

Snow, Rain, and Theft: The Limits of U.S. Postal Service Liability Under the Federal Tort Claims Act

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The U.S. Postal Service's (USPS) [unofficial motto](#) is “neither snow nor rain nor heat nor gloom of night stays these couriers from the swift completion of their appointed rounds.” Chiseled into the granite over the entrance to the New York Post Office, this quote from Herodotus's *The Persian Wars* represents the USPS's dedication to providing prompt, reliable, and efficient postal services across the nation. Despite these grand aspirations, however, the USPS is an imperfect system. In [fiscal year 2014](#), for example, the USPS's Mail Recovery Center received 88 million lost items. Only 2.5 million were reunited with their owners.

The USPS provides a critical service, connecting millions of Americans and enabling cross-country communication through mail delivery. Its physical and logistical infrastructure is the [largest](#) of any nonmilitary government institution in the United States. In 2023, USPS [employed](#) 525,469 people who processed and [delivered](#) an average of 318 million pieces of mail a day. But while protecting the USPS's resources is critical to ensure continued connection between every address in the nation, these protections must be balanced with providing recourse to people who are harmed by torts committed by USPS employees. Under the [Federal Tort Claims Act](#) (FTCA), the USPS waives sovereign immunity and permits injured parties to sue, provided the tort is not covered by the [postal-matter exception](#). While the exception has traditionally been interpreted to cover both negligent *and* intentional action, the Fifth Circuit bucked this trend in [Konan v. United States Postal Service](#) (5th Cir. 2024). This circuit split highlights the challenges of balancing government and individual interests, as well as the potential risks of failing to adequately protect both sides. In recognition of the significant stakes at issue in the case, the Supreme Court will [hear](#) the case in the 2025 term.

This Case Note first reviews the origins of the postal-matter exception and the FTCA. Then, it analyzes the Fifth Circuit's holding in *Konan* and explores contrasting precedent in other circuits, most notably in the First and Second Circuits. Finally, this Note discusses the difficulty of balancing USPS's interests against enabling suits under the FTCA and considers the implications of providing a tort remedy.

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I. Sovereign Immunity, the FTCA, and the Postal-Matter Exception

Sovereign immunity, [derived from](#) British common law, protects the U.S. government from being sued in American courts without its consent. The doctrine is [intended to](#) “strike[] a balance between the public interest in having injurious acts compensated and the competing public interest in safeguarding the ability of responsible governmental employees to faithfully carry out their duties without fear of protracted litigation in unfounded damages suits.”

The FTCA [was passed](#) to provide broad recourse to plaintiffs in suits against the government that would be otherwise barred by sovereign immunity. It allows plaintiffs to seek remedies for negligent or wrongful acts or omissions by government employees. Notably, the FTCA is not a total waiver of sovereign immunity and contains exceptions that preclude plaintiffs from recovery. Though the legislative history of the exceptions [is limited](#), the Supreme Court identified two likely rationales for their inclusion in [Kosak v. United States](#) (1984): first, to protect certain government activities from disruption by the threat of damages suits; and second, to prevent exposure to liability for excessive or fraudulent claims.

One example that seeks to strike this balance is the postal-matter exception. Under [28 U.S.C. § 2680\(b\)](#), the government retains sovereign immunity for “[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” The Supreme Court has previously articulated some limits to the postal-matter exception. In [Dolan v. United States Postal Service](#) (2006), Barbara Dolan sought to recover under the FTCA for injuries that she suffered after tripping over mail that was negligently left on her porch by USPS employees. The Court concluded that the postal-matter exception did not bar Dolan’s claims, judging it “more likely that Congress intended to retain immunity, as a general rule, only for injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address.” The Supreme Court’s holding did not address other open questions regarding the limits of the postal-matter exception, including whether it covers intentional manipulations of mail delivery.

II. Circuits Split on Intentional Torts Under Postal-Matter Exception

Without clear guidance from the Supreme Court on allegations of intentional tortious conduct by USPS employees, circuits have reached their own conclusions. Prior to the Fifth Circuit’s 2024 decision, the

circuits that had considered the issue concluded that the postal-matter exception barred recovery for such intentional acts. *Konan* knowingly defied this trend.

