting its position.[93] While Mikkelson argued that the SUA limited all pipelines to those shown in Exhibit C, the court rejected this interpretation, noting that North Dakota law does not require the precise location of easements to be specified.[94]

On appeal, the Eighth Circuit upheld the district court's decision.[95] The appellate court agreed that the SUA and addendum, when read together, clearly authorized Continental to install water pipelines, including those not initially contemplated in Exhibit C.[96] The inclusion of compensation terms for future pipelines demonstrated the parties' intent to allow for such installations.[97] The court further determined there was no conflict between the specific provisions that referred to Exhibit C and the general provisions that permitted future developments.[98] Mikkelson's interpretation was deemed untenable, as it would contradict principles of contract interpretation by nullifying other portions of the agreement.[99]

90. *Id.* at 1047.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*
95. *Id.* at 1049.
96. *Id.* at 1048.
97. *Id.*
98. *Id.* at 1049.
99. *Id.*

In conclusion, the Eighth Circuit held the district court properly interpreted the SUA and addendum to authorize Continental's installation of water pipelines and did not err in granting summary judgment to Continental, where the SUA unambiguously granted Continental the right to install the pipelines.[100] Because the Eighth Circuit found the district court's grant of summary judgment proper, it declined to consider Mikkelson's alternative argument.[101] This decision underscores the importance of clear contractual language and the need to interpret agreements as a whole to give effect to all provisions.[102]

100. *Id.*
101. *Id.*
102. *See id.*

CONSTITUTIONAL LAW – SCOPE OF QUALIFIED IMMUNITY IN CIVIL RIGHTS CLAIMS

Poemoceah v. Morton County, 117 F.4th 1049 (8th Cir. 2024).

In *Poemoceah v. Morton County*, the Eighth Circuit examined issues surrounding the protection against excessive force and the scope of qualified immunity.[103] The case centered on whether a law enforcement officer's actions during Poemoceah's arrest at a Dakota Access Pipeline protest violated constitutional protections.[104] The petitioner, Poemoceah, filed a lawsuit under 42 U.S.C. § 1983, claiming violations of his First, Fourth, and Fourteenth Amendment rights.[105] The named defendants in the case included Morton County, Officers Swenson and Laney; Morton County Sheriff Kyle Kirchmeier, North Dakota Highway Patrol Trooper Thomas Iverson, and four unnamed individuals.[106] The district court dismissed Poemoceah's claims, finding that the officers were shielded by "qualified immunity on the First and Fourth Amendment claims," and the other claims were not properly pled.[107] Poemoceah argued on appeal that the force used against him was excessive and not shielded by qualified immunity as it pertained to Officer Swenson.[108] The Eighth Circuit partially agreed, holding that allegations against one officer's use of excessive force were sufficient to proceed.[109] The Eighth Circuit reversed the dismissal in part and remanded for further proceedings.[110]

The court outlined the following facts from the face of Poemoceah's complaint.[111] Poemoceah, a resident of Oklahoma and member of the Comanche Nation, participated in a peaceful protest at the Standing Rock Reservation on February 22, 2017.[112] He was "'present as a Water Protector' supporting the 'peaceful opposition to the construction of the Dakota Access Pipeline.'"[113] Poemoceah was standing near a group of riot-gear-clad officers to negotiate the elders' ability to safely leave the encampment.[114]

After speaking to the group of officers, they approached Poemoceah and two other "Water Protectors"; Poemoceah began running.[115] He was neither

103. 117 F.4th 1049 (8th Cir. 2024).
104. *Id.* at 1053-54.
105. *Id.* at 1054.
106. *Id.*
107. *Id.*
108. *Id.* at 1054-55.
109. *Id.* at 1055, 1059.
110. *Id.* at 1059.
111. *Id.* at 1053.
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*

informed he was under arrest nor ordered to stop.[116] Swenson was among the officers who approached Poemoceah.[117] Swenson caught up to Poemoceah and tackled him from behind, driving him off the roadway and onto a nearby hill.[118] Swenson pinned Poemoceah under his full weight.[119] Poemoceah neither resisted nor displayed any intent to be uncooperative during the encounter.[120] Poemoceah claimed that two officers jumped on him, at least one struck him with a fist or knee while he was already subdued, and another wounded his foot and ankle.[121] Poemoceah informed officers he could not walk and believed his hip was broken.[122] He requested an ambulance; the officers accused him of faking it and forced him to walk more than 200 feet to a police vehicle.[123] He was eventually taken by ambulance to a local hospital.[124] Medical staff identified minor bruising but neglected to identify a nondisplaced pelvic fracture.[125] Poemoceah claimed his injuries from the incident included a pelvic fracture, neck, ankle, and wrist injuries, severe posttraumatic stress disorder, anxiety, and major depressive disorder.[126] He required ongoing physical therapy and anticipated suffering lifelong "debilitating effects [from] his pelvis injury."[127]

