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United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

February 7, 2023

Lyle W. Cayce  
Clerk

ANNICE HALE,

*Plaintiff—Appellant,*

*versus*

THE UNITED STATES OF AMERICA,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:22-CV-983

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Before DAVIS, DUNCAN, and ENGELHARDT, *Circuit Judges.*

**J U D G M E N T**

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellee the costs on appeal to be taxed by the Clerk of this Court.



Certified as a true copy and issued  
as the mandate on Apr 03, 2023

Attest: *Lyle W. Cayce*

United States Court of Appeals  
for the Fifth Circuit

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 7, 2023

Lyle W. Cayce  
Clerk

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No. 22-20426  
Summary Calendar

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ANNICE HALE,

*Plaintiff—Appellant,*

*versus*

THE UNITED STATES OF AMERICA,

*Defendant—Appellee.*

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:22-CV-983

---

Before DAVIS, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

Plaintiff-Appellant Annice Hale appeals the dismissal of her Federal Tort Claims Act (FTCA) suit against Defendant-Appellee the United States. Because we agree with the district court that Hale's suit is barred by sovereign immunity, we AFFIRM.

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\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

No. 22-20426

## I. BACKGROUND

In her complaint, Hale alleges that the United States Postal Service (USPS) was negligent for: (1) providing her notice of a temporary change of address to third-parties; (2) failing to deliver her certified mail to the Harris County District Court; (3) closing her post office box without notice and then refusing to provide further rental services; (4) returning medication mailed to Hale back to the sender; and (5) failing to obtain proper certified mail signatures and instead having mail carriers use “COVID-19” or “Comptroller” as signatures to indicate that they have identified the customer to whom the mail is being delivered. The Government moved to dismiss Hale’s claims for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), and failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). The district court granted the Government’s motion, dismissing the action for lack of subject-matter jurisdiction on the grounds of sovereign immunity. Hale timely appealed.

## II. DISCUSSION

“We review a district court’s grant of a motion to dismiss based on exceptions to the FTCA de novo.”<sup>1</sup> The United States “is immune from suit save as it consents to be sued.”<sup>2</sup> Similarly, because the Postal Service is “an independent establishment of the executive branch of the Government of the United States,” it too “enjoys federal sovereign immunity absent waiver.”<sup>3</sup>

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<sup>1</sup> *Jeanmarie v. United States*, 242 F.3d 600, 602 (5th Cir. 2001) (citing *Leleux v. United States*, 178 F.3d 750, 754 (5th Cir. 1999)).

<sup>2</sup> *United States v. Sherwood*, 312 U.S. 584, 586 (1941) (citations omitted).

<sup>3</sup> *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 483-84 (2006) (internal quotations and citations omitted).

The FTCA constitutes a limited waiver of sovereign immunity,<sup>4</sup> and generally waives the Postal Service's sovereign immunity for "tort claims arising out of activities of the Postal Service."<sup>5</sup>

However, the waiver provided by the FTCA is limited by several exceptions, two of which the Government asserts are applicable here. The first, known as the postal-matter exception, preserves the Government's immunity for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter."<sup>6</sup> The second, known as the discretionary-function exception, preserves the Government's immunity "when the plaintiff's claim is based on an act by a government employee that falls within the employee's discretionary authority."<sup>7</sup> Accordingly, we must evaluate whether the FTCA provides a waiver of sovereign immunity or whether Hale's claims are barred by one of the exceptions.<sup>8</sup>

Turning first to the postal-matter exception, we find that several of Hale's claims fall within this exception. The Supreme Court made clear that in creating this exception, it was "likely that Congress intended to retain immunity, as a general rule, only for injuries arising, directly or

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<sup>4</sup> *United States v. Orleans*, 425 U.S. 807, 813 (1976).

<sup>5</sup> 39 U.S.C. § 409(c).

<sup>6</sup> 28 U.S.C. § 2680(b).

<sup>7</sup> *Tsolmon v. United States*, 841 F.3d 378, 382 (5th Cir. 2016) (citing 28 U.S.C. § 2680(a)).