A. Parties Can Sue for Intentionally Withheld Mail Under the FTCA in the Fifth Circuit

In *Konan*, the Fifth Circuit was asked to determine whether intentionally withheld mail falls under the “loss,” “miscarriage,” or “negligent transmission” provisions of the postal-matter exception, an issue of first impression for the court. The plaintiff, Lebene Konan, owned two rental property residences in Euless, Texas. Konan alleged that the USPS and two of its employees intentionally withheld mail addressed to her and the residents at her properties because they did not “like the idea that a black person own[ed] [the properties].”

Konan brought common law tort claims against the USPS and the United States under the FTCA, claiming that she lost rental income due to tenants moving because of the mail issues and that she and her remaining tenants failed to receive important mail, including “doctor’s bills, medications, credit card statements, car titles and property tax statements.” The district court [concluded](#) that Konan’s claims were barred by the postal-matter exception to the waiver of sovereign immunity in the FTCA and granted the USPS’s motion to dismiss for lack of subject-matter jurisdiction under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#).

On appeal, however, the Fifth Circuit reversed, concluding that the postal-matter exception did not cover intentional acts. Judge Dana M. Douglas, writing for a unanimous panel, held that the alleged intentional action did not fit within “loss,” “miscarriage,” or “negligent transmission.” Applying a plain language analysis and citing the Supreme Court’s interpretation in *Dolan*, the court posited that “loss” implies *unintentional action* that may result in the destruction or misplacement of mail. Citing the same sources, the court concluded that “miscarriage” implies an attempt at carriage. As the USPS employees intentionally refused to deliver mail to Konan, there was no attempt at carriage, so there was no miscarriage. Finally, the Fifth Circuit invoked the *Dolan* Court’s interpretation that “negligent transmission” covers only “negligence causing mail to be lost or to arrive late, in damaged condition, or at the wrong address.” The *Dolan* Court, employing the associated-words canon, interpreted “negligent transmission” in the company of the preceding terms “loss” and “miscarriage.” Since loss and miscarriage both refer to failures to deliver mail to the correct address in a timely manner, *Dolan* concluded that “negligent transmission” must be similarly limited to injuries that involve a failure to transmit mail.

As Konan's claims alleged an *intentional* failure to even attempt to deliver the mail, "negligent transmission" did not apply. Judge Douglas acknowledged that this decision created a split from the decisions of sister circuits, but reaffirmed the panel's belief that intentional action by the USPS does not fall under the postal-matter exception.

B. The First and Second Circuits Hold the Postal-Matter Exception Covers Intentional Acts

Courts in other jurisdictions that have considered whether intentional acts fall under the postal-matter exception have reached the opposite conclusion from the Fifth Circuit.

In [*Levasseur v. United States Postal Service*](#), the First Circuit held that intentional theft or concealment of mail is subject to the exception. Joseph Kelly Levasseur, a local candidate for political office, brought an action against the USPS under the FTCA, alleging that a USPS employee "stole or intentionally hid" Levasseur's campaign flyers to prevent their delivery to voters in advance of the election. The court concluded that the inclusion of "negligent" as a modifier only to "transmission" indicated that intentional acts of "loss" and "miscarriage" are part of the exception and that it is "entirely reasonable to say ... that mail that is stolen by a postal employee is thereby 'lost' from the postal system."

The Second Circuit reached the same conclusion in a case involving a theft ring operated by USPS and jewelry store employees. In *C.D. of NYC, Inc. v. U.S. Postal Service*,¹ the plaintiff's employees and USPS employees conspired to steal approximately \$1.5 million worth of diamonds. USPS employees stole the diamond parcels and provided false mailing documents to the diamond seller to maintain the fiction that the diamonds had been mailed. Citing past precedent in [*Marine Insurance Co. v. United States*](#) (2d Cir. 1967), the court held that the postal-matter exception of the FTCA barred jurisdiction for the thefts.

