Celeste Pretends Eagle v. U.S., 2023 WL 5978034 (D.S.D., September 14, 2023).

- **Holding**: United States granted dismissal of claim made under Federal Torts Claims Act alleging that tribal officer working pursuant to a contract entered under section 638 of the Indian Self-Determination and Education Assistance Act of 1975 caused deaths of three of plaintiffs' family members because claims were not properly presented to the Tort Practice Branch due to plaintiffs' failure to provide evidence that they had authority to present claims on behalf of the deceased family members as agent, executor, administrator, parent, guardian, or other representative.
- **Summary**: It was alleged that an officer of the Oglala Sioux Tribe Department of Public Safety, while at a sanctioned party thrown by the Oglala Sioux Tribe Department of Corrections, became intoxicated and then drove in a grossly negligent fashion, killing three members of a family and an unborn child. Plaintiffs, individually and as personal representatives of the deceased family members, made claims against the United States under the Federal Torts Claims Act.

  The United States filed a motion to dismiss under FRCP 12(b)(1) and 12(b)(6), alleging that Plaintiffs failed to properly allege that the officer was a federal official because the Complaint does not state that the Oglala Sioux Tribe Department of Public Safety operates pursuant to a contract entered under section 638 of the Indian Self-Determination and Education Assistance Act of 1975 ("638 contract"). The court rejected this argument, noting that the "fact that the Oglala Sioux Tribe Department of Public Safety receives funds under a 638 contract is well known to this Court, is a matter of public record, and has been noted in certain legal opinions."

  The court also rejected the United State's argument that Plaintiffs failed to allege that the officer was acting within the scope of his employment at the time of the accident, because the complaint alleged that the party was work-sponsored and liquor was negligently supplied by the officer's supervisors, and South Dakota Supreme Court precedent had found employer liability when it was foreseeable that by failing to supervise an employee "afforded free reign to consume alcohol while at work, that the employee could abuse the alcohol, leave the premises after work unfit to drive, and injure a member of the general public.

  The court dismissed the claims, however, because the plaintiffs had not satisfied the presentment requirement of 28 U.S.C. § 2675(a) (a properly "presented" claim under § 2675(a) must include evidence of a representative's authority to act on behalf of the claim's beneficiaries under state law) because they failed to provide adequate evidence of their authority to present claims on behalf of the deceased family members as "agent, executor, administrator, parent, guardian, or other representative," 28 C.F.R. § 14.2(a), and the failure of the Tort Practice Branch to request proof of authority from plaintiffs at the time they initially presented their claims did waive the requirement or preclude the United States from now arguing that Plaintiffs failed to meet their burden.
- **Relevant (2023) Deskbook Section**: 7:22