"Poemoceah was charged with physical obstruction of a government function, a class A misdemeanor in North Dakota," but the charge was ultimately dismissed.[128] Poemoceah filed a lawsuit under 42 U.S.C. § 1983, alleging violations of his First, Fourth, and Fourteenth Amendment rights.[129] He also brought claims under North Dakota law.[130] The defendants moved to dismiss the case, and the district court granted their motions.[131] The district court held the defendants were protected by qualified immunity for the First and Fourth Amendment claims and dismissed the other claims as inadequate.[132] Poemoceah filed a request to amend his complaint which was denied, and the court dismissed his complaint with prejudice.[133]

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116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.* at 1053-54.
124. *Id.* at 1054.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.* (citing N.D. CENT. CODE § 12.1-08-01 (1975)).
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*

Poemoceah argued on appeal that his Fourth Amendment excessive force claim against Officer Swenson was improperly dismissed.[134] Under the Fourth Amendment, an officer's use of force is unlawful if it is "objectively unreasonable," determined by factors such as the severity of the crime, the suspect's threat level, and whether the suspect resisted or evaded arrest.[135] The district court found that Poemoceah "advanced *toward* the officers," which could make an officer feel threatened.[136] However, Poemoceah alleged he was unarmed while negotiating the safe passage of elders, and advanced marginally while maintaining distance without unexpected movements.[137] The court indicated these details challenged the claim that a reasonable officer would view him as a threat.[138] Additionally, Poemoceah was neither resisting nor evading arrest and was given no command to stay put or stop.[139] Considering the allegations and viewing them in Poemoceah's favor, the Eighth Circuit found he asserted a plausible excessive force claim against Officer Swenson.[140] The right to be free from excessive force in such circumstances is well established.[141]

Poemoceah next argued the district court inappropriately dismissed his claim of deliberate indifference to a serious medical need, which is evaluated under the Fourteenth Amendment.[142] The court concluded that Poemoceah failed to show the officers had actual knowledge of the severity of his injuries.[143] While he experienced pain, he was able to walk 200 feet, and the officers transported him to a base camp whereafter he was taken to a hospital.[144] Despite Poemoceah's statement that he thought his hip was broken, medical providers discharged him without diagnosing his pelvic fracture.[145] Since deliberate indifference requires more than negligence, the Eighth Circuit affirmed the dismissal of this claim.[146]

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134. *Id.*
135. *Id.* at 1054-55 (quoting Tatum v. Robinson, 858 F.3d 544, 547 (8th Cir. 2017)).
136. *Id*. at 1055 (emphasis in original).
137. *Id.*
138. *Id*.
139. *Id*.
140. *Id*.
141. *See id*. (asserting courts have consistently held that using more than minimal force against an unthreatening, non-resisting individual suspected of a minor crime is unreasonable).
142. *Id*. (alterations in original) (quoting Carpenter v. Gage, 686 F.3d 644, 650 (8th Cir. 2012)) ("To establish this claim, '[Poemoceah] must demonstrate that he suffered an objectively serious medical need, and that the [officers] had actual knowledge of those needs but deliberately disregarded them.'").
143. *Id*.
144. *Id*. at 1056.
145. *Id*.
146. *Id*.

Poemoceah further argued the district court wrongly dismissed his First Amendment retaliation claim.[147] Poemoceah claimed the officers' excessive force and deliberate indifference constituted the adverse action and alleged his speech was a protected activity.[148] However, the court found his complaint failed to "plausibly allege a causal connection between [his speech] and the officers' actions."[149] As a result, the Eighth Circuit affirmed dismissal of his First Amendment retaliation claim.[150] The court next reviewed the dismissal of Poemoceah's supervisory liability claims.[151] The court agreed with the district court's finding that the complaint did not "implicate Iverson or Kirchmeier as . . . officers . . . directly involved in Poemoceah's arrest or the force used against him."[152] Additionally, the complaint failed to allege deficiencies in their supervision or training beyond the fact that they were present during the incident.[153] As such, the Eighth Circuit held the supervisory liability claims against Iverson and Kirchmeier were appropriately dismissed.[154]