<sup>8</sup> We note that Hale's argument that the United States waived sovereign immunity under Texas state statutes is without merit. The Texas statutes cited by Hale are inapplicable because a "plaintiff may only sue the United States if a federal statute explicitly provides for a waiver of sovereign immunity," and the FTCA, a federal statute, "provides the sole basis for recovery for tort claims against the United States." *In re FEMA Trailer Formaldehyde Prod. Liab. Litig. (Miss. Plaintiffs)*, 668 F.3d 281, 287 (5th Cir. 2012).

consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address.”<sup>9</sup>

Here, Hale is seeking damages for injuries related to USPS’s “numerous service process violations, service delay[] violations, [and] service non[]-delivery violations.” Hale’s claims that the USPS failed to deliver her certified mail to the Harris County District Court and returned her medication to the sender both arise from the alleged loss or miscarriage of a postal matter.<sup>10</sup> Similarly, Hale’s claim that USPS closed her “Business Rental Box” therefore causing her to lose “many Certified Mail Legal Documents,” also falls within the postal-matter exception.<sup>11</sup> Because the United States has not waived sovereign immunity for claims related to lost mail, the district court correctly held that it did not have subject-matter jurisdiction to hear Hale’s claims that USPS negligently failed to deliver her certified mail, closed her post office box, and failed to deliver her medication.

Turning next to the discretionary-function exception, we find that Hale’s claim that USPS improperly allowed for alternative signatures for certified mail during the Covid-19 pandemic falls within this exception. The Supreme Court has established a two-part test to determine whether the

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<sup>9</sup> *Dolan*, 546 U.S. at 489.

<sup>10</sup> *Id.* at 487 (noting that mail is “lost” if “it is destroyed or misplaced” and that mail is “miscarried” if “it goes to the wrong address” and that “both those terms refer to failings in the postal obligation to deliver mail in a timely manner to the right address”); *see also Ruiz v. United States*, 160 F.3d 273, 275 (5th Cir. 1998) (per curiam) (affirming the district court’s dismissal of the plaintiff’s claims that he failed to receive his mail as barred by 28 U.S.C. § 2680(b)).

<sup>11</sup> *See Georgacarakos v. United States*, 420 F.3d 1185, 1186-88 (10th Cir. 2005) (finding that the exception in § 2680(b) was applicable “because the heart of Plaintiff’s claim is . . . the damage caused by loss of the postal matter”).

No. 22-20426

discretionary-function exception is applicable to a particular claim.<sup>12</sup> The first prong requires that the challenged governmental action is a “matter of choice” for the employee.<sup>13</sup> The second prong requires that the judgment is “of the kind that the discretionary function exception was designed to shield.”<sup>14</sup>

We find that the manner in which signatures are provided for certified mail meets both prongs of the discretionary-function test. Under the first prong, Hale fails to meet her “burden of pointing to relevant authority to show the conduct was not a choice.”<sup>15</sup> Specifically, Hale points to no statute or regulation that requires a signature for certified mail. Instead, as the Government asserts, Congress has given the Postal Service broad authority to prescribe the necessary rules and regulations to implement its mail delivery system.<sup>16</sup>

For purposes of the second prong of the discretionary-function exception analysis, when “established governmental policy, as expressed or implied by statute, regulation, or agency guidelines, allows a Government agent to exercise discretion, it must be presumed that the agent’s acts are

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<sup>12</sup> *Berkovitz v. United States*, 486 U.S. 531, 536-37 (1988).

<sup>13</sup> “The requirement of judgment or choice is not satisfied if a ‘federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow.’” *United States v. Gaubert*, 499 U.S. 315, 322 (1991) (quoting *Berkovitz*, 486 U.S. at 536).

<sup>14</sup> The second prong “protects only governmental actions and decisions based on considerations of public policy.” *Id.* at 323 (quoting *Berkovitz*, 486 U.S. at 537).

<sup>15</sup> *Nichols v. United States*, No. 21-50368, 2022 WL 989467, at \*2 (5th Cir. Apr. 1, 2022) (per curiam) (unpublished) (citing *Campos v. United States*, 888 F.3d 724, 731 (5th Cir. 2018)). Unpublished opinions issued in or after 1996 are “not controlling precedent” except in limited circumstances, but they “may be persuasive authority.” *Ballard v. Burton*, 444 F.3d 391, 401 n.7 (5th Cir. 2006).

