No. 24-351

In the Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL., PETITIONERS

v.

LEBENE KONAN

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.*, generally waives the United States' sovereign immunity for suits seeking damages "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of an employee of the federal government "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b)(1). The FTCA, however, excepts from that waiver of immunity "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. 2680(b). The question presented is as follows:

Whether a plaintiff's claim that she and her tenants did not receive mail because Postal Service employees intentionally did not deliver it to a designated address arises out of the "loss" or "miscarriage" of letters or postal matter, 28 U.S.C. 2680(b).

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellees below) are the United States Postal Service and the United States of America.

Respondent (plaintiff-appellant below) is Lebene Konan.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 96 F.4th 799. The opinion and order of the district court (Pet. App. 14a-35a) are reported at 652 F. Supp. 3d 721.

JURISDICTION

The judgment of the court of appeals was entered on March 20, 2024. A petition for rehearing was denied on June 4, 2024 (Pet. App. 36a-37a). On August 26, 2024, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including October 2, 2024, and the petition was filed on September 27, 2024. The petition for a writ of certiorari was granted on April 21, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-3a.

INTRODUCTION

The Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671 *et seq.*, waives the United States' sovereign immunity for certain tort claims. As an exception to that waiver, the so-called postal exception preserves immunity for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. 2680(b). In *Dolan* v. *United States Postal Service*, 546 U.S. 481 (2006), this Court interpreted that exception to cover "injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address." *Id.* at 489.

In this case, the question presented is whether the postal exception applies to claims by respondent alleging that mail failed to arrive at two of her residences because employees of the United States Postal Service (USPS or Postal Service) *intentionally* refused to deliver it. The answer is yes. Respondent seeks damages for "injuries arising, directly or consequentially, because mail * * * fail[ed] to arrive at all"—precisely the type of claim that *Dolan* recognized as covered by the postal exception. 546 U.S. at 489. Indeed, respondent's claims satisfy two of the exception's plain terms. First, her claims arise out of the "miscarriage" of mail because they are based on the failure of mail to arrive or to be carried properly. And second, her claims arise out of the "loss" of mail because they are based on the deprivation of mail.

The court of appeals nevertheless held that the postal exception does not apply. The court did so pri-

marily on the view that the exception does not apply to "intentional acts." Pet. App. 5a. But that view cannot be squared with the ordinary meaning of either "miscarriage" or "loss," which include both unintentional and intentional acts. Moreover, far from being limited to unintentional acts, "miscarriage" tends to connote intentional wrongdoing, just as "misconduct" and other words beginning with the prefix "mis-" do. And "loss" should be construed to bear the same meaning as it does in the FTCA's waiver provision, where Congress made clear that it encompasses deprivations generally, including those caused intentionally. 28 U.S.C. 1346(b)(1). In contrast, the text of the postal exception shows that Congress knew how to exclude intentional conduct when it wanted to: by using the modifier "negligent," which it did only before the term "transmission." 28 U.S.C. 2680(b).

In addition, excluding intentional acts from the exception's scope would upend the balance that Congress struck and expose the government to precisely the kinds of suits that Congress meant to foreclose. The Postal Service handles more than 300 million pieces of mail on any given day. Under the logic of the decision below, any person whose mail is not properly delivered could bring an FTCA suit—and potentially proceed to burdensome discovery—so long as she alleges that a postal employee acted intentionally. Congress enacted the postal exception specifically to protect the work of the Postal Service from such disruptive litigation. Because the court of appeals erred in concluding that the postal exception does not apply to respondent's claims, this Court should reverse.

STATEMENT

A. The Federal Tort Claims Act

"Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *FDIC* v. *Meyer*, 510 U.S. 471, 475 (1994). The FTCA, enacted in 1946, sets forth a "limited waiver" of that immunity, subject to certain exceptions. *Molzof* v. *United States*, 502 U.S. 301, 304-305 (1992); see ch. 753, Tit. IV, 60 Stat. 842.

The FTCA's waiver of sovereign immunity appears in 28 U.S.C. 1346(b), the Act's "principal provision." *Smith* v. *United States*, 507 U.S. 197, 201 (1993) (citation omitted). Section 1346(b) grants federal district courts jurisdiction over specified tort claims. 28 U.S.C. 1346(b)(1). Those claims are:

> claims [1] against the United States, [2] for money damages, * * * [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Ibid.; see 28 U.S.C. 2674 (making the United States "liable" on claims described in Section 1346(b)). In authorizing federal courts to hear those claims, Section 1346(b) "delineates the scope of the United States' waiver of sovereign immunity." *Smith*, 507 U.S. at 201.

The FTCA's exceptions to that waiver of sovereign immunity appear in 28 U.S.C. 2680. Congress enacted those exceptions—13 in all—"to protect certain important governmental functions and prerogatives from

disruption." *Molzof*, 502 U.S. at 311. If a claim falls within an exception, "the bar of sovereign immunity remains." *Dolan* v. *USPS*, 546 U.S. 481, 485 (2006).

One of the exceptions is the "postal exception" in Section 2680(b). *Dolan*, 546 U.S. at 487. That exception states:

> The provisions of this chapter and section 1346(b) of this title shall not apply to * * * [a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

28 U.S.C. 2680(b). By its terms, the postal exception does not "immunize all postal activities." *Dolan*, 546 U.S. at 489. Instead, the exception preserves the United States' immunity for claims arising out of "three types of harm": "loss, miscarriage, and negligent transmission" of mail. *Id.* at 490.

This Court addressed the scope of the postal exception in *Dolan*. The plaintiff in that case had sued the United States under the FTCA, alleging that mail left on her porch by postal employees had caused her to trip and fall. *Dolan*, 546 U.S. at 483. The Court allowed the suit to proceed, holding that the postal exception did not apply. *Ibid.* In so holding, the Court interpreted the exception "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." *Id.* at 489. The Court identified "[i]llustrative instances" of such injuries as including "personal or financial harms arising from nondelivery or late delivery of sensitive materials or information (*e.g.*, medicines or a mortgage foreclosure notice)." *Ibid.* "Such harms," the Court explained, "are the sort primarily identified with the Postal Ser-

vice's function of transporting mail throughout the United States." *Ibid.*

B. The Present Controversy

1. Respondent Lebene Konan owned several properties in the Dallas-Fort Worth area. Pet. App. 39a. Those properties included two houses in Euless, Texas, a block apart: one at 1207 Saratoga Drive, and the other at 1116 Trenton Lane. *Ibid.* Respondent rented out rooms in both houses to numerous tenants, but sometimes stayed in the houses herself. *Id.* at 41a, 56a.

When the Postal Service delivers mail to 1207 Sarasota Drive or 1116 Trenton Lane, it does not do so at the house itself. Pet. App. 41a. Instead, the Postal Service delivers mail to a centralized delivery point, where multiple residences receive their mail. *Ibid.* Use of a centralized delivery point is more efficient than dropping off mail at every door and is now the Postal Service's "preferred mode of delivery," particularly in new residential or commercial developments. USPS, *Postal Operations Manual, POM Issue 9*, at § 631 (rev. Apr. 30, 2022), perma.cc/py8f-bt58 (*Postal Operations Manual*); see USPS, *Mode of Delivery* 1 (Mar. 2024), perma.cc/gx7x-2y8m (*Mode of Delivery*).

For 1207 Sarasota Drive, the centralized delivery point is a cluster box unit, located on the tree lawn in front of another house just down the street; for 1116 Trenton Lane, the centralized delivery point is a different cluster box unit, also several doors down. See Pet. App. 41a; *Mode of Delivery* 1. Each cluster box unit is a free-standing structure that contains multiple mailboxes, one for each house in the area. Pet. App. 41a. Residents access their house's mailbox using keys provided by the Postal Service. *Ibid.*

2. In 2022, after exhausting administrative remedies under the FTCA, respondent brought suit in federal district court, alleging that Postal Service employees had intentionally refused to deliver mail addressed to 1207 Sarasota Drive or 1116 Trenton Lane. Pet. App. 47a-48a, 54a-55a. The employees in question were Jason Drake, the postmaster of the local post office in Euless, and Raymond Rojas, a mail carrier whose route included both cluster box units. *Id.* at 39a.

