No. 24-351

IN THE

Supreme Court of the United States

UNITED STATES POSTAL SERVICE, ET AL.,

Petitioners,

v.

LEBENE KONAN,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

BRIEF FOR RESPONDENT

Easha Anand
Jeffrey L. Fisher
Pamela S. Karlan
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305

Robert Clary
Counsel of Record
ROBERT CLARY, PLLC
405 Windward Drive
Murphy, TX 75094
(972) 757-5690
rclary662@gmail.com

QUESTION PRESENTED

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).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules and Regulations

Other Authorities

BRIEF FOR RESPONDENT

Respondent Lebene Konan respectfully requests that this Court affirm the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Respondent Lebene Konan alleges that as part of a two-year campaign of racial harassment, postal employees refused to deliver her mail, instead detaining it at a post office in suburban Texas. The Government claims it cannot be sued for that conduct under the Federal Tort Claims Act (FTCA) because Ms. Konan's allegations fall within 28 U.S.C. § 2680(b), which exempts the United States from liability for "[a]ny claims arising out of the loss, miscarriage, or negligent transmission of letters or postal matter."

The Government is wrong. Ms. Konan's claims did not arise out of a "loss": If you described this case to any ordinary English speaker and asked whether the Government "lost" Ms. Konan's mail, you'd get a definitive "no." Nor was the intentional campaign to withhold Ms. Konan's mail a "miscarriage": The drafters of the FTCA would have understood "miscarriage" to be akin to an "accident[]" or "mistake," not part of a deliberate operation. *U.S. Tel. Co. v. Gildersleve*, 29 Md. 232, 246 (Md. 1868). Nor did Ms. Konan's claims arise out of the "negligent transmission" of mail: Her claims were predicated on the USPS's wrongful refusal to transmit mail.

To be sure, each of the terms in the statute—"loss," "miscarriage," and "negligent transmission"—might, in isolation or in another statute, take on a

different or broader meaning. The Government makes much of that fact, pointing to some loosely worded dictionary definitions and a hodgepodge of examples about plucked out eyes and defeated cavalry. Petr. Br. 32. But the Government's aggressive reading can't be squared with the way Congress drafted Section 2680(b). It renders superfluous *both* the terms "negligent transmission" (the Government itself admits this one, Petr. Br. 16-17) and "loss." A reading of the statute that makes "loss, miscarriage, or negligent transmission" cover exactly the same conduct as if Congress had just written "miscarriage" simply cannot be correct. And the Government's reading ignores the meaning of the terms "loss," "miscarriage," and "negligent transmission" in the specific context of *mail*—the context that matters for this case.

The decision below should be affirmed.

STATEMENT OF THE CASE

A. Factual background[1]

Respondent Lebene Konan, who is Black, is a respected realtor, insurance agent, and landlady. Pet. App. 38a-39a. She owns several properties in the Dallas/Fort Worth area, including, as relevant here, two properties in Euless, Texas. *Id.* She leases rooms at each of the properties and sometimes stays at those properties. *Id.* 41a.

Each property Ms. Konan owns is assigned a post office box within a structure that contains post office

[1] Because Ms. Konan's claims were dismissed at the complaint stage, the facts alleged in her complaint are taken as true. *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 181 (2024).

boxes for the whole neighborhood. Pet. App. 41a. The owner of each residence has a key to the relevant post office box. *Id.* As the owner of the properties at issue in this case, Ms. Konan would collect all mail from each property's post office box and distribute it to her tenants. *Id.* 41a-42a.

In 2020, two employees of the United States Postal Service (USPS), Raymond Rojas and Jason Drake, began a campaign of racial harassment against Ms. Konan. They changed ownership records of one property to suggest that Ms. Konan's white tenant, rather than Ms. Konan, was the true owner. Pet. App. 42a-43a. Without notifying Ms. Konan, they changed the locks on the post office box so that only the white tenant—and not Ms. Konan—could access it. *Id.* 42a. They taped a sign with bright red letters to Ms. Konan's mailbox, announcing that they would not deliver mail to many tenants, thereby tarnishing Ms. Konan's reputation. *Id.* 48a. And they imposed an ID policy that applied only to Ms. Konan—and not to any of her white neighbors—when she came to pick up mail from the Euless Post Office. *Id.* 49a-50a.