<sup>16</sup> 39 U.S.C. § 401(1)-(2).

grounded in policy when exercising that discretion.”<sup>17</sup> We find that Hale has done nothing to rebut the presumption that USPS’s exercise of discretion—altering its certified mail procedure—involved a policy judgment. As the Government notes, the Postal Service’s decision to allow for alternative signatures for certified mail in the wake of a global pandemic, was a policy choice made to “protect workers and the public from unnecessary contact and possible Covid exposure.” We thus conclude that the discretionary-function exception divests the federal courts of jurisdiction over Hale’s claim regarding USPS’s handling of certified mail signatures.

Finally, Hale argues that she filed a “temporary change of address” with USPS and that USPS violated its own policy by providing her new address to third-parties, including her bank, insurance company, and creditors. The district court held that it lacked jurisdiction over this claim because it falls within the postal-matter exception. Assuming arguendo that this claim does not fall within the postal-matter exception,<sup>18</sup> for a different reason, Hale has not shown that the Government has waived its immunity for this claim.

Subject to several exceptions noted above, the FTCA “waives the sovereign immunity of the United States, . . . for certain damages ‘caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to

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<sup>17</sup> *Gaubert*, 499 U.S. at 324.

<sup>18</sup> See *Dolan*, 546 U.S. at 489-90 (noting that because Congress preserved immunity under the postal-matter exception for “just three types of harm (loss, miscarriage, and negligent transmission),” it “expressed the intent to immunize only a subset of postal wrongdoing, not all torts committed in the course of mail delivery,” and therefore the postal-matter exception “require[s] a narrow[] reading”) (internal citation omitted).

the claimant in accordance with the law of the place where the act or omission occurred.’’<sup>19</sup> Here, Hale has provided no reasoning or authority that USPS employees would have committed a tort under Texas law if they were private actors who behaved the same way.<sup>20</sup>

Accordingly, we find that Hale’s claim that USPS negligently handled her notice of change of address fails to state a cause of action under the FTCA or any other statute that would provide a waiver of the Government’s sovereign immunity. Thus, we affirm the district court’s holding that it lacked subject-matter jurisdiction over this claim.

Because the district court correctly dismissed Hale’s complaint for lack of subject-matter jurisdiction, its judgment is AFFIRMED.

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<sup>19</sup> *Johnson v. Sawyer*, 47 F.3d 716, 727 (5th Cir. 1995) (quoting 28 U.S.C. § 1346(b)).

<sup>20</sup> *Cf. Raz v. United States*, 132 F.3d 1454, 1454 (5th Cir. 1997) (per curiam) (unpublished) (“In sum, the facts pleaded by [plaintiff] would not be sufficient to give rise to the duty based on the Louisiana precedents upon which he relies, and consequently, as held by the district court, he has failed to state a claim under the FTCA.”); *see also United States v. Smith*, 324 F.2d 622, 624-25 (5th Cir. 1963) (finding that the FTCA was inapplicable “where the claimed negligence arises out of the failure of the United States to carry out a statutory duty in the conduct of its own affairs . . . because it is impossible to equate the relationship of the parties in such a situation to any state law relationship where the person sought to be bound is a ‘private person’ who ‘would be liable to the claimant in accordance with the law’ of the state”).

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Civil Action Number: 4:22-cv-00983

United States District Court  
Southern District of Texas

ENTERED

March 25, 2022

Nathan Ochsner, Clerk

ORDER FOR CONFERENCE  
AND  
DISCLOSURE OF INTERESTED PARTIES

Judge Keith P. Ellison  
515 Rusk Avenue, Courtroom 3A Houston  
Houston, TX 77002  
on June 17, 2022 at 04:15 PM

COURT PROCEDURES AND ATTACHMENTS, WHICH ARE APPLICABLE TO CASES ASSIGNED TO JUDGE KEITH P. ELLISON CAN BE OBTAINED ON THE DISTRICT WEBSITE AT [www.txs.uscourts.gov](http://www.txs.uscourts.gov)