According to respondent, Drake and Rojas had intentionally refused to deliver the mail because they "d[id] not like the idea" that she was a "black person" who leased rooms to "white people." Pet. App. 46a. Respondent alleged that Rojas had changed the lock on the mailbox for 1207 Saratoga Drive so that only a white tenant could access it, *id.* at 42a-43a; that after respondent complained about the new lock, she was told that mail addressed to 1207 Saratoga Drive would not be delivered until the Inspector General of the Postal Service verified the identity of the property's owner, *id.* at 43a-44a; that even after the Inspector General directed Drake and Rojas to deliver all mail addressed to 1207 Saratoga Drive, Drake instructed postal employees to withhold that mail unless the people to whom the mail was addressed provided proof that they were actually living there, *id.* at 44a-45a; that Rojas withheld mail addressed to 1207 Saratoga Drive, and "return[ed]" it to the Euless post office, instead of delivering it, *id.* at 45a-46a; and that the mail was marked "'undeliverable'" and "returned by USPS" to whoever sent it, *id.* at 45a. Respondent further alleged that after Rojas discovered that respondent also owned the house at 1116 Trenton Lane, he "started to withhold mail addressed to that location as well." *Id.* at 48a.

Based on Drake's and Rojas's alleged conduct, respondent asserted various state-law tort claims under the FTCA. Pet. App. 52a-62a. The district court found it "unclear" which defendants respondent had sued under that statute. *Id.* at 23a. The court recognized, however, that the United States is "the sole party" that the FTCA authorizes a plaintiff to sue. *Id.* at 26a; see 28 U.S.C. 1346(b)(1). The court therefore held that respondent could not pursue FTCA claims against the Postal Service, Rojas, or Drake. Pet. App. 25a-26a.[1]

Respondent claimed that by refusing to deliver her mail, the United States had "knowingly and willfully converted [her] property." Pet. App. 59a. Respondent thus sought damages for "loss of medical records" and "loss of access to time-sensitive mail (including tax statements and financial mail)." *Id.* at 53a. Respondent further claimed that by refusing to deliver her tenants' mail, the United States had created a nuisance and had intentionally interfered with her prospective business relations. *Id.* at 56a-58a. Respondent accordingly sought damages for "the loss of significant income relating to the [r]esidences" on the theory that "tenants leave when they do not receive mail and prospective tenants do not choose to live at either [r]esidence once they learn that Rojas refuses to deliver their mail." *Id.* at 53a. Finally, respondent claimed that by refusing to deliver her and her tenants' mail, the United States had intentionally inflicted emotional distress on her. *Id.* at 59a-62a. Re-

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[1] On appeal, respondent "d[id] not contest the dismissal of the USPS as a party." Resp. C.A. Br. 8. In stating that "[respondent] concedes that USPS is the appropriate defendant in this FTCA action," the court of appeals made an apparent typographical error. Pet. App. 4a; see *id.* at 4a n.2 (recognizing that "FTCA claims may be brought against only the 'United States'") (citation omitted).

spondent therefore sought damages for "humiliation and emotional distress." *Id.* at 53a.[2]

3. The district court dismissed respondent's FTCA claims. Pet. App. 14a-35a. The court held that all of respondent's FTCA claims fall within the postal exception —and are thus barred by sovereign immunity—because they arise out of the "loss" or "miscarriage" of "letters or postal matter." *Id.* at 28a (citation omitted). The court rejected respondent's contention that the postal exception applies "only to negligent acts, not to intentional torts." *Id.* at 27a. The court explained that while "the word 'negligent' modifies * * * the noun 'transmission'" elsewhere in the exception, "[n]o such qualifier modifies the nouns 'loss' or 'miscarriage,' indicating an intent to retain immunity for intentional acts of 'loss' or 'miscarriage' of 'letters or postal matter.'" *Ibid.* (citations omitted).

4. The court of appeals reversed the dismissal of respondent's FTCA claims and remanded for further proceedings. Pet. App. 1a-13a. The court held that the postal exception does not apply to respondent's claims. *Id.* at 5a-9a. The court took the view that her claims do not arise out of the "loss" of letters or postal matter because a "loss" must be "*unintentional*" and respondent's "dam-

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[2] Respondent also asserted claims against Drake and Rojas in their individual capacities, alleging that they had conspired to violate her right to equal protection, in violation of 42 U.S.C. 1981 and 1985. Pet. App. 62a-63a. The district court dismissed those claims, *id.* at 20a, and the court of appeals affirmed, *id.* at 10a-13a, finding "no facts" to "support [respondent's] assertion that Rojas and Drake continued to deliver mail to any similarly situated white property owners while denying her delivery of mail," *id.* at 11a. This Court denied respondent's cross-petition for a writ of certiorari. See 2025 WL 1151219 (No. 24-495). Respondent's Section 1981 and Section 1985 claims are not at issue here.

ages arose from USPS's *intentional* failure to carry mail to her properties." *Id.* at 6a-7a. The court likewise took the view that respondent's claims do not arise out of the "miscarriage" of letters or postal matter. *Id.* at 7a-8a. The court stated that there can be no "miscarriage" without a "*preced*[*ing*]" "carriage" (or attempt at "carriage"). *Ibid.* And the court held that the mail at issue "was not carried at all" because "USPS intentionally fail[ed] or refuse[d] to deliver [it]" and "never *mistakenly* deliver[ed] [it] to a third party." *Id.* at 8a.

SUMMARY OF ARGUMENT

The postal exception to the FTCA's waiver of sovereign immunity covers any claim arising out of the "loss" or "miscarriage" of letters or postal matter. 28 U.S.C. 2680(b). Respondent's claims are squarely covered by that exception, and the court of appeals erred in holding otherwise.

I. Respondent's claims fall within the FTCA's postal exception because they arise out of the "miscarriage" of mail. The ordinary meaning of "miscarriage" is failure of mail to arrive or to be carried properly. That is what respondent alleges here: that mail addressed to her two residences failed to arrive because the mail was wrongly carried somewhere else.

Respondent's contrary interpretations of "miscarriage" cannot be squared with the term's ordinary meaning. First, respondent contends that a "miscarriage" of mail may occur only mistakenly and not intentionally. But dictionary definitions of "miscarriage" do not limit the term in that way. To the contrary, the term tends to connote intentional misconduct, just as other words that begin with the prefix "mis-" do. Second, respondent contends that there can be no "miscarriage" without a preceding carriage (or attempt at carriage). But the

ordinary meaning of "miscarriage" contains no such temporal requirement. And even if it did, it would be satisfied here because the mail at issue was in constant carriage from the moment that it was deposited in the Postal Service's system. Third, respondent suggests that mail is not miscarried unless it goes to the wrong address. But going to the wrong address is only one form of "miscarriage," and in any event, respondent alleges that the mail went to the wrong address when it was carried back to the local post office and then returned to sender.

Respondent's interpretations of "miscarriage" also cannot be squared with the postal exception's objectives. Congress enacted the postal exception to ensure that the essential work of the Postal Service would not be disrupted by the threat of damages suits and to avoid exposure of the United States to liability for excessive and fraudulent claims. Respondent's approach, however, would undermine both of those objectives by permitting plaintiffs to pursue FTCA claims against the United States merely by alleging that postal employees acted intentionally in failing to deliver, or to deliver properly, the mail. Because an employee's intent is easy to allege and hard to disprove, the government would likely be inundated with suits that entail burdensome discovery.

Making matters worse, respondent's interpretations of "miscarriage" would require judges and litigants to grapple with a host of unfamiliar questions merely to determine whether the postal exception applies. For instance, how does a line between intentional and unintentional failures to deliver mail apply when an employee implements a legal restriction on delivering mail based on a factual mistake? And what qualifies as carriage "preceding" the miscarriage of mail, or mail going to the

"wrong" address, if the facts here somehow do not qualify? Under respondent's approach, judges and litigants would have to confront such issues before even reaching the merits of the underlying state-law claim. In contrast, the ordinary meaning of "miscarriage" of mail is easy to apply; judges and litigants need only ask whether a claim arises out of a failure of mail to arrive or to be carried properly. Administrative simplicity thus cuts strongly in favor of the ordinary-meaning approach.

II. Respondent's claims also fall within the FTCA's postal exception for an independent reason: They arise out of the "loss" of mail. The ordinary meaning of "loss" is deprivation—the failure to keep, have, or get something. Respondent's allegation that the mail failed to arrive fits that definition.