In addition, Rojas and Drake refused to deliver mail to Ms. Konan or her tenants. When Ms. Konan did not receive mail for several months, she signed up for Informed Delivery[2] to find out what happened to her mail. Pet. App. 47a-48a. She learned that Rojas and Drake were holding some of the mail at the Euless post office. *Id.* Other mail was marked "undeliverable" and returned to the sender. *Id.*

---

[2] Informed Delivery allows customers to see images of their incoming mail and track its location. USPS, *Informed Delivery by USPS*, https://perma.cc/V9BV-UXUV.

Ms. Konan tried every strategy possible to get her mail delivered. She complained to the USPS Inspector General, who "confirmed that [she] owned the property" and ordered "that mail be delivered." Pet. App. 2a. She filed more than 50 administrative complaints. *Id.* 47a. She got confirmation in writing from local USPS authorities that her mail should be delivered. *Id.* 44a-45a. She even attempted to avoid Rojas by asking that all her mail be held at the Euless Post Office, only to be refused when she came to pick it up. *Id.* 49a-50a. None of Ms. Konan's efforts resulted in her or her tenants getting mail.

No similar harassment was inflicted on Ms. Konan's white neighbors. And Rojas's and Drake's campaign significantly harmed Ms. Konan. Ms. Konan and her tenants did not receive "important mail," including "doctor's bills, medications, credit card statements, car titles and property tax statements." Pet. App. 45a. The inability to receive mail drove away "both existing and prospective tenants," causing the value of Ms. Konan's properties to decline and costing her rental income. *Id.* 51a.[3]

---

[3] The Government seeks to contest Ms. Konan's allegations in an unsubstantiated footnote, claiming that more than 15 tenants lived at each of Ms. Konan's properties; that, as a result, she was required to maintain a "directory" of her tenants; and that her failure to do so was the reason no mail was delivered for years. *See* Petr. Br. 29 n.4. Those assertions are, of course, entirely inappropriate for this stage of litigation. They are also false. Ms. Konan never had 15 tenants. She was never told to maintain a "directory." As she swore in her complaint, the USPS's own Inspector General and customer service representatives ordered Rojas and Drake to deliver her mail, without any mention of a "directory." Pet. App. 42a. In any case, the "directory" story

B. Procedural background

1. Having secured no relief by exhausting administrative remedies, Ms. Konan filed suit. *See* Petr. Br. 7; Pet. App. 38a, 47a. As relevant here, she brought claims under the Federal Tort Claims Act (FTCA).[4] Pet. App. 3a, 29a, 56a-63a.

The FTCA creates a cause of action for the "negligent or wrongful act or omission of any employee of the Government" under "circumstances where the United States, if a private person, would be liable" under state law. 28 U.S.C. §§ 1346(b)(1), 2674. Ms. Konan alleged that Rojas's and Drake's conduct would be actionable under Texas law for nuisance, conversion, intentional infliction of emotional distress, and tortious interference with prospective business relations. Pet. App. 57a-62a.

The Government moved to dismiss. As relevant here, it argued that one of the FTCA's 13 exceptions—the one for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter"—applied to this case. 28 U.S.C. § 2680(b).

The district court dismissed Ms. Konan's FTCA claims, finding that they arose from the "loss" and "miscarriage" of postal matter. Pet. App. 28a-29a.

---

wouldn't explain why Rojas changed the locks on Ms. Konan's mailbox or altered ownership records to suggest that her white tenant was the property's true owner.

[4] Ms. Konan also brought claims under two civil rights statutes, 42 U.S.C. §§ 1981 and 1985(3). The district court dismissed those claims; the Fifth Circuit affirmed the dismissal; and this Court denied Ms. Konan's cross-petition regarding those two claims. *Konan v. USPS*, 145 S. Ct. 1918 (2025).

2. The Fifth Circuit unanimously reversed, holding that under the "plain language" of Section 2680(b) and this Court's opinion in *Dolan v. USPS*, 546 U.S. 481 (2006), an intentional refusal to deliver mail was not a "loss," "miscarriage," or "negligent transmission." Pet. App. 5a-9a.