Poemoceah next contested the dismissal of his *Monell* claim, which allows municipalities to be held liable under 42 U.S.C. § 1983 for constitutional violations arising from official policies, unofficial customs, or failures in training or supervision.[155] Poemoceah, however, failed to provide evidence of a pattern beyond his own experience or show that policymakers were aware of similar incidents.[156] He also claimed a failure to train officers adequately on policing norms during the pipeline protests but offered only conclusory allegations without specific facts demonstrating that the need for training was obvious or that policymakers were deliberately indifferent.[157] As a result, the Eighth Circuit held the *Monell* claim against Morton County was properly dismissed.[158]

Poemoceah's claim for intentional infliction of emotional distress ("IIED") under North Dakota law was dismissed due to insufficient allegations.[159] The threshold for such conduct is high and limited to behavior that

147. *See id*. (quoting Peterson v. Kopp, 754 F.3d 594, 602 (8th Cir. 2014)) ("To establish a violation of the First Amendment based on the retaliatory use of force, a plaintiff must show that (1) they 'engaged in protected activity,' (2) the officer 'took adverse action against him that would chill a person of ordinary firmness from continuing the protected activity,' and (3) that action 'was motivated at least in part by the exercise of the protected activity.'").

148. *Id*.

149. *Id*.

150. *Id*.

151. *Id*.

152. *Id*. at 1057.

153. *Id*.

154. *Id*.

155. *Id*.; *see* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690-92, 694 (1978).

156. *Poemoceah*, 117 F.4th at 1057.

157. *Id*. at 1057-58.

158. *Id*. at 1058.

159. *Id*. at 1059.

exceeds "all possible bounds of decency."[160] Poemoceah alleged that the defendants assaulted him, berated him, and forced him to walk with a broken pelvis, resulting in severe emotional distress, including PTSD, anxiety, and depression.[161] The court found these allegations failed to meet the standard for extreme and outrageous conduct.[162] The alleged assault was not shown to be specifically aimed at causing emotional distress, and the officers' taunts did not rise to the level of atrocity required by law.[163] Thus, the Eighth Circuit held the claim was properly dismissed.[164] In addition, the district court's denial of Poemoceah's request to amend his complaint was upheld.[165] Poemoceah did not formally move for leave to amend, instead addressing the issue briefly in his opposition to the motions to dismiss.[166] He also failed to provide a proposed amended complaint or detail any consequential changes he intended to make.[167] The Eighth Circuit found no abuse of discretion by the district court in its decision to dismiss the complaint with prejudice.[168]

The Eighth Circuit's decision in *Poemoceah v. Morton County* highlights critical issues surrounding qualified immunity and civil rights claims, particularly excessive force and supervisory liability under Section 1983. The court affirmed in part, reversed in part, and remanded for further proceedings on Poemoceah's Fourth Amendment claim against defendant Swenson.[169] This case underscores the high evidentiary standards for *Monell* liability, supervisory liability, and IIED claims, as well as the necessity of adequately pleading and substantiating allegations in civil rights litigation.

160. *Id*. at 1058 (quoting Zuger v. State, 2004 ND 16, ¶ 14, 673 N.W.2d 615).
161. *Id*.
162. *Id*.
163. *Id*. at 1059.
164. *Id.*
165. *Id*.
166. *Id*.
167. *Id.*
168. *Id*.
169. *Id*.

CRIMINAL LAW – INADEQUATE JURY INSTRUCTIONS WARRANT REVERSAL OF CONVICTION

United States v. Sledge, 108 F.4th 659 (8th Cir. 2024).

In *United States v. Sledge*, the United States Court of Appeals for the Eighth Circuit reviewed the defendants' appeal, which alleged several errors from a joint trial.[170] The defendants, Darius Sledge ("Darius") and Baquan Sledge ("Baquan"), were convicted on five counts related to their involvement and leadership in a drug distribution conspiracy in North Dakota.[171] Darius contended that the Government committed errors by failing to provide a specific unanimity jury instruction regarding the continuing criminal enterprise charge.[172] Baquan claimed that his request for placement in a correctional facility in North Dakota was improperly denied, and that prosecutorial misconduct occurred when prosecutors listened to his phone conversations with his counsel.[173] Furthermore, Darius and Baquan argued that the admission of certain evidence violated their rights under the Confrontation Clause.[174] Finally, both defendants asserted the court abused its discretion by denying their motions for a new trial and for an evidentiary hearing based on allegations of juror bias.[175]

Baquan and Darius were arrested for conspiring to distribute oxycodone pills on the Turtle Mountain, Fort Berthold, and Spirit Lake Indian Reservations in North Dakota.[176] The defendants transported the oxycodone from Michigan and recruited local residents to assist with distribution in North Dakota.[177] The residents provided accommodations for the individuals in exchange for payment of rent and phone bills.[178] The criminal operation was large-scale.[179]