Respondent again contends that her claims do not arise out of the "loss" of mail because "loss" refers only to deprivations caused unintentionally. But the ordinary meaning of "loss" encompasses deprivations generally, including those caused intentionally. And Congress embraced that ordinary meaning in the FTCA's principal provision, 28 U.S.C. 1346(b), which waives the United States' sovereign immunity for claims for "loss of property" caused "negligent[ly] *or wrongful*[*ly*]" (*i.e.*, intentionally). 28 U.S.C. 1346(b)(1) (emphasis added). "Loss" presumptively bears the same ordinary meaning in the postal exception. And nothing in the FTCA's text, history, or purposes rebuts that presumption. To the contrary, those traditional tools of statutory construction confirm that "loss" bears the same meaning in both provisions. Indeed, respondent's interpretation of "loss," like her interpretations of "miscarriage," cannot be squared with the postal exception's objectives or the need for an administrable jurisdictional rule.

ARGUMENT

The FTCA's postal exception preserves the United States' sovereign immunity for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. 2680(b). In *Dolan* v. *United States Postal Service*, 546 U.S. 481 (2006), this Court interpreted that exception to cover "injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address." *Id.* at 489. Respondent's claims allege just that: "injuries arising, directly or consequentially, because mail * * * fail[ed] to arrive at all." *Ibid.* The postal exception therefore preserves the United States' sovereign immunity for those claims.

I. RESPONDENT'S CLAIMS FALL WITHIN THE FTCA'S POSTAL EXCEPTION BECAUSE THEY ARISE OUT OF THE "MISCARRIAGE" OF MAIL

All of respondent's claims rest on the same basic allegation: that postal employees improperly failed to deliver mail to her residences. Pet. App. 52a-62a. That allegation perfectly describes a "miscarriage" of mail, 28 U.S.C. 2680(b)—that is, a failure of the mail to arrive or to be carried properly. And that is so even though the alleged "miscarriage" of mail was intentional. Because all of respondent's claims arise out of the "miscarriage" of mail, they fall within the FTCA's postal exception and should be dismissed.

A. Respondent's Claims Satisfy The Ordinary Meaning Of "Miscarriage" Of Mail

1. This Court usually interprets statutory terms according to their ordinary meaning at the time of enactment. See, *e.g.*, *Wisconsin Cent. Ltd.* v. *United States*, 585 U.S. 274, 277 (2018). When Congress enacted the

postal exception in 1946, *Webster's Second* defined "miscarriage" as "[f]ailure (of something sent) to arrive" or "[f]ailure to carry properly." *Webster's New International Dictionary of the English Language* 1568 (2d ed. 1942) (*Webster's Second*).

Other contemporaneous dictionaries provided similar definitions. For example, the *Oxford English Dictionary* defined "[m]iscarriage" as "failure (of a letter, etc.) to reach its destination" or "[f]ailure to carry or convey properly." 6 *Oxford English Dictionary* 497 (1933) (*Oxford English Dictionary*). The *American College Dictionary* defined "miscarriage" as "failure of a letter, etc., to reach its destination" or "transmission of goods not in accordance with the contract of shipment." *American College Dictionary* 776 (1948) (*American College Dictionary*). And *Funk & Wagnalls* defined "miscarriage" as [f]ailure to transport properly, or carry to intended destination, as freight or a letter." *Funk & Wagnalls New Standard Dictionary of the English Language* 1585 (1946) (*Funk & Wagnalls*).

Those definitions capture what this Court said about the meaning of "miscarri[age]" in *Dolan*: that the term "refer[s] to failings in the postal obligation to deliver mail in a timely manner to the right address." 546 U.S. at 487. Put simply, someone who is entrusted with carrying the mail assumes a duty of carriage, and a "miscarriage" of mail is a failure to fulfill that duty, whether by failing to carry the mail to its destination or by failing to carry it properly.

2. Respondent's allegations fit that understanding of "miscarriage" to a tee. She alleges that mail addressed to her two residences failed to arrive because the mail was wrongly carried back to the local post office and eventually to whoever sent it. See p. 7, *supra*. Respond-

ent thus alleges both a "[f]ailure (of something sent) to arrive" and a "[f]ailure to carry properly"—the very definitions of "miscarriage." *Webster's Second* 1568. And those failures form "the basis" for respondent's tort claims, *United States* v. *Shearer*, 473 U.S. 52, 55 (1985) (plurality opinion)—each one of which seeks damages for "injuries arising, directly or consequentially, because mail * * * fail[ed] to arrive at all," *Dolan*, 546 U.S. at 489; see pp. 8-9, *supra*.

Indeed, respondent acknowledged below that "[e]ach of [her] tort claims * * * seeks recovery for" the same thing: "the intentional actions of [postal employees] in deliberately and intentionally withholding delivery of mail to two residences that [she] owns." Resp. C.A. Br. 10. Respondent thus accepted that "[h]er damages result from the fact that USPS deliberately failed and refused to deliver * * * the mail." Resp. C.A. Reply Br. 4. And because her claims all "stem from" that alleged failure, *Shearer*, 473 U.S. at 55 (plurality opinion), each of her claims "aris[es] out of the * * * miscarriage * * * of letters or postal matter," 28 U.S.C. 2680(b).

B. Respondent And The Court Of Appeals Cannot Justify Departing From The Ordinary Meaning Of "Miscarriage" Of Mail

Respondent's and the court of appeals' contrary conclusion rests on interpretations of "miscarriage" that depart from the term's ordinary meaning. This Court should reject those attempts to redefine the term.

1. A "miscarriage" of mail can be caused intentionally

The court of appeals took the view that a miscarriage of mail may occur only "*mistakenly*" and not "intentionally." Pet. App. 8a; see Br. in Opp. 18. But the ordinary meaning of "miscarriage" does not turn on the carrier's

intent (or lack thereof). The dictionary definitions of the term broadly cover any failure of the mail to arrive or to be carried properly, whether intentional or unintentional. See pp. 13-14, *supra*. And this Court's decision in *Dolan* likewise does not limit the term to failures that were intentional—either in describing the term as "refer[ring] to failings in the postal obligation to deliver mail in a timely manner to the right address," 546 U.S. at 487, or in describing the postal exception in general as covering injuries arising from the mail "fail[ing] to arrive at all or arriv[ing] late, in damaged condition, or at the wrong address," *id.* at 489.

If anything, the term "miscarriage" tends to connote *intentional* misconduct, not inadvertent error. After all, the word "miscarriage" begins with "mis-," a "prefix meaning amiss, wrong, ill, wrongly." *Webster's Second* 1567 (emphasis omitted). Other "mis-" words, such as "misbehavior," "misconduct," and "misdeed," encompass intentional wrongs; indeed, intentional wrongs are the paradigmatic examples of those terms. See *id.* at 1568 (defining "misbehavior" to include "ill conduct"); *ibid.* (defining "misconduct" as "[w]rong or improper conduct; bad behavior; unlawful behavior or conduct"); *id.* at 1569 (defining "misdeed" as "[a] gravely wrongful deed"). This reinforces that Congress's use of the term "miscarriage"—which begins with the same prefix—likewise encompasses intentional wrongs. Just as a miscarriage of justice can be the result of intentional wrongdoing, so too can a miscarriage of mail.

That the term "miscarriage" tends to connote intentional misconduct helps explain why the postal exception refers to any claim arising out of "the loss, miscarriage, *or negligent transmission*" of mail, rather than any claim arising out of such "loss" or "miscarriage" alone.

28 U.S.C. 2680(b) (emphasis added). Although "miscarriage," properly understood, encompasses any "[f]ailure" of the mail to "arrive" or be carried "properly," Congress may have been concerned that the term could be read to encompass only such failures caused intentionally —*i.e.*, with "ill" motive. *Webster's Second* 1567. The inclusion of "negligent transmission" addresses that concern by ensuring that the postal exception is understood to encompass "negligent" failures to properly carry the mail as well. 28 U.S.C. 2680(b).[3]

Congress's use of the phrase "negligent transmission" is significant for a further reason: It shows that Congress knew how to exclude intentional misconduct when it wanted to. 28 U.S.C. 2680(b); see *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation and brackets omitted). Respondent suggests that such a limit is already inherent in "miscarriage." See Br. in Opp. 19. But as explained above, that is not the case: If anything, the term tends to connote intentional

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[3] Congress took a similar belt-and-suspenders approach with respect to intentional and negligent conduct in another FTCA exception, 28 U.S.C. 2680(h), which preserves the United States' sovereign immunity for any claim arising out of "misrepresentation" or "deceit," *ibid.* "Deceit" encompasses representations that are deliberately false, while "misrepresentation" encompasses representations that are deliberately or negligently false. See *United States* v. *Neustadt*, 366 U.S. 696, 702, 706-707 & n.16 (1961). Despite that overlap, Congress included both terms in Section 2680(h). See *Pugin* v. *Garland*, 599 U.S. 600, 609 (2023) (explaining that "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure") (citation omitted).

misconduct. Thus, had Congress wanted to refer only to "negligent" or "unintentional" miscarriages, it presumably would have done so expressly, to eliminate any contrary connotation. That Congress did not do so is further evidence that "miscarriage" bears the full breadth of its ordinary meaning.