First, the court held that Ms. Konan's claims did not arise out of a "loss." Looking to contemporaneous dictionary definitions and to *Dolan*, the Fifth Circuit concluded that the word "loss" "carr[ies] the sense that the loss is *unintentional*." Pet. App. 6a (emphasis in original). Drake's and Rojas's "continued, intentional effort not to deliver [Ms.] Konan's mail over a two-year period" did not constitute a "loss" under Section 2680(b). *Id.*

Next, the court held that the postal workers' refusal to deliver Ms. Konan's mail was not a "miscarriage." Guided again by *Dolan* and dictionaries, the Fifth Circuit concluded that "[w]here USPS intentionally fails or refuses to deliver mail to designated addressees, and never *mistakenly* delivers the mail to a third party," no miscarriage occurs. Pet. App. 8a (emphasis in original).

Finally, the court held that "the postal workers' actions were intentional and thus" did not "constitute a 'negligent transmission.'" Pet. App. 8a-9a.

3. The Fifth Circuit denied the Government's petition for rehearing en banc. Pet. App. 36a-37a. The Government petitioned this Court, which granted certiorari.

SUMMARY OF THE ARGUMENT

I. Had Rojas and Drake acted inadvertently, their conduct would have been covered by "negligent

transmission." That legal concept is drawn from the telegraph context and covers instances where mail is withheld or delayed. *See* Thomas Atkins Street, *Negligent Transmission of Telegrams* 435, *in* 1 The Foundations of Legal Liability (1906). Ms. Konan's claims arose out of the withholding of her mail but not out of the *negligent* withholding of her mail. They thus didn't arise out of a "negligent transmission" (and the Government does not argue otherwise).

II. Ms. Konan's claims didn't arise out of the "miscarriage" of mail, either. A "miscarriage" occurs when mail inadvertently ends up in the wrong hands. Dictionary definitions of "miscarry," court cases, and everyday usage from the time of the FTCA's passage all confirm as much. "Miscarriage" is limited to acts akin to a "mistake" or "accident[]." *U.S. Tel. Co. v. Gildersleve*, 29 Md. 232, 246 (Md. 1868). Ms. Konan's mail did not end up in the wrong hands, and her claims did arise out of an accident or mistake.

The Government urges that "miscarriage" means *any* "failure to arrive" or "carry properly," no matter the cause. Petr. Br. 14. The Government's reading would render the terms "loss" and "negligent transmission" entirely superfluous. Plus, its broadly worded dictionary definitions don't reflect the way "miscarriage" was actually used in relation to the mail. And, in any event, even the definitions the Government points to don't encompass wrongful—as opposed to negligent—conduct.

III. Ms. Konan's claims didn't arise out of the "loss" of mail. The primary definition of "loss" in the dictionaries of the 1930s and 1940s was "destruction"; Ms. Konan's mail was not, of course, destroyed. This Court's opinion in *Dolan v. USPS*, 546 U.S. 481 (2006),

and the Fifth Circuit both contemplated that "loss" might instead mean "misplacement." But even on that definition, Ms. Konan's claims didn't arise out of the "loss" of mail. Among other things, misplacement is inadvertent, whereas Rojas's and Drake's conduct was willful.

Indeed, no matter the definition of "loss," Ms. Konan's claims would not have arisen out of a "loss" as used in Section 2680(b). That's because no one would ever say that Rojas and Drake "lost" the mail. The Government suggests that the relevant question is instead "whether postal employees caused the 'loss' of the mail." Petr. Br. 39. But the question isn't whether "postal employees caused" the negligent transmission of the mail; it's whether the postal employees negligently transmitted the mail. To read the statute consistently, the question for "loss" must similarly be whether postal employees lost the mail—and to ask that question is to answer it.

IV. The Government's reading makes a hash of the statutory structure. In addition to rendering portions of Section 2680(b) superfluous, it ignores that Congress drafted Section 2680(b) more narrowly than other provisions in Section 2680. The Government's reading is also inconsistent with *Dolan*, which makes clear that "mail is 'lost' if it is destroyed or misplaced and 'miscarried' if it goes to the wrong address." 546 U.S. at 481.

