

No. 24A\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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MOLLY VOGT, AS TRUSTEE FOR THE HEIRS AND  
NEXT-OF-KIN OF JOSHUA VOGT, DECEASED,  
*Applicant,*

v.

CO ROBERT ANDERSON; CO RAYNOR BLUM; AND CO RONALD J. IMGRUND,  
*Respondents.*

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**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH  
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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deceased*

December 23, 2024

## **PARTIES TO THE PROCEEDINGS BELOW**

Applicant Molly Vogt, as Trustee for the Heirs and Next-of-Kin of Joshua Vogt, deceased, was the plaintiff in the district court and the appellant in the court of appeals.

Respondents CO Robert Anderson, CO Raynor Blum, and CO Ronald J. Imgrund were defendants in the district court and appellees in the court of appeals.

Crow Wing County, Minnesota; Heath Fosteson, individually and in his capacity as Crow Wing County Jail Administrator; CO Cherokee DeLeon; CO Christine Ghinter; CO Lukasz Organista; and MEnD Correctional Care Inc. were defendants in the district court but did not participate in the court of appeals proceedings. They were dismissed from the case before the district court entered the summary judgment presented for review.

## RELATED CASES

### Decisions Under Review:

*Vogt, etc. v. MEnD Corr. Care Inc., et al.*, 2023 WL 2414531 (D. Minn. Mar. 8, 2023)  
(No. 21-cv-1055 (WMW/TNL)) (adopting report and recommendation)

*Vogt, etc. v. MEnD Corr. Care Inc., et al.*, 2023 WL 2414551 (D. Minn. Jan. 30, 2023)  
(No. 21-cv-1055 (WMW/TNL)) (report and recommendation)

*Vogt, etc. v. MEnD Corr. Care Inc., et al.*, 2023 WL 7180168 (D. Minn. July 28, 2023)  
(No. 21-cv-1055 (WMW/TNL)) (report and recommendation)

*Vogt, etc. v. MEnD Corr. Care Inc., et al.*, 2023 WL 7180169 (D. Minn. Sept 25, 2023)  
(No. 21-cv-1055 (WMW/TNL)) (adopting report and recommendation)

*Vogt, etc. v. MEnD Corr. Care Inc., et al.*, 113 F.4th 793 (8th Cir. Aug. 16, 2024)  
(No. 23-3359)

*Vogt, etc. v. MEnD Corr. Care Inc., et al.*, 2024 WL 4508478 (8th Cir. Oct. 16, 2024)  
(No. 23-3359) (denying rehearing)

### Prior, Related Decisions:

*Vogt, etc. v. Crow Wing Cnty., et al.*, 2021 WL 6275271 (D. Minn. Nov. 1, 2021)  
(No. 21-cv-1055 (WMW/TNL)) (report and recommendation)

*Vogt, etc. v. Crow Wing Cnty., et al.*, 2022 WL 37512 (D. Minn. Jan. 4, 2022)  
(No. 21-cv-1055 (WMW/TNL)) (adopting report and recommendation)

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To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice for the Eighth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicant Molly Vogt, as Trustee for the Heirs and Next-of-Kin of Joshua Vogt, deceased, respectfully requests a 30-day extension of time, up to and including February 13, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

The court of appeals entered its judgment and issued an opinion on August 16, 2024, and denied a petition for rehearing on October 16, 2024. The court of appeals' opinion (reported at 113 F.4th 793) is attached hereto as Exhibit A, and the order denying rehearing is attached as Exhibit B. Relevant opinions and orders of the district court are not reported and are attached as Exhibits C-F. The petition would be due on January 14, 2025, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important question about the civil jury's role that has divided the federal circuits and the court below. In January 2020, Joshua Vogt, an arrestee at a Minnesota county jail, rapidly sickened and died of a drug overdose. Anticipating litigation, his jailers watched and then destroyed the only video showing inside the two cells where Mr. Vogt was kept before he died.