1. If Plaintiff would like a scheduling conference earlier than the date and time noted above, once the Answer has been filed by Defendant(s), please contact Arturo Rivera, Case Manager to Judge Ellison at (713) 250-5181 or email to [Arturo.Rivera@txs.uscourts.gov](mailto:Arturo.Rivera@txs.uscourts.gov) to schedule an earlier initial pretrial and scheduling conference.
2. Counsel shall file with the clerk within fifteen days from receipt of this order, a certificate listing all person, associations of person, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. If a group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded. If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.
3. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 90 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 90 days after the filing of the complaint may result in dismissal of this action by court on its own initiative.
4. After the parties confer as required by Fed. R. Civ. P. 26(f), counsel shall prepare and file not less than 10 days before the conference a joint discovery/case management plan containing the information required on the attached form.
5. All counsel shall prepare, fill in dates and bring the Scheduling/Docket Control Order to the initial pretrial and scheduling conference. The Court will enter the *pretrial order due date and trial date* on the scheduling order and may rule on any pending motions at the conference. Counsel may obtain this Court's form of Scheduling/Docket Control Order from the district website.
6. Counsel who file or remove an action must serve a copy of this order with the summons and complaint or with the notice of removal.
7. Attendance by an attorney who has authority to bind the party is required at the conference either in person or by telephone. Please inform the Court if you wish to participate by telephone.
8. Counsel shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference shall advise the court of the results of their discussions.
9. A person litigating pro se is bound by the requirements imposed upon counsel in this Order.
10. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs.

By Order of the Court

**ENTERED**

July 25, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ANNICE HALE,

Plaintiff,

VS.

THE UNITED STATES OF AMERICA,

Defendant.

§  
§  
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CIVIL ACTION NO. 4:22-CV-00983

**FINAL JUDGMENT**

Plaintiff Annice Hale brought this suit against Defendant United States of America.

(Docs. 1, 13.) Defendant moved to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction, or in the alternative, for failure to state a claim under Rule 12(b)(6). (Doc. 23.) The Court granted Defendant's motion and dismissed all of Plaintiff's claims with prejudice on July 22, 2022.

Pursuant to Federal Rule of Civil Procedure 58(a), and for the reasons set forth at the hearing, final judgment is hereby ENTERED for Defendant United States of America.

**IT IS SO ORDERED.**

Signed at Houston, Texas on July 22, 2022.

  
Keith P. Ellison  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

ANNICE HALE 4:22-cv-00983

VS. HOUSTON, TEXAS

THE UNITED STATES OF AMERICA JULY 22, 2022

TRANSCRIPT OF MOTION HEARING AND SCHEDULING CONFERENCE  
HEARD BEFORE THE HONORABLE KEITH P. ELLISON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MS. CATINA HAYNES PERRY  
U.S. Attorney's Office  
1000 Louisiana Street  
Suite 2300  
Houston, Texas 77002

FOR THE DEFENDANT: MS. ANNICE HALE  
901 s. Kobayashi Road, No. 2014  
Webster, Texas 77598

Official Court Reporter: Mr. David S. Smith, CSR, RPR, CRR  
Official Court Reporter  
United States District Court  
Southern District of Texas  
515 Rusk Street, Room 8004  
Houston, Texas 77002

Proceedings recorded by mechanical stenography,  
transcript produced via computer.

## PROCEEDINGS

2 THE COURT: Good afternoon and welcome. We're on the  
3 record in Hale versus United States of America.

4 We'll take appearances of the parties or  
5 counsel beginning with the plaintiff.

6 Ms. Hale, are you present?

7 MS. HALE: Yes, sir, I am. I didn't understand what  
8 you asked me, sir.

9                   THE COURT: Yes. I was asking to find out who is on  
10                  the phone.

11 For the government?

12 MS. PERRY: AUSA Catina Haynes Perry for the United  
13 States.

14 THE COURT: Welcome to both of you.

15 MS. HALE: Thank you.

16 THE COURT: I understand we're having trouble getting  
17 the initial docketing order completed, but I called this status  
18 hearing in any event just to see if I could better understand  
19 the plaintiff's claims.

20 MS. HALE: Okay.

21 THE COURT: Ms. Hale, if you want to, in your own words  
22 explain to me what you're asking for.

23 MS. HALE: Okay. So my legal basis for claim is under  
24 Title 20 -- I guess Code 28, 131; but anyway, so violations  
25 of -- postal violations of policy and then -- well, they're

1 giving my address -- and they shouldn't have -- to the public,  
2 to my -- I would guess my bank and then outside of that I got  
3 them closing my box so that would be some civil suit for civil  
4 rights. They closed my box. They refused to open my box.  
5 They failed to notice me or give me notice that they were  
6 closing my box and those are violations under 28 as well and 39  
7 and they harassed me and retaliated against me and after they  
8 signed my legal documents or I put something in a legal  
9 document and they deliberately -- because I complained on them,  
10 they deliberately signed my signature of my green card return  
11 receipt for the legal document COVID-19, okay? And so then  
12 they harassed me with that in retaliation.