Unable to muster an argument based on the statutory text, the Government instead relies on fearmongering about endless litigation. Petr. Br. 23-30, 38. But the Government is wrong to worry. Even on Ms. Konan's reading of Section 2680(b), the United States retains immunity for most postal-matter-

related harms. And the Government wildly overestimates the economic incentives for plaintiffs to file suit against the USPS. In most cases, the $405 filing fee—not to mention the cost of hiring a lawyer—would dwarf the potential recovery from a missing package. Finally, the Government's argument that Section 2680(b) can't require an inquiry into the government employee's mens rea is belied by the rest of Section 2680: Several exceptions unquestionably turn on the government employee's mens rea.

V. Whatever its answer to the question presented, this Court must remand this case for further proceedings. Not even the Government argues that much of the conduct alleged in Ms. Konan's complaint—conduct such as unilaterally changing the locks on Ms. Konan's mailbox so that only her white tenant could access it—has anything to do with the "loss, miscarriage, or negligent transmission of letters or postal matter." *See* 28 U.S.C. § 2680(b).

ARGUMENT

On Ms. Konan's reading, each term in Section 2680(b) has a separate ambit: "Loss" covers damage to postal matter; "miscarriage" covers what happens to postal matter when it leaves the USPS's custody and ends up in the wrong place; and "negligent transmission" covers detention or delays of the mail while still in the USPS's possession. Each of the three terms covers negligent, but not wrongful,[5] conduct.

---

[5] A word about terminology: The law uses many words to describe the mens rea of an actor who desires not only to take a particular act but also to cause the consequences of that act—

Ms. Konan's reading avoids superfluity. It defines each term as it was actually used in reference to the mail. And it's consistent with this Court's opinion in *Dolan v. USPS*, 546 U.S. 481 (2006).

The Government's reading, by contrast, has none of those features. Per the Government, "loss" means any "failure to get, keep, or have"; "miscarriage" covers any "failure of mail to arrive or to be carried properly" due to negligence or "ill motive"; and "negligent transmission" covers any "failure of mail to arrive or to be carried properly" due to negligence but not "ill motive." The Government doesn't deny that its definition of "miscarriage" renders both "loss" and "negligent transmission" superfluous. It doesn't provide any examples of its preferred definitions being used in the specific context of mail. And it doesn't explain how to square its chosen definitions with *Dolan*.

This Court should adopt Ms. Konan's reading of the statute and affirm the decision below.

"intentional," "willful," "malicious," "deliberate," and "purposeful," among others. *See, e.g.*, Restatement (Second) of Torts §§ 8A, 503 (A.L.I. 1965); Model Penal Code § 2.02(a) (A.L.I. 2025). This brief uses "wrongful" to refer to such conduct, in keeping with the FTCA's use of that word in 28 U.S.C. § 1346(b). "Wrongful" conduct contrasts with merely negligent conduct, where an actor may desire to take an act but does not intend the harm that results (even if such harm turned out to be preventable).

I. Ms. Konan's claims arose out of the willful refusal to transmit mail, not out of a "negligent transmission."

Ms. Konan alleges that Rojas and Drake withheld her mail. So begin with the statutory term that at least encompasses instances where the USPS withholds or detains mail (albeit only instances where it does so negligently): "negligent transmission." Ms. Konan's claims arise from problems with the transmission of mail—namely, Rojas's and Drake's willful refusal to transmit the mail—but not from "negligent transmission." And the Government does not argue otherwise.

1. At first blush, "transmission" might seem to encompass *all* mail-handling activities, leaving little for the other terms in the statute. But as this Court explained in *Dolan*, and as the historical record demonstrates, "transmission" does not "include[] delivery." 546 U.S. at 486; *Davis v. John L. Roper Lumber Co.*, 269 U.S. 158, 162 (1925).