Other courts have also interpreted the postal-matter exception along similar lines. In a *per curiam* decision, the Eighth Circuit affirmed the dismissal of a plaintiff's loss-of-mail claim.² The plaintiff alleged that the USPS had "intentionally withheld his mail from home delivery on numerous occasions" and "never delivered to him certain weekly newspapers." The court agreed with the district court's judgment that the mail delivery failures were subject to the postal-matter exception. Likewise, the Northern District of Illinois, in [*Watkins v. United States*](#)

¹ 157 F. App'x 428 (2d Cir. 2005).

² *Benigni v. United States*, 141 F.3d 1167 (8th Cir. 1998) (unpublished table decision).

(N.D. Ill. 2003), dismissed a suit asserting that a USPS employee stole or tampered with a package that Watkins was returning to a retailer. The court reasoned that Congress would have placed the word “negligent” before the entire postal-matter section if it intended to limit the exception to negligent actions; since the drafters did not do so, intentional act claims must be barred.

III. Challenges of Balancing Protections for USPS Against Litigant Remedies

The Fifth Circuit’s decision and the resulting circuit split cut to the core of a question central to the FTCA: How should the law balance the government’s interest in preserving efficient services with the public interest in remedying individual harms? The postal-matter exception was inserted, per the [testimony](#) of a Justice Department official in a Senate Judiciary Committee hearing prepassage, because it “would be intolerable ... if in any case of loss or delay, the government could be sued for damages.” In other words, the FTCA was not intended to provide recourse to every citizen whose mail was misplaced.

The USPS considers the Fifth Circuit’s decision to be a serious threat to its operation as an indispensable, fundamental service. In its [petition for a writ of certiorari](#) to the Supreme Court ([granted](#) on Apr. 21, 2025), the USPS expressed concern that *Konan* could result in a significant number of tort lawsuits that would disrupt its functioning.

The Fifth Circuit’s decision also runs the risk of creating a perverse set of incentives for potential plaintiffs seeking to clear the jurisdictional bar of the postal-matter exception. If plaintiffs can recover from injury caused by mail theft or other intentional mishandling, litigants may be inclined to assert that any mail deprivation was the product of intentional action, rather than mere negligence. Such allegations, even if later determined to be unfounded, could force the USPS to expend its limited resources on burdensome discovery and draw funding away from mail delivery.

Though the USPS may have genuine concerns about the impact of an increased number of tort suits brought under a narrowed conception of the postal matter exception, the Fifth Circuit’s decision draws a potentially valuable distinction between unintentional and intentional mishandling of mail. *Konan*’s injury, as alleged, is much more significant than the injury experienced when a piece of mail is merely lost in transit. For months, USPS employees intentionally deprived *Konan* and her tenants of access to their mail, purportedly due to discriminatory animus. To classify this intentional manipulation of the postal system as equivalent to negligent

misdelivery deprives Konan of her chance to secure a meaningful remedy.

Insulation from tort lawsuits for intentional actions may disincentivize the USPS from expending resources to institute policies that better prevent intentional impediments to mail delivery. The risk that the USPS may not take this threat seriously seems especially acute given the mail's frequent use to transmit extremely important documents. For example, in the face of relaxed procedures and policies, postal workers might feel emboldened to intentionally withhold mail-in ballots for elections. Though the government may hold postal workers accountable for such intentional action through other avenues, including criminal charges of [unlawful delay of mail](#), [deprivation of the right to vote](#), and even [attempted election fraud](#), these resolutions do not provide any direct recourse to potential litigants whose ballots are stolen and delayed. In the 2020 election, USPS delivered more than [135 million mail-in ballots](#) to or from voters. Postal workers across the country have access to ballots and could abuse their position in the system to interfere in elections. In many federal circuits, a postal worker could intentionally withhold a ballot, depriving a potential litigant of their ability to vote, and the government would be immune from any attempts to seek individual recourse.

As it turns out, the USPS's commitment to rain-or-shine delivery can be disrupted by at least one kind of storm: the intentional theft or withholding of mail by USPS employees. And, until the Supreme Court settles this split, your options for recourse if you are targeted by a USPS employee may be very different depending on which court has jurisdiction over your case.

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