The grand jury indicted the defendants on five separate counts.[180] Two of these charges were conspiracy to distribute and possess a controlled substance and money laundering conspiracy.[181] The remaining charges included possession of oxycodone with intent to distribute; maintaining premises

170. 108 F.4th 659, 664 (8th Cir. 2024).
171. *Id.*
172. *Id.* at 665.
173. *Id.* at 672.
174. *Id.* at 670.
175. *Id.* at 671-72.
176. *Id.* at 664.
177. *Id.*
178. *Id.*
179. *Id.*
180. *See id.*
181. *Id.* (citing 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(C); 18 U.S.C. § 2; 18 U.S.C. § 1956(h), (a)(1)).

involved in drug activity; and engaging in a continuing criminal enterprise ("CCE").[182] Following the defendants' joint trial, both individuals received a sentence of 360 months for the charge of CCE, along with a sentence of 240 months for their remaining charges.[183] All sentences were to be served concurrently.[184]

The first error Darius raised on appeal involved the jury instructions regarding the CCE count, where the court did not inform the jury that they must unanimously agree on which "three predicate felonies constituted the 'continuing series.'"[185] To establish a CCE violation, the Government must prove that the defendant committed:

> a felony violation of federal narcotics laws;
>
> as part of a continuing series of three or more related felony violations of federal narcotics laws;
>
> in concert with five or more other persons;
>
> for whom [the defendant] is an organizer, manager or supervisor; [and]
>
> from which [the defendant] derives substantial income or resources.[186]

Since the jury did not receive proper instructions, Darius argued that information on which three counts the jury unanimously convicted him was lacking, as he was only convicted on two felonies under the second prong.[187]

The court reviewed the error in the jury instructions using the plain error standard, as Darius did not explicitly object at trial that the instruction required a unanimous vote on three felonies.[188] Instead, his counsel asserted, alternatively, that the felonies needed to be proven beyond a reasonable doubt and identified the specific federal narcotic laws violated.[189] Since the defense did not object or propose "a specific unanimity instruction when discussing the final proposed instructions," the court declined to review the error under either abuse of discretion or *de novo* standards.[190]

The Eighth Circuit determined that plain error was present for several reasons.[191] First, the failed unanimity instructions conflicted with the current

182. *Id.* (citing 21 U.S.C. § 841(a)(1), (b)(1)(C); 18 U.S.C. § 2; 21 U.S.C. § 856; 21 U.S.C. § 848(a), (c)).

183. *Id.* at 665.

184. *Id.*

185. *Id.*

186. *Id.* (alterations in original) (quoting United States v. Lee, 687 F.3d 935, 940 (8th Cir. 2012)).

187. *Id.*

188. *See id.* at 666.

189. *Id.* (second alteration in original) (quoting United States v. Weckman, 982 F.3d 1167, 1175 (8th Cir. 2020)) ("[T]he mere tender of an alternative instruction without objecting to some specific error . . . or explaining why the proffered instruction better states the law does not preserve the error for appeal.").

190. *Id.* at 666-67.

191. *Id.* at 667-69.

law.[192] Second, had the jury received appropriate guidance, it was probable that the outcome for Darius would have been different.[193] The jury only unanimously found Darius guilty of *two* predicate felonies: conspiracy with intent to possess or distribute a controlled substance and maintaining drug-involved premises.[194] The court discussed how conspiracy to commit money laundering cannot constitute a predicate felony for the CCE count.[195] The court disagreed with the Government's contention that inquiry for specific unanimous instructions was given during the closing argument.[196] The court further disagreed that the jury instruction that any "felony violations of federal controlled substance laws" could encompass offenses like "possession of oxycodone with intent to distribute, distribution of oxycodone, and maintaining drug premise[s]" were sufficient to meet three felony violations under the second prong.[197] However, the jury acquitted Darius of one of the listed felonies: possession with intent to distribute oxycodone.[198] Further, Darius was never charged with distribution of oxycodone, and the jury did not render a verdict to support unanimity.[199] For these reasons, the court refused to speculate on the jury's unanimous agreement concerning distribution.[200] Lastly, the Eighth Circuit found the instructional error affected "the fairness, integrity, or public reputation of judicial proceedings" because Darius was convicted on the CCE count, which added an additional 120 months to his sentencing term.[201] In light of the findings presented, the Eighth Circuit reversed Darius's conviction for CCE and "remand[ed] for a new trial."[202] Because of this holding, the court declined to consider Darius's arguments in the alternative.[203]

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192. *Id*. at 667-68 (quoting United States v. Poitra, 648 F.3d 884, 887 (8th Cir. 2011)) (citing Richardson v. United States, 526 U.S. 813, 824 (1999)) ("To obtain relief under a plain-error standard of review, the party seeking relief must show that there was an error, the error is clear or obvious under current law, the error affected the party's substantial rights, and the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.").