13 So after I filed civil suit, they did the same  
14 thing further. They signed another legal document that I was  
15 sending out with the comptroller so they been harassing me and  
16 then they stopped delivering my mail. So all of these are  
17 violations under the 28 code, and that's why I filed suit  
18 against them because they won't stop harassing me and  
19 retaliating against me.

20 THE COURT: Okay. Anything further?

21 MS. HALE: No.

22 THE COURT: Okay, Ms. Perry?

23 MS. PERRY: Yes. The requirement of the United States  
24 is that the plaintiff complaints represent to items that have  
25 been accepted as postal matters under the SCCA 28 USC 2680(b).

1 immunity part; and then I've got under United States Code 409:  
2 "Suits by and against the Postal Service shall not be immune  
3 under any doctrine of sovereign immunity from suits in Federal  
4 Court by any person for any violation of any of those  
5 provisions of law by any officer or employee of the Postal  
6 Service."

7 And I filed this one on, like I said, March the  
8 25th. And then on here it's got I have exhaustion of remedies.  
9 It says in accordance with the administrative remedies pursuant  
10 to 28 USC 2675(a) I have received on November the 2nd, 2020,  
11 the final answer to my March 31st, 2021, sovereign claim  
12 against the Postal Service and then -- which it makes the  
13 causes of action, the claims for relief.

14 THE COURT: Ms. Perry?

15 MS. PERRY: Yes?

16 THE COURT: Is there anything that you want to say?

17 MS. PERRY: I think the issue is not about the service  
18 of process or exhaustion of remedies, but in particular the  
19 subject matter jurisdiction is the issue and just because  
20 someone exhausts remedies doesn't mean that there is subject  
21 matter jurisdiction. SCCA provides a waiver of sovereign  
22 immunity; but there are exceptions to that waiver and the  
23 complaints raised by the plaintiff fall within those exceptions  
24 that I mentioned previously for postal matters, the  
25 discretionary function exception and, therefore, the Court

1 the other things that they have done, it's not in service at  
2 all. It's a violation of policy. It's a violation of my civil  
3 rights. And I think that the Court has jurisdiction over that,  
4 and I've established sovereign immunity should be waived.

5 THE COURT: I do believe sovereign immunity is  
6 interpreted very broadly. I agree with you there.

7 MS. HALE: Okay.

8 THE COURT: And I would change it if I could; but I'm  
9 forced to make my decisions based on the laws that exist, not  
10 the way I wish it would exist and I'm just afraid that  
11 sovereign immunity hasn't been waived for the letter-carrying  
12 functions of the Postal Service or the discretionary actions  
13 taken by the Postal Service. I wish I --

14 MS. HALE: Okay.

15 THE COURT: Not every harm in this world has a remedy,  
16 and I'm afraid this is one of them. I'm willing to believe you  
17 were mistreated and the Postal Service acted badly, but there's  
18 nothing I can do to fix that except express my sympathy.

19 MS. HALE: Okay. So, well, outside of that, I'm  
20 standing on the law; and the law says that -- I quoted it; and  
21 then rather than quote it, I can write it. So, therefore, I --  
22 you already told me to proceed forward, that sovereign immunity  
23 was waived and you told her to answer and outside of my serving  
24 her correctly --