Although the Court in *Dolan* applied the *noscitur a sociis* canon (which teaches that "[a] word is known by the company it keeps") in construing the postal exception, 546 U.S. at 486 (citation omitted), that canon would not in this case justify reading the word "negligent" into all three terms of the exception. First, *Dolan* already identified what all three terms have in common, without mentioning any sort of intent requirement. See *id.* at 487 (explaining that both "'los[s]'" and "'miscarri[age]'" "refer to failings in the postal obligation to deliver mail in a timely manner to the right address," and that "'negligent transmission'" likewise should not be read to go beyond "failure to transmit mail" or "damage to its contents"). Second, in order for the *noscitur a sociis* canon to be relevant here, "loss" would also need to contain an intent requirement, but as explained below, it does not. See pp. 31-38, *infra*. And third, even if both "loss" and "negligent transmission" were limited to harms caused unintentionally, that would still not justify departing from the unambiguous, ordinary meaning of "miscarriage" of mail. See *United States* v. *Stevens*, 559 U.S. 460, 474-475 (2010) (declining to apply the *noscitur a sociis* canon where there was "little ambiguity" in a term's "ordinary meaning") (citation omitted).

2. A "miscarriage" of mail does not require a preceding carriage, and respondent alleges one regardless

a. The court of appeals also expressed the view that there can be no "miscarriage" without a "*preced*[*ing*]"

"carriage" (or attempt at "carriage"). Pet. App. 7a-8a; see Br. in Opp. 18. But the ordinary meaning of "miscarriage" contains no such temporal requirement. Instead, the ordinary meaning of the term refers simply to the failure of a carrier to fulfill its "obligation to deliver [the] mail in a timely manner to the right address." *Dolan*, 546 U.S. at 487; see *Webster's Second* 1568.

It is easy to imagine examples of such "miscarriage" with no preceding carriage; indeed, these are some of the most egregious violations of a carrier's obligation to carry the mail. For instance, a sender having dropped off a letter, the carrier could fail to carry the letter at all—in which case, there is a "miscarriage," but no "carriage" preceding it. Or, a sender having dropped off a letter, the carrier could start carrying it to the wrong destination from the very outset—in which case, the entire duration of "carriage" is a "miscarriage," without any pre-miscarriage carriage. As these examples show, there is no requirement that there be a preceding carriage for a "miscarriage" of the mail to occur. It is implausible that these extreme breaches of a carrier's obligation to carry the mail would not count as "miscarriages."

Respondent contends (Br. in Opp. 18) that "use of the prefix 'mis'" supports construing "miscarriage" to require a preceding carriage. To the contrary, it undermines that construction. The word "misconduct" also begins with the prefix "mis-." Yet "misconduct" can occur without any preceding conduct or even any conduct at all—as when a person intentionally fails to act when he has a duty to do so. See, *e.g.*, *Delligatti* v. *United States*, 145 S. Ct. 797, 804 (2025) ("Homicide under New York law can be committed by act *or* omission, with the latter defined as failure to perform a legally imposed

duty."). Respondent thus errs in asserting that the combination of "mis-" and "carriage" means that there must be a preceding carriage.

b. Even if "miscarriage" of mail required a preceding carriage, respondent alleges a preceding carriage here. According to the operative complaint, the mail at issue took the following path: The mail was first placed by various senders "in the USPS system for delivery" to respondent's two residences, Pet. App. 46a; next, the mail was carried by postal employees to the Euless post office, where Rojas and Drake "assumed and exercised dominion and control" over it, *id.* at 58a; see *id.* at 47a-50a; the mail then remained in Rojas's "possession" until he "return[ed] [it] to the Euless Post Office" instead of dropping it off in the residences' mailboxes, *id.* at 45a-46a; and finally, the mail was marked "'undeliverable'" and "returned by USPS" to whoever sent it, *id.* at 45a; see *id.* at 48a-49a. Those allegations establish that, from the time the mail was placed in the Postal Service's system to the time the mail was returned to sender, the mail was in continuous carriage by Rojas, Drake, and other postal employees.

Respondent does not dispute that the mail reached the Euless post office via "carriage" by postal employees. Br. in Opp. 18 n.8. Respondent nevertheless contends that carriage by other employees does not count because her "claims arise out of *Rojas and Drake's* refusal to deliver." *Ibid.* (emphasis added). But the only proper defendant under the FTCA is the United States, not Rojas or Drake. 28 U.S.C. 1346(b)(1); see p. 8 & n.1, *supra*. And the postal exception asks whether respondent's claims arise out of a "miscarriage" of letters or postal matter, without regard to the conduct of any particular federal employee. 28 U.S.C. 2680(b). Nothing in

the text of the postal exception or Section 1346(b) justifies respondent's focus on the actions of some postal workers but not others, all of whom respondent alleges were acting within the scope of their federal employment. Pet. App. 52a.

Moreover, a rule that focused on whether Rojas or Drake carried the mail before causing a "miscarriage" would make little sense. Under such a rule, the postal exception would apply if Rojas or Drake happened to be the postal employee who collected the mail from wherever a sender deposited it and carried it to the Euless post office. But the exception would not apply if Rojas or Drake simply saw the mail at the Euless post office and refused to deliver it. "There is nothing in the Tort Claims Act which shows that Congress intended" the postal exception to turn on "distinctions" as "finespun and capricious" as those. *United States* v. *Neustadt*, 366 U.S. 696, 708 (1961) (citation omitted).

In any event, focusing only on Rojas's and Drake's alleged conduct leads to the same outcome in this case. Rojas and Drake could not have "assumed and exercised dominion and control" over the mail without carrying it. Pet. App. 58a. Rojas likewise could not have "retain[ed] possession" of the mail, or "return[ed] [it] to the Euless Post Office," without carrying it. *Id.* at 45a. In fact, respondent's tenants asserted seeing Rojas "holding" "in his hand" mail that was addressed to them but that Rojas refused to deliver. D. Ct. Doc. 20, at 13, 16 (Apr. 18, 2022). Thus, even if the proper inquiry were whether the mail was allegedly carried by Rojas or Drake "*preced*[*ing*] the 'miscarriage,'" Pet. App. 7a, the answer would be yes.

3. A "miscarriage" of mail does not require that the mail go to the wrong address, and respondent alleges that the mail went to the wrong address regardless

Respondent further suggests that the mail is not "miscarried" unless "it goes to the wrong address." Br. in Opp. 17 (quoting *Dolan*, 546 U.S. at 487). Of course, mail going to the wrong address is one form of miscarriage of mail. See *Dolan*, 546 U.S. at 487 ("[M]ail is * * * 'miscarried' if it goes to the wrong address."). But it is not the only form. There are many ways in which a carrier can "fail[]" in its "obligation to deliver mail in a timely manner to the right address." *Ibid.* Other ways, besides carrying the mail to the wrong place, include failing to carry the mail at all or delivering the mail late or in damaged condition. See *id.* at 489.

In any event, even if a "miscarriage" of the mail required the mail to go to the wrong address, that is what is alleged here. Respondent alleges that, instead of being delivered to her residences, the mail was "return[ed]" by Rojas to "the Euless Post Office," and then "returned by USPS marked 'undeliverable'" to whoever sent the mail. Pet. App. 45a-46a; see *id.* at 8a (understanding respondent as alleging that mail marked "undeliverable" was "returned to sender"); D. Ct. Doc. 20, at 17 (asserting that mail marked "'undeliverable'" was "return[ed] * * * to sender"); D. Ct. Doc. 20, at 19 (same); D. Ct. Doc. 20, at 23-24 (asserting that senders called one of respondent's tenants and told him that "the mail had been returned to them marked 'undeliverable'"). Neither the address of the Euless post office nor the address of any sender was, in respondent's view, the right address—*i.e.*, the address where the mail properly should have ended up. Thus, on respondent's own telling, the mail was carried to the wrong address.