193. *Id*. at 668.

194. *See id.*

195. *Id*. (citing United States v. Lee, 687 F.3d 935, 940 (8th Cir. 2012); United States v. Brown, 202 F.3d 691, 700 (4th Cir. 2000)) (establishing that money laundering cannot be regarded as a predicate offense under the CCE statute).

196. *Id.*

197. *Id*.

198. *Id*.

199. *Id.*

200. *Id.*

201. *Id.* at 669-70 (citing United States v. Poitra, 648 F.3d 884, 887 (8th Cir. 2011)); *see also* United States v. Pirani, 406 F.3d 543, 553-54 (8th Cir. 2005) (The Eighth Circuit's prior "decisions reflect proper concern that the fairness, integrity, and public reputation of judicial proceedings are seriously affected when a defendant must spend additional time in prison on account of an illegal sentence.").

202. *Sledge*, 108 F.4th at 670.

203. *Id.*

The Eighth Circuit held that Darius's argument that the admission of evidence collected from the cellphone of the unindicted coconspirator infringed on his Confrontation Clause rights was without merit.[204] The court reasoned the statements made by the coconspirator to further the conspiracy were nontestimonial and, as a result, did not defy the Confrontation Clause.[205] The court rejected Baquan's similar arguments as meritless.[206]

Next, both appellants asserted "that the district court abused its discretion when denying their motion for a new trial and an evidentiary hearing based on claims of jury bias or misconduct."[207] After the verdict, one of the jurors reached out to Baquan's counsel to disclose that another juror had failed to mention during jury selection that his daughter had experienced an overdose, which was relevant due to the drug-related nature of the case.[208] However, after review of the voir dire transcript, the Eighth Circuit found the appellants failed to establish that the potential juror gave a dishonest answer to a material question during voir dire, as the Government had not asked a specific question to this effect.[209] As such, the court "conclude[d] that the district court did not abuse its discretion in denying Darius and Baquan a new trial or evidentiary hearing."[210]

Baquan asserted two final arguments: (1) that his conviction should be vacated on the grounds of a violation of his Sixth Amendment right to counsel; and (2) that the "Government engaged in prosecutorial misconduct."[211] Baquan's assertion of a violation of his Sixth Amendment right to counsel was examined under a *de novo* standard.[212] The Eighth Circuit concluded the Government had not "knowingly intruded" upon his attorney-client relationship by transferring him from North Dakota to a correctional facility in Colorado.[213] Furthermore, Baquan acknowledged that he had no right to request a specific housing location, as such decisions were likely based on budgetary factors.[214] Regarding Baquan's final argument of prosecutorial misconduct

204. *Id.*
205. *See id.*
206. *See id.*
207. *Id.* at 671.
208. *Id.* at 665.
209. *See id.* at 671 (citing United States v. Ruiz, 446 F.3d 762, 770 (8th Cir. 2006)); *see also* McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 556 (1984)) (alteration in original) ("[T]o obtain a new trial . . . , a party must first demonstrate that a juror failed to answer honestly a material question on *voir dire* . . . .").
210. *Sledge*, 108 F.4th at 671.
211. *Id.* at 672.
212. *Id.* (citing United States v. Harris, 964 F.3d 718, 722 (8th Cir. 2020)).
213. *Id.* (quoting United States v. Sawatzky, 994 F.3d 919, 923 (8th Cir. 2021)).
214. *See id.* (Baquan "conceded that 'the U.S. Marshal[s] Service is the legal custodial entity which determines housing Defendants pre-trial' and that 'legally in general he has no right to demand a specific housing location.'").

concerning the recorded conversations between Baquan and his counsel from jail, the court identified no plain error.[215] This determination was based on the fact that Baquan impliedly consented to the recording of those calls, as Baquan was informed his calls would be recorded.[216]

Ultimately, the Eighth Circuit reversed Darius's conviction for CCE and remanded this count for a new trial.[217] The court also remanded Baquan's drug conspiracy conviction to the district court.[218] The Eighth Circuit "affirm[ed] the judgments in all other respects."[219]

215. *See id.* at 672-73.
216. *See id.* (citing United States v. Morin, 437 F.3d 777, 780 (8th Cir. 2006)).
217. *Id.* at 673.
218. *Id.*
219. *Id.*