25 THE COURT: Who told you sovereign immunity was waived?

1 MS. HALE: Okay. When I initially said, they said --  
2 after he read it, he said you can proceed forward. After you  
3 read it, you told her -- you said, "Give me a answer on the  
4 date that the" -- and then they canceled it, the conference.  
5 They was supposed to give me an answer in 20 days or something  
6 like that. We moved on with the process, and so it was  
7 established. And like -- and my point was -- my point was that  
8 that Ms. -- the defense's motion to dismiss is not on my  
9 initial March the 25th, 2022, complaint file. Their motion to  
10 dismiss, if you look at it on No. 20 -- well, where she try  
11 to -- okay. The motion to dismiss, when you look at it, it is  
12 on my June -- my June 27th complaint. She didn't file a motion  
13 to dismiss. She was getting ready to answer and then --  
14 June 27th. She answered for June 27th. She didn't say  
15 anything about it. And so what happened with that, on June the  
16 27th there's a member complaint so she never answered to my  
17 first complaint. The amended complaint and then it was a  
18 substituted complaint. I filed a motion to get that complaint,  
19 a substitute complaint, as opposed to them putting it in an  
20 amended complaint because that would make the defendant have to  
21 answer to the March 25th complaint as opposed to answering to  
22 the June 27th complaint because, like I said in the beginning,  
23 she got all the complaints. She got the March 27th complaint  
24 and the June 27th complaint when I filed the correct summons.  
25 The error here is why we're -- the cause of this is because I

1 didn't serve her correctly and I got an extension for not  
2 serving her correctly and then she sent me -- and then I  
3 submitted it and then she said that in that that I did not have  
4 jurisdiction. The Court has not jurisdiction to hear because  
5 sovereign immunity was not waived. At first what -- I don't  
6 know what was going to be at first; but like I said, beginning  
7 March 25th there was -- sovereign immunity was established for  
8 us to proceed and her to answer.

9 THE COURT: You're looking at 39 USC Section 409; is  
10 that right?

11 MS. HALE: Yes. You said 39(b)?

12 THE COURT: 39 USC 409.

13 MS. HALE: 409, yes, I got it. On my initial complaint  
14 it says Code 28 USC Section 2671 through 2680 and then it says  
15 2401(b) 39 USC 409 and then it says all the cause of actions.  
16 But when I got -- I would guess it was put it into the system  
17 and it was another code on there that says: "809 statutory  
18 actions."

19 So outside of -- I would guess it's 809  
20 statutory actions is for civil actions.

21 THE COURT: What section are you quoting? I'm  
22 confused.

23 MS. HALE: Okay. So on that sheet the service sheet,  
24 the first one, it has in there included the 809 other statutory  
25 actions added to the complaint, I would guess. It's -- let me

1 it doesn't have it on the docket sheet. Although I filed it in  
2 my complaint, it does not have the docket sheet the 28 code.  
3 It just has the 39, 49 Postal code and then it has other  
4 statutory claims, other statutory actions. But on my complaint  
5 it says all of those except 809. I mean -- not 809. 890. And  
6 that's where I found it at. Like I said, the Southern District  
7 of Texas Houston civil docket or case. It says: "U.S.  
8 District Court."

9 THE COURT: Ms. Perry?

10 MS. PERRY: Yes?

11 THE COURT: Anything you want to add?

12 MS. PERRY: I will just say I know plaintiff has been  
13 referring to 39 USC 409; but under Provision C it states that  
14 "The provisions of Chapter 171 and all other provisions of  
15 Title 28 relating to tort claims shall apply to tort claims  
16 arising out of activities of" --

17 THE COURT: You're going too fast. You're going too  
18 fast.

19 MS. PERRY: I'm sorry. My apologies.

20 Part C of the provision that the plaintiff  
21 cites to in 39 USC 409 states: "The provisions of Chapter 171  
22 and all other provisions of Title 28 relating to tort claims  
23 shall apply to tort claims arising out of activities of the  
24 Postal Service."

25 So that brings us back to 28 USC 2680. Parts A

1 and B, which I previously referenced where the plaintiff's  
2 complaints are excepted from the waiver of sovereign immunity.

3 MS. HALE: Okay. And then I --

4 THE COURT: Let's Ms. Perry finish, please.

5 MS. HALE: Okay. Okay.

6 MS. PERRY: There is no waiver of sovereign immunity  
7 for the plaintiff's claim; and in the motion to dismiss, both  
8 her original complaint and her supplemental complaints were  
9 adjourned. It's all-encompassing of all the complaints raised  
10 by the plaintiff.