C. Reading "Miscarriage" Of Mail In Line With Its Ordinary Meaning Serves The Postal Exception's Objectives

Adhering to the ordinary meaning of "miscarriage" of mail also serves Congress's objectives in enacting the postal exception. Respondent's and the court of appeals' approach, in contrast, would effectively upend the balance that Congress struck.

1. Congress enacted the postal exception to ensure that the essential work of the Postal Service would "not be disrupted by the threat of damages suits." *Kosak* v. *United States*, 465 U.S. 848, 858 (1984); see *Hatzlachh Supply Co.* v. *United States*, 444 U.S. 460, 464 n.4 (1980) (per curiam); S. Rep. No. 1400, 79th Cong., 2d Sess. 33 (1946). To be sure, Congress "did not intend to immunize all postal activities." *Dolan*, 546 U.S. at 489. It did not intend to immunize the United States from liability for injuries arising out of auto accidents or slip and falls, for example. See *id.* at 483, 487-488, 491. But Congress did intend to preserve the United States' immunity for the sorts of harms "primarily identified with the Postal Service's function of transporting mail throughout the United States"—harms such as those "arising from nondelivery or late delivery of sensitive materials or information (*e.g.*, medicines or a mortgage foreclosure notice) or from negligent handling of a mailed parcel (*e.g.*, shattering of shipped china)." *Id.* at 489.

At least until the decision below, the postal exception had been doing its job. The Postal Service has informed this Office that in fiscal year 2024, plaintiffs filed 942 new FTCA suits arising out of postal activities: 815 suits arising out of auto accidents; 73 suits arising out of slip (or trip) and falls; and 54 suits categorized as "other." That would all change if the court of appeals' holding were to become the nationwide rule, excluding any "in-

tentional act" from the postal exception. Pet. App. 9a. Because "an official's state of mind is easy to allege and hard to disprove," *Egbert* v. *Boule*, 596 U.S. 482, 499 (2022) (citation omitted), the government would be inundated with precisely the kinds of suits that Congress meant to foreclose: suits seeking damages 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," *Dolan*, 546 U.S. at 489.

The volume of mail that the Postal Service handles is staggering. In fiscal year 2024, the Postal Service processed and delivered more than 112 billion pieces of mail—an average of 306 million pieces each day. USPS, *Fiscal Year 2024 Annual Report to Congress* 3, perma.cc/5c3j-6hl5. While the vast majority of mail arrives at its destination as intended, there will invariably be some items that do not. And when that happens, customers often attribute the cause to personal animus or misconduct of postal employees.

The Postal Service has informed this Office that it receives hundreds of thousands of customer complaints each year about misconduct or wrongdoing by letter carriers. In 2024, for example, it received approximately 335,000 such complaints. To be sure, not every customer complaint about misconduct by letter carriers concerns the intentional failure to deliver, or to deliver properly, the mail. But it is reasonable to expect that, if the holding below were to become the nationwide rule, at least some of those complaints each year will result in FTCA suits like respondent's. And if even only a small percentage did so, those suits would dwarf the 900 or so auto-accident and slip-and-fall suits that the Postal Service currently handles each year.

The ensuing burdens of litigation would create precisely the sort of disruption that Congress sought to avoid. Because questions of subjective intent can rarely be decided on a motion to dismiss, litigating them would likely "entail broad-ranging discovery and the deposing of numerous persons." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 817 (1982); see *Crawford-El* v. *Britton*, 523 U.S. 574, 585 (1998) (noting that "insubstantial claims that turn on improper intent may be less amenable to summary disposition"). And those burdens of discovery and trial would be "peculiarly disruptive of effective government," *Harlow*, 457 U.S. at 817—turning postal employees into declarants and witnesses and diverting scarce resources away from the Postal Service's important mission.

2. Allowing plaintiffs to pursue claims like respondent's would also undermine another objective of the postal exception: "avoiding exposure of the United States to liability for excessive or fraudulent claims." *Dolan*, 546 U.S. at 491 (citation omitted). It is not difficult to allege a long chain of consequential damages flowing from the failure to receive mail. In this case, for example, respondent seeks damages not only for the "loss" of the mail itself, but also for the consequences of that "loss" for her both personally and financially. Pet. App. 53a; see *id.* at 51a.

Yet claims seeking damages for such "personal or financial harms" are precisely the kinds of claims the postal exception was meant to foreclose. *Dolan*, 546 U.S. at 489. And if allowed to stand, the decision below would give plaintiffs a blueprint for seeking them: simply allege that the failure of mail to arrive, or to be carried properly, was intentional. As noted, that is the sort of allegation that is "easy to [make] and hard to disprove."

Egbert, 596 U.S. at 499 (citation omitted). And "[e]ven frivolous claims [would] require the Federal Government to expend administrative and litigation costs, which [would] ultimately fall upon society at-large." *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 422 (2015) (Alito, J., dissenting).

3. Although the postal exception preserves the United States' immunity for suits seeking damages for "the loss, miscarriage, or negligent transmission" of mail, 28 U.S.C. 2680(b), someone who suffers those "harm[s]" is not necessarily without any remedy, *Dolan*, 546 U.S. at 490.

To begin, "losses of the type for which immunity is retained under § 2680(b) are at least to some degree avoidable or compensable through postal registration and insurance." *Dolan*, 546 U.S. at 490. If insured mail fails to arrive or arrives in damaged condition, the sender may file an indemnity claim with the Postal Service for the "loss" or "damage." *Postal Operations Manual* § 137.445; see 39 C.F.R. 211.2(a)(2) (providing that the Postal Service's regulations include the *Postal Operations Manual* and other manuals). The addressee may likewise file an indemnity claim in certain circumstances. *Postal Operations Manual* § 146.111. And the Postal Service will pay a covered claim regardless of whether the "loss" or "damage" was caused by postal employees intentionally or unintentionally.

Congress also provided an avenue of relief through the Postal Regulatory Commission in certain cases. Individuals may file complaints with the Commission alleging violations of 39 U.S.C. 403(c), which generally prohibits the Postal Service from engaging in "any undue or unreasonable discrimination among users of the mails" in "providing services and in establishing classi-

fications, rates, and fees." *Ibid.*; see 39 U.S.C. 3662(a). If the Commission "finds the complaint to be justified," it has the authority to "order that the Postal Service take such action as the Commission considers appropriate." 39 U.S.C. 3662(c). In addition, a postal employee who obstructs the mail may be subject to internal discipline and criminal punishment. See, *e.g.*, 18 U.S.C. 1693, 1701; 39 C.F.R. 447.21(d); USPS, *Employee and Labor Relations Manual, Issue 55*, at § 660 (rev. Mar. 2024), perma.cc/e2lv-3v42.

Even as to suits for money damages, the postal exception applies only to suits governed by the FTCA. See 28 U.S.C. 2680(b). The postal exception therefore does not apply to suits brought against individual federal employees for torts committed *outside* the scope of their employment. See 28 U.S.C. 1346(b)(1), 2679(b)(1). Intentional torts committed outside an employee's scope of employment that cause mail not to be properly delivered could therefore be the subject of state-law damages suits against individual employees.

When it comes to state-law damages suits for torts committed *within* an employee's scope of employment, however, the postal exception preserves the United States' immunity for any claim arising out of the "fail[ure]" to "deliver mail in a timely manner to the right address." *Dolan*, 546 U.S. at 487. That is the balance Congress struck, and Congress can "amend the statute" if it "desires a different result." *United States* v. *Kubrick*, 444 U.S. 111, 125 (1979).

D. Reading "Miscarriage" Of Mail In Line With Its Ordinary Meaning Promotes Administrative Simplicity

"Sovereign immunity is jurisdictional in nature," *FDIC* v. *Meyer*, 510 U.S. 471, 475 (1994), and "administrative simplicity is a major virtue in a jurisdictional

statute," *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). The ordinary meaning of "miscarriage" of mail is easy to apply; judges and litigants need only ask whether a claim arises out of a "[f]ailure" of mail "to arrive" or to be carried "properly." *Webster's Second* 1568. The approach embraced by respondent and the court of appeals, in contrast, would require judges and litigants to grapple with a host of unfamiliar questions merely to determine whether the postal exception applies, before even reaching the merits of the underlying state-law claim.