Finding intentional spoliation, the district court in this Section 1983 action, brought by Mr. Vogt’s daughter, granted an adverse-inference sanction against the three remaining officer-defendants—empowering the jury to infer that the destroyed footage would have disfavored their case. *See* Fed. R. Civ. P. 37(e)(2). But then the court granted summary judgment, crediting the officers’ own testimony and declaring that the intentional spoliation “does not alter the Court’s analysis.” Ex. D, 2023 WL 7180168, at \*17.

A divided Eighth Circuit panel affirmed. The majority acknowledged that the destroyed video could have contradicted the officers’ case, such as by showing that Mr. Vogt had experienced “more severe symptoms than the officers disclosed in their testimony.” Ex. A, 113 F.4th at 798. But the majority affirmed because, given the officers’ own account of their conduct, “[a]ny hypothesis” about the destroyed footage “would fail to satisfy the ‘onerous standard’ of culpability required for a deliberate indifference claim.” *Id.* at 798-99.

Judge Shepherd dissented. The majority, he wrote, “invades the province of the jury in considering the adverse-inference instruction” by substituting its own “speculation about what the destroyed video does or does not show.” *Id.* at 800. And granting summary judgment based on that speculation “makes the adverse-inference instruction meaningless” as a remedy for the “intentional destruction of evidence.” *Id.* at 800-01. Judge Shepherd contrasted the majority’s conclusion with that of other courts, which have held that a jury must weigh the destruction of evidence that could have contradicted a defendant’s case. *See, e.g., Kronisch v. United States*, 150 F.3d 112, 128-30 (2d Cir. 1998); *Van Winkle v. Rogers*, 82 F.4th

370, 382 (5th Cir. 2023); *see also Talavera v. Shah*, 638 F.3d 303, 312-13 (D.C. Cir. 2011). The full Eighth Circuit then denied rehearing by one vote, splintering five to six.

The Eighth Circuit’s ruling warrants this Court’s review to resolve this circuit conflict and to protect the civil jury’s role in weighing evidence of spoliation. Rule 37(e)(2)’s text expressly reserves for “the jury” the power to weigh an adverse inference from the intentional destruction of evidence. And as this Court has held, such an inference can support a factfinder’s verdict against a spoliator even where he proffers self-serving evidence or testimony against the inference. *See The Bermuda*, 70 U.S. (3 Wall.) 514, 550-51 (1866). That conclusion follows from “the venerable rule that a factfinder may draw an adverse inference when a party fails to produce highly probative evidence that it could readily obtain if in fact such evidence exists.” *Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 36 (2024) (citing *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 226 (1939), and 2 John H. Wigmore, *Evidence in Trials at Common Law* § 291, at 227-29 (Chadbourn rev. 1979)). Under that longstanding rule of Anglo-American law, the adverse inference “packs a wallop” and “may be dispositive.” *Id.* at 35-36 (cleaned up); *see also Nation-Wide Check Corp. v. Forest Hills Distribs., Inc.*, 692 F.2d 214, 217-19 (1st Cir. 1982) (Breyer, J.). But the Eighth Circuit’s ruling, as Judge Shepherd explained in dissent, “renders this ‘powerful tool’ meaningless.” Ex. A, 113 F.4th at 799.

**2.** The 30-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to review the record and prepare the petition and appendix in light of other, previously engaged matters, including:

(1) a motion to dismiss counterclaims, including antitrust claims, in *X Corp. v. Bright Data Ltd.*, No. 3:23-cv-03698-WHA (N.D. Cal., due Jan. 14, 2025); (2) travel and preparation for a jury trial exercise from January 12-14, 2025 in *Innovative Health LLC v. Biosense Webster, Inc.*, No. 8:19-cv-01984-JVS-KES (C.D. Cal.); (3) preparations for two trials starting in April 2025: *Innovative Health LLC v. Biosense Webster, Inc.*, No. 8:19-cv-01984-JVS-KES (C.D. Cal.), and *FTC v. Meta Platforms, Inc.*, No. 1:20-cv-03590-JEB (D.D.C.); and (4) assisting with oral argument preparations in *Abraham Watkins v. Festeriga*, No. 23-20337 (5th Cir.) (en banc) (argument scheduled for Jan. 22, 2025). Counsel also has long-scheduled travel over the holidays.

For all these reasons, there is good cause for a 30-day extension of time, up to and including February 13, 2025, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,



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