11 MS. HALE: Okay. So I object. And I want to say that  
12 I established that in my original complaint and it says  
13 according to 39 Code 409, "Suits by and against the Postal  
14 Service, except as otherwise provided in this title, United  
15 States District Court shall have original but not exclusive  
16 jurisdiction over all the actions brought by the" -- "by or  
17 against the Postal Service. Any actions brought in the state  
18 court in which the Postal Service is a party may be removed to  
19 appropriate district court under the provision of 8929 shall be  
20 considered to be" -- it says that "The Postal Service shall be  
21 considered to be a person and used in the provision of law  
22 involved and shall not be immune under any" -- excuse me.

23 B says: "shall not be immune under any other  
24 doctrine of sovereign immunity or suit in Federal Court by any  
25 person for any violation of any of those provisions of law by

1 an officer or employee of the Postal Service" if I establish it  
2 in my complaint, and it is established. It says: "The  
3 provision of Chapter 171 and all the other provisions of  
4 Title 28 USC relating to claims shall apply to the tort claims  
5 arising out of activities of the Postal Service."

6 And it goes on to say: "39 USC 409(c)."

7 THE COURT: I have 409(c). I have that in front of me.  
8 It doesn't deal with our situation.

9 I have your civil cover sheet. It says:  
10 "Nature of suit."

11 And you said: "890 and other statutory  
12 actions."

13 That's what you said about --

14 MS. HALE: Okay. So my -- okay, so my -- okay. Like I  
15 said on there, my first page of my original complaint on  
16 March 25th was an affidavit or something like -- it is an  
17 affidavit.

18 THE COURT: For motions to dismiss we're talking about  
19 allegations in the complaint. We're not talk about evidence.  
20 We're talking about allegations.

21 MS. HALE: Okay. So I've got allegations. What you  
22 asked me was my cover sheet. So I got a cover sheet. Just my  
23 first page is -- my complaint on March 25th is a affidavit of  
24 the code that's necessary to file my complaint. I wish my  
25 complaint -- and then after which -- after which the United

1 States -- this docket sheet adds this 89 other statutory  
2 actions.

3 THE COURT: I'm sorry. I just don't have jurisdiction  
4 here. I'm very sorry. You've tried your best. I appreciate  
5 your effort, but I'm going to have to dismiss this case. I'm  
6 very sorry.

7 MS. HALE: Okay, so I have a right to appeal? Hello?

8 (The proceedings were adjourned.)

9 \* \* \* \*

10 REPORTER'S CERTIFICATE

11 I, David S. Smith, CSR, RPR, CRR, Official  
12 Court Reporter, United States District Court, Southern District  
13 of Texas, do hereby certify that the foregoing is a true and  
14 correct transcript, to the best of my ability and  
understanding, from the record of the proceedings in the  
above-entitled and numbered matter.

15 /s/ David S. Smith  
16 Official Court Reporter

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LAW DEPARTMENT  
NATIONAL TORT CENTER.



VIA CERTIFIED MAIL  
7020 2450 0002 0564 2140

November 2, 2021

Ms. Annice Hale  
901 S. Kobayashi Road, #2014  
Webster, TX 77598

Re: Your Claim  
Date of Incident: March 22, 2021  
NTC File No.: NT202127773

Dear Ms. Hale:

This is in reference to the request for reconsideration of the administrative claim filed under the provisions of the Federal Tort Claims Act, as a result of injuries allegedly sustained on or about March 22, 2021.

Based on our reconsideration of the facts and circumstances set out in the claim file, and the applicable law, we do not find the United States Postal Service negligent in this matter. Again, the FTCA specifically excludes liability for claims based upon the loss, miscarriage, or negligent transmission of letters or postal matter (See 28 U.S.C. §2680(b)). Accordingly, this claim is denied.

In accordance with 28 U.S.C. § 2401(b) and 39 C.F.R. 912.9(a), if dissatisfied with the Postal Service's final denial of an administrative claim, a claimant may file suit in a United States District Court no later than six (6) months after the date the Postal Service *mails* the notice of that final action. Accordingly, any suit filed in regards to this denial must be filed no later than six (6) months from the date of the mailing of this letter, which is the date shown above. Further, note the United States of America is the only proper defendant in a civil action brought pursuant to the Federal Tort Claims Act and such suit may be heard only by a federal district court.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Mandernach".

Ann Mandernach  
Tort Claims Examiner/Adjudicator  
Tel: 314/345-5847  
cc: Jimmy Lopez - Tort Claim Coordinator  
File No. 770-21-509188