First, what is the line between intentional and unintentional failures to deliver mail? Under applicable statutes and regulations, postal employees may withhold mail for any number of legitimate reasons—*e.g.*, because an addressee requested it; because the identity of someone claiming to be the addressee cannot be verified; because a customer has not provided a suitable mail receptacle; because delivery would risk an employee's safety; because a residence is vacant; because the mail has insufficient postage; because the address on the mail is incomplete or illegible; because the mail contains nonmailable matter; and so on. See, *e.g.*, 39 U.S.C. 3001-3005; *Postal Operations Manual* §§ 611.1(d) and (e), 611.9, 623, 681.1. An employee who withholds mail for one of those reasons necessarily does so intentionally. But what if the employee's decision is based on a mistake about whether one of the grounds applies—for instance, about whether a residence is vacant? If the employee genuinely thinks the residence is vacant even though it is not, is the failure to deliver mail to the res-

idence intentional or unintentional under respondent's approach?[4]

Second, what qualifies as "carriage *preced*[*ing*] the 'miscarriage'" of mail? Pet. App. 7a. Here, the mail was allegedly carried to the Euless post office, placed in Rojas's possession, and returned by Rojas to the Euless post office—all before the mail was marked as "undeliverable" and returned to sender. See p. 20, *supra*. Yet the court of appeals concluded that the mail "was not carried at all," Pet. App. 8a—leaving unclear exactly what qualifies as "carriage" under the court's approach. The court's approach would also appear to require rules about when "carriage" ends and "miscarriage" begins, as well as rules about which employees' pre-miscarriage "carriage" counts. See pp. 20-21, *supra*.

Third, what qualifies as mail "go[ing] to the wrong address"? Br. in Opp. 17 (citation omitted). In this case, the mail addressed to respondent's residences was allegedly returned to the Euless post office and eventu-

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[4] Although the government has not yet had a chance to contest respondent's allegations, which must be taken as true at this stage, see *National Rifle Ass'n* v. *Vullo*, 602 U.S. 175, 181 (2024), the Postal Service has informed this Office that its employees believed that there was a legitimate reason for withholding mail addressed to respondent's two residences. Specifically, the Postal Service determined that respondent's residences were being used as transient housing for approximately 15 residents at a time with very high turnover. It accordingly required each residence to maintain a directory of current residents to ensure that mail was delivered to the correct people; when respondent and her tenants failed to maintain such a directory, the Postal Service withheld their mail. Cf. *Postal Operations Manual* § 632.626 ("For all apartment houses with 15 or more receptacles, maintain a complete directory of all persons receiving mail."). Once respondent and her tenants began maintaining such a directory, mail delivery resumed to those listed on the directory.

ally to sender. See p. 20, *supra*. Although neither that post office nor any sender was the intended destination of the mail, respondent denies that the mail ended up at the "wrong address"—leaving unclear what "wrong address" means under her approach. Br. in Opp. 17 (citation omitted); see *id.* at 17-18.

Administrative simplicity thus cuts strongly against adopting respondent's and the court of appeals' uncertain approach. For this reason too, the Court should follow the ordinary meaning and hold that the failure of mail to arrive or be carried properly is sufficient to satisfy the "miscarriage" clause of the postal exception.

II. RESPONDENT'S CLAIMS FALL WITHIN THE FTCA'S POSTAL EXCEPTION BECAUSE THEY ARISE OUT OF THE "LOSS" OF MAIL

The alleged refusal to deliver mail in this case also caused a "loss" of mail, even though the refusal was allegedly intentional. 28 U.S.C. 2680(b). Respondent's claims fall within the postal exception, and should be dismissed, on that ground as well.

A. Respondent's Claims Arise Out Of A Deprivation, And Therefore A "Loss," Of Mail

The ordinary meaning of "loss" relevant here is "deprivation"—the failure to keep, have, or get something. *Webster's Second* 1460; see, *e.g.*, *Random House Dictionary of the English Language* 847 (1966) (*Random House Dictionary*) ("detriment or disadvantage from failure to keep, have, or get"); *American College Dictionary* 721 (same); *Funk & Wagnalls* 1465 ("privation"); 6 *Oxford English Dictionary* 452 ("[t]he being deprived of"). The postal exception thus covers any claim arising out of a deprivation of mail—as occurs when the mail "fails to arrive at all." *Dolan*, 546 U.S. at 489.

That is what respondent alleges here: the failure of the mail to arrive at all. According to respondent, she suffered such a deprivation at the hands of postal employees who intentionally refused to deliver mail to her two residences. See p. 7, *supra*. And because all of her claims arise out of that deprivation, they all fall within the postal exception. See p. 15, *supra*.

B. "Loss" Refers To Deprivations Generally, Including Those Caused Intentionally

The court of appeals held that respondent's state-law tort claims do not arise out of the "loss" of mail. Pet. App. 6a-7a. In so holding, the court accepted respondent's contention that the word "loss" in the postal exception refers only to deprivations caused "*unintentional*[*ly*]." *Id.* at 6a. As other courts of appeals have correctly recognized, that contention lacks merit. See *Levasseur* v. *USPS*, 543 F.3d 23, 23-24 (1st Cir. 2008) (per curiam); *C.D. of NYC, Inc.* v. *USPS*, 157 Fed. Appx. 428, 429-430 (2d Cir. 2005), cert. denied, 549 U.S. 809 (2006); *Marine Ins. Co.* v. *United States*, 378 F.2d 812, 813-814 (2d Cir.), cert. denied, 389 U.S. 953 (1967).

1. "Loss" in the postal exception presumptively bears the same ordinary meaning as it does in the FTCA's waiver of sovereign immunity

a. As noted, the relevant ordinary meaning of "loss" here is deprivation—*i.e.*, failure to keep, have, or get something. See p. 30, *supra*. The deprivation can be one caused *unintentionally*. But it need not be. As a matter of ordinary meaning, the word "loss" can also refer to a deprivation caused *intentionally*. That was as true when Congress enacted the postal exception in 1946 as it is today.

Contemporaneous dictionaries prove the point. They illustrate the meaning of the word "loss" using the following sentences:

- "William the Conqueror . . . punished such as were convicted of killing the wild boar in his forests, with the loss of their eyes." *Oxford English Dictionary* 452.
- "The loss from the robbery amounted to a week's salary for all employees." *Random House Dictionary* 847 (emphasis omitted); see *American College Dictionary* 721 ("to bear the loss of a robbery") (emphasis omitted).
- "[T]he loss of the army, in killed, wounded, and missing, was severe." *Funk & Wagnalls* 1465 (emphasis omitted).

In each of those representative uses of the word, the "loss" was caused intentionally—as punishment, during a robbery, or in battle. Yet what the convicts, the employees, and the army suffered were still described as paradigms of "loss"—showing that the ordinary meaning encompasses deprivations caused intentionally.

Another example appears in this Court's decision in *Dolan*. There, the Court observed that "mail is 'lost' if it is destroyed." 546 U.S. at 487. Of course, mail can be destroyed intentionally; for example, postal regulations require postal employees to destroy certain types of nonmailable or undeliverable postal matter. See *Postal Operations Manual* §§ 691-692. As a matter of everyday English, destroying the mail results in its "loss," providing further evidence that the ordinary meaning of the term encompasses deprivations caused intentionally.

b. Congress embraced that ordinary meaning in the FTCA. The term "loss" appears not just in the postal exception, but also in the Act's "principal provision," Section 1346(b). *Smith* v. *United States*, 507 U.S. 197, 201 (1993) (citation omitted). That provision is the reason that any tort claim can be brought against the United States at all: It waives the United States' sovereign immunity for specified tort claims. Those claims include claims for "loss of property, * * * caused by the negligent or wrongful act or omission" of a federal employee. 28 U.S.C. 1346(b)(1).

The term "loss" in Section 1346(b) thus encompasses deprivations caused "negligent[ly] *or wrongful*[*ly*]." 28 U.S.C. 1346(b)(1) (emphasis added). And as this Court has recognized, "wrongful[ly]" includes "intentionally." *Laird* v. *Nelms*, 406 U.S. 797, 801 (1972); see *Hatahley* v. *United States*, 351 U.S. 173, 181 (1956) (observing that "wrongful" acts include "trespasses") (citation omitted). Indeed, the so-called intentional tort exception in Section 2680(h)—which exempts from Section 1346(b) any claim arising out of various intentional torts, including "interference with contract rights," 28 U.S.C. 2680(h)—presupposes that "wrongful" acts include intentional ones in Section 1346(b). 28 U.S.C. 1346(b)(1). The word "loss" in Section 1346(b) therefore is not limited to deprivations caused negligently. Rather, consistent with its ordinary meaning, the word "loss" in Section 1346(b) refers to deprivations generally, including those caused intentionally.

"Loss" presumptively has the same meaning in the postal exception. After all, this Court generally presumes that "when Congress uses a term in multiple places within a single statute, the term bears a consistent meaning throughout." *Azar* v. *Allina Health*

Servs., 587 U.S. 566, 576 (2019). And the Court has specifically emphasized that the FTCA should be read as a "coherent and consistent" whole. *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 222 (2008); see *Richards* v. *United States*, 369 U.S. 1, 11 (1962) (deeming it "fundamental that a section of a statute should not be read in isolation from the context of the whole Act").

The presumption of consistent usage has special force here. For one thing, Congress enacted the sovereign-immunity waiver and the postal exception at the same time. See *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007) (finding the presumption "doubly appropriate" where provisions were enacted simultaneously). For another, Congress intended the sovereign-immunity waiver and the postal exception to work together. Both provisions concern the viability of an FTCA plaintiff's claim. See *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 859-860 (1986) (finding the presumption "especially" appropriate where provisions concern the same subject matter). One states a general rule to which the other is an "[e]xception[]." 28 U.S.C. 2680. And each provision even cross-references the other. See 28 U.S.C. 1346(b)(1) (making the FTCA's waiver of sovereign immunity "[s]ubject to the provisions of chapter 171 of this title," including the postal exception); 28 U.S.C. 2680(b) (specifying that "section 1346(b) shall not apply to" claims falling within the postal exception).

It would thus be anomalous if "loss" meant one thing in the FTCA's waiver of sovereign immunity (Section 1346(b)) and another thing in an exception to that waiver (Section 2680(b)). The better interpretation is that the word bears the same meaning in both places in the FTCA—referring to deprivations generally, including those caused intentionally.

2. Nothing in the text, history, or purposes of the FTCA rebuts the presumption of consistent usage

Although the presumption of consistent usage can be rebutted, nothing in the FTCA's text, history, or purposes suggests that the term "loss" has one meaning in the sovereign-immunity waiver and a different meaning in the postal exception. To the contrary, the statute's text, history, and purposes all confirm that "loss" bears the same meaning in both provisions.

a. As noted, the text of the postal exception refers to "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. 2680(b). That text gives no indication that Congress intended "loss" to have a different meaning there than in Section 1346(b), let alone a meaning that encompasses only deprivations caused unintentionally. Quite the opposite, the text of the postal exception shows that Congress knew how to single out harms caused unintentionally when it wanted to: by using the modifier "negligent." *Ibid.* That is what Congress did just a few words over, before "transmission." *Ibid.* That Congress did not similarly modify "loss"—by, for example, referring to the "loss" of mail caused by the "negligent" acts or omissions of a federal employee, cf. 28 U.S.C. 1346(b)(1)—reinforces that Congress did not intend to limit the scope of the postal exception in that way.

b. The history of the postal exception likewise provides no basis for giving "loss" a different meaning in the postal exception than in Section 1346(b). Congress enacted the postal exception against the backdrop of the 1940 edition of the *Postal Laws and Regulations*—a compilation of statutory and regulatory provisions governing postal services. See U.S. Post Office Dep't, *Postal*

Laws and Regulations of 1940 (1941) (*Postal Laws and Regulations*).

One section of the *Postal Laws and Regulations* made it the obligation of a Post Office Department official known as the Chief Inspector to investigate the "loss, rifling, damage, [or] wrong delivery of * * * mail." *Postal Laws and Regulations* § 812. That same section provided that if the Chief Inspector found that "the facts ascertained in connection with such investigation established the responsibility, *by reason of fault or negligence*, of a postal employee or mail contractor * * * , the Chief Inspector shall demand the amount of the *loss* from such employee or contractor." *Id.* § 812(2) (emphases added). Thus, in addressing the same subject here (namely, the "loss" of mail), the *Postal Laws and Regulations* sought to hold postal employees responsible not only for "loss[es]" attributable to their "negligence," but also for "loss[es]" attributable to their "fault," *ibid.*—a term that encompasses "wrongful intent," William L. Prosser, *Handbook of the Law of Torts* 426 (1941). The *Postal Laws and Regulations* likewise did not distinguish between "loss[es]" caused intentionally and "loss[es]" caused unintentionally in its provisions governing postal registration and insurance; those provisions allowed customers to seek indemnity for the "loss" of insured mail, regardless of whether the "loss" was caused intentionally. *Postal Laws and Regulations* §§ 1380-1383, 1386; see 39 U.S.C. 381 (1940). The postal exception presumably reflected that background understanding of "loss" in the mail context. See *Block* v. *Neal*, 460 U.S. 289, 296 n.5 (1983) (relying on background understandings of "misrepresentation" when interpreting that term in Section 2680(h)).

Numerous other sections of the *Postal Laws and Regulations* similarly used the word "loss" to refer to deprivations generally, including those caused intentionally. One provision, for example, made postmasters "liable on their official bonds for any *losses* of Government funds resulting from *fault* or negligence on their part." *Postal Laws and Regulations* § 110(3) (emphases added); see *id.* § 1615(7) (similar). Another provision required postmasters to submit a report "[w]henever Government property of any kind is *lost* or damaged through the carelessness, negligence, *willfulness*, or *malice* of a postal employee." *Id.* § 58 (emphases added). Still other provisions referenced "loss" of government funds or property through intentional acts, such as embezzlement or theft. See *id.* § 12 ("loss * * * through embezzlement"); *id.* § 443 ("loss * * * by theft"). Those provisions provide further evidence of how an ordinary reader would have understood the word "loss" when Congress enacted the postal exception. See *Feliciano* v. *Department of Transp.*, 145 S. Ct. 1284, 1292 (2025); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 388 (2012).

c. The purposes of the FTCA also provide no basis for rebutting the presumption of consistent usage. In fact, construing "loss" in the postal exception to refer only to deprivations caused unintentionally would risk the same flood of litigation discussed above. See pp. 23-26, *supra*. That construction would thus undermine the postal exception's objectives in protecting the work of the Postal Service from disruption and in shielding the United States from exposure to liability for excessive and fraudulent claims.

3. Any remaining doubt about the meaning of "loss" in the postal exception should be resolved in favor of administrative simplicity

Because "administrative simplicity is a major virtue in a jurisdictional statute," *Hertz Corp.*, 559 U.S. at 94, any remaining doubt about the meaning of "loss" should be resolved in favor of interpreting it to encompass deprivations generally, whether intentional or unintentional. As noted above, the line between intentional and unintentional failures to deliver mail is a murky one, and judges and litigants would benefit from a straightforward rule that simply counts any deprivation of mail as a "loss." See pp. 28-29, *supra*.

C. The Contrary Reasoning Of Respondent And The Court Of Appeals Lacks Merit

Neither respondent nor the court of appeals offers any valid reason to construe "loss" in the postal exception to refer only to deprivations caused unintentionally —much less to give the term there a different meaning than in the FTCA's sovereign-immunity waiver.

1. Respondent contends that *Webster's Second* supports her interpretation of the term "loss" because it defines "[l]oss" as an "unintentional parting with something of value." Br. in Opp. 15 (citation omitted); see Pet. App. 6a. But that argument omits a key word appearing before the quoted language: "esp." *Webster's Second* 1460. What the relevant definition says is that "loss" means an "[a]ct or fact of losing (in various senses) or suffering deprivation; failure to keep possession; esp., unintentional parting with something of value; as, the *loss* of property." *Ibid.*

That definition supports, rather than undermines, the view that "loss" can refer to deprivations caused intentionally. After all, the definition does not say that

"loss" refers *exclusively* to "unintentional parting[s]"; rather, it says that "loss" refers "*esp*[*ecially*]" to them —indicating that "loss" can also refer to deprivations that are *not* "unintentional." *Webster's Second* 1460 (emphasis added); see *ibid.* (similarly defining "loss" as "[t]hat which is lost; that of which anything is deprived or from which something is separated, *usually* unintentionally and to disadvantage") (emphasis added).

Indeed, that is exactly how the FTCA's principal provision uses the term. As noted, Section 1346(b) uses "loss" to refer to deprivations caused "negligent[ly]" or "wrongful[ly]." 28 U.S.C. 1346(b)(1). That is a natural use of "loss," even if the word refers "esp[ecially]" to deprivations caused negligently (*i.e.*, "unintentional[ly]"). *Webster's Second* 1460. And the postal exception uses the term in the same way. See pp. 31-38, *supra*.

2. Respondent reasons that because postal employees did not "lose" the mail at issue, there was no "loss." Br. in Opp. 15 (brackets omitted); see Pet. App. 6a. That reasoning is wrong for two reasons.

a. First, the postal exception is not phrased in terms of whether postal employees "lost" the mail. The word that appears in the exception is the noun "loss," not the verb "lose" (or "lost"). What the text of the postal exception asks, then, is whether postal employees caused the "loss" of mail, not whether postal employees "lost" the mail. 28 U.S.C. 2680(b).

The difference is important because the meaning of a word can change when the word is converted from one part of speech to another. This Court has recognized, for instance, that "a noun and its adjective form may have meanings as disparate as any two unrelated words." *FCC* v. *AT&T Inc.*, 562 U.S. 397, 403 (2011). Thus, the word "person," as a noun, often refers to cor-

porations, *id.* at 404, but when it takes its adjectival form "personal," it does not reach them, *id.* at 405. And just this past Term, the Court found "notable" a statute's use of the "the word 'injured' rather than 'injury,'" because the latter may bear a "specialized meaning" that the former does not. *Medical Marijuana, Inc.* v. *Horn*, 145 S. Ct. 931, 940 (2025).

Similarly, asking whether someone caused a "loss" is not necessarily the same as asking whether someone "lost" something. In the example from the *Oxford English Dictionary*, see p. 32, *supra*, William the Conqueror caused the "loss" of the eyes of those he punished, but one would not say that he "lost" their eyes. Likewise, in the example from the *Random House Dictionary*, see *ibid.*, the robbers caused the "loss," but one would not say that they "lost" anything.

Indeed, no one, not even respondent, would say that causing a "loss" and "losing" something are necessarily the same for purposes of the FTCA's waiver provision, Section 1346(b). That provision also uses the noun "loss." And it does so in asking whether federal employees "caused" a "loss" of property, 28 U.S.C. 1346(b)(1)—not whether federal employees "lost" the property. The distinction matters because the only way that respondent's conversion claim falls within Section 1346(b)'s sovereign-immunity waiver in the first place is if her claim alleges that federal employees "caused" the "loss" of her property—namely, her mail. *Ibid.*; see Pet. App. 58a-59a. But if the text of Section 1346(b) were reformulated to ask whether federal employees "lost" her property, respondent's view that they did not "lose" her mail would mean the dismissal of her own conversion claim. Br. in Opp. 15 (brackets omitted). It would thus be wrong to transform the immunity waiver into a ques-

tion about whether federal employees "lost" respondent's property.

It likewise would be wrong to transform the postal exception into such a question. As explained above, "loss" presumptively bears the same meaning in both Section 1346(b) and Section 2680(b). See pp. 31-38, *supra*. The postal exception should be interpreted to ask the same question as the immunity waiver: whether federal employees caused the "loss" of mail, not whether they "lost" the mail. Far from anything rebutting the presumption of consistent usage, it would be anomalous if the same failure of mail to arrive qualified as a "loss" of property for purposes of the immunity waiver, but not a "loss" of mail for purposes of the postal exception.

b. Second, even if the noun "loss" were converted into a verb, the relevant question would be whether *the alleged victims* "lost" mail, not whether *the postal employees* did. Again, Section 1346(b) shows why. As noted, respondent's view that postal employees did not "lose" her mail would doom her own conversion claim if the relevant question were whether *the postal employees* allegedly "lost" her property. See p. 40, *supra*. But if the question were instead whether *respondent* allegedly "lost" her property, her conversion claim would satisfy Section 1346(b). Thus, as respondent's own claim illustrates, the way to convert Section 1346(b)'s use of the noun "loss" into a verb is to ask whether *the alleged victim* "lost" her property.

For all of the reasons discussed, the postal exception works in the same way. See pp. 31-38, *supra*. Unless "loss" is to mean one thing in Section 1346(b) and something else in Section 2680(b), the question under the postal exception must be the same: Did *the alleged victims* "lose" mail?

That framing of the question reflects the fact that the FTCA uses "loss" to refer to something that another party "caused" the alleged victim to suffer, rather than something that the alleged victim "caused" herself to suffer. 28 U.S.C. 1346(b)(1). In that context, the alleged victim who suffered the "loss," rather than the other party who caused it, is ordinarily thought of as the one who "lost" something. See, *e.g.*, *Webster's Second* 1460 (defining "lose" as "[t]o suffer the loss of"). And it is natural to say that the one who suffered the loss "lost" something, even when the "loss" was caused intentionally. So, for example, it is natural to say that those punished by William the Conqueror "lost" their eyes, even though the "loss" was caused intentionally. See p. 32, *supra*. It is also natural to say that the respondent in *Medical Marijuana* "lost" his job, 145 S. Ct. at 937, even though the "loss" was caused intentionally when his employer fired him, *id.* at 945; see *id.* at 937. And here, it is natural to say, based on respondent's allegations, that she and her tenants "lost" their mail, even though the "loss" was caused intentionally when Rojas and Drake refused delivery. See Resp. C.A. Br. 10 ("[Respondent] lost * * * important mail addressed to her.").

3. Finally, respondent contends (Br. in Opp. 15) that she could not have "los[t]" mail that never made it to her. But physical possession is not an element of "loss." Although a "loss" can be a "failure to keep," it can also be a "failure to have" or to "get." *American College Dictionary* 721; see *New Century Dictionary* 980 (1940) (same). Indeed, respondent's own allegations belie the notion that physical possession must precede a "loss." In both her administrative tort claim (which she presented to the Postal Service) and her complaint, respondent describes the alleged deprivation of mail that

she suffered as a "loss," even though she never physically possessed that mail. Pet. App. 53a; see *ibid.* (alleging that she "is personally being denied access to critical items of mail, exposing her to loss of medical records, and loss of access to time-sensitive mail"); D. Ct. Doc. 7-1, at 19 (Jan. 24, 2022) (same); Resp. C.A. Br. 10 (asserting that she "lost * * * important mail addressed to her"). She also describes the alleged financial injuries that she suffered as a "loss," even though she never physically possessed that money. Pet. App. 53a; see *ibid.* (alleging that "she is being financially destroyed by the loss of significant income relating to the [r]esidences"); *id.* at 51a (alleging that she "lost substantial income through the loss of tenants"); *id.* at 60a (alleging that she "worries about the loss of her sources of income"); D. Ct. Doc. 7-1, at 2 (asserting that she suffered "financial loss as a consequence of being discriminated against").

Those same allegations belie respondent's central contention in this case: that as a matter of ordinary meaning, "loss" does not encompass deprivations caused intentionally. The "loss[es]" that she describes in her own filings are losses allegedly "inflicted on [her] by [Rojas] and [Drake]." D. Ct. Doc. 7-1, at 3. And according to respondent, all of those losses were inflicted intentionally—hence her claims for intentional interference with prospective business relations, conversion, and intentional infliction of emotional distress. Pet. App. 57a-62a. Respondent's own use of the word thus shows that the ordinary meaning of "loss" encompasses deprivations generally, including those caused intentionally.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 28 U.S.C. 1346(b)(1) provides:

United States as defendant

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death 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 the claimant in accordance with the law of the place where the act or omission occurred.

2. 28 U.S.C. 2680 provides:

Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer, except that the provisions of this chapter and section 1346(b) of this title apply to any claim based on injury or loss of goods, merchandise, or other property, while in the possession of any officer of customs or excise or any other law enforcement officer, if—

(1) the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;

(2) the interest of the claimant was not forfeited;

(3) the interest of the claimant was not remitted or mitigated (if the property was subject to forfeiture); and

(4) the claimant was not convicted of a crime for which the interest of the claimant in the property was subject to forfeiture under a Federal criminal forfeiture law.

(d) Any claim for which a remedy is provided by chapter 309 or 311 of title 46 relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

[(g) Repealed. Sept. 26, 1950, ch. 1049, § 13(5), 64 Stat. 1043.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: *Provided*, That, with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(*l*) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.