That's because the legal concept of "negligent transmission" emerged in the telegraph context. In that context, "transmission" happened over the telegraph wires; "delivery" happened after the telegram was printed out. *See, e.g.*, *Peterson v. W. Union Tel. Co.*, 72 Minn. 41, 43 (Minn. 1898) (message was at first "*transmitted* over the wires to the operator at St. Paul, to be by him reduced to writing," and then "delivered to the plaintiff" on paper) (emphasis added). "Negligent transmission" or similar locutions were used to describe when operators of the wires made mistakes—when the message was not transmitted or was transmitted late or garbled. Thomas Atkins

Street, *Negligent Transmission of Telegrams* 436, *in* 1 The Foundations of Legal Liability (1906).

Claims about where the mail ended up *after* it was printed out and left the telegraph company's hands were claims about errors in delivery, often shorthanded "miscarriage" (more on that below). *See, e.g.*, *W. Union Tel. Co. v. Peter & Neylon*, 160 S.W. 991, 991 (Tex. Civ. App. 1913), *writ refused* (Mar. 18, 1914) (distinguishing "miscarriage" from "default" or "delay in delivery"); *Taliferro v. W. Union Tel. Co.*, 54 S.W. 825, 826 (Ky. 1900) (distinguishing "miscarriage" from telegram not being sent); *Brooks v. W. Union Tel. Co.*, 19 S.W. 572, 572 (Ark. 1892) ("The terms of the acts are confined to a refusal to 'transmit over the wires.' The language is not to 'transmit and deliver the message.'") (quoting statutes); *Peterson*, 72 Minn. at 43; *Dudley v. W. Union Tel. Co.*, 54 Mo. App. 391, 395 (Mo. Ct. App. 1893).

By the time of the FTCA's passage, the concept of a negligent transmission was well-entrenched. Courts were regularly adjudicating suits raising "negligent transmission," "negligent failure to transmit," or the like in the telegraph context.[6] Many states had even codified transmission-related torts in statutes. *See, e.g.*, Wis. Sess. Laws 171 (1885); Mich. Stat. Ann. 484.251 (1893); Va. Code Ann. § 56-477 (1900); S.C. Stat. Ann. § 58-9-1860 (1901); Ark. Code Ann. § 23-17-112 (1903); Okla. Stat. Ann. § 176 (1917); Fla. Rev. Gen. Stat. § 5628 (1917); Mass. Gen. Laws ch. 166, § 19 (tercentenary ed. 1931); Mo. Rev. Stat. § 5334

---

[6] *See, e.g.*, *W. Union Tel. Co. v. Gauntt*, 28 S.W.2d 207, 210 (Tex. Civ. App. 1930); *W. Union Tel. Co. v. Redding,* 129 So. 742, 744-45 (Fla. 1930); *Swingle v. W. Union Tel. Co.*, 177 So. 299, 299 (Fla. 1937).

(1939). And the idea that "transmission" was confined to what happened while the mail was in the carrier's possession, not where the carrier relinquished possession, was carried over into the mail context.[7]

2. "Negligent transmission" or similar phrases in the telegraph context covered instances where an operator either neglected to send a message along the telegraph wires altogether or delayed doing so.[8] So a plaintiff might file suit for negligent transmission where a telegraph company failed to pass along a message that he'd be home late, such that his wife was "sitting up awaiting" him and "very anxious." *Burnett v. W. Union Tel. Co.*, 39 Mo. App. 599, 604 (Mo. Ct. App. 1890). Or where a telegraph company neglected to send a message that a plaintiff's wife was in labor, so that he arrived home too late to meet his quadruplets, who passed away soon after birth. *Postal Telegraph-Cable Co. v. Kennedy*, 81 So. 644, 644 (Miss. 1919). Or where a telegram was delayed so long

---

[7] Postal statutes and regulations routinely distinguished between transmission and delivery. *See, e.g.*, 18 U.S.C. § 1696(b) (fining "[w]hoever *transmits* by private express or other unlawful means, or *delivers* to any agent thereof") (emphasis added); U.S. Post Office Dep't, *Postal Laws and Regulations of 1940* § 1078 (1941) ("Postmasters and all persons employed in the Postal Service shall facilitate" the "prompt dispatch, *transmission*, and immediate *delivery*" of mail) (emphasis added); *id.* at § 596(4)(a) (directing employees to "promptly *transmit* [mail] to that office" where "[i]t shall then be *delivered* to the addressee") (emphasis added).

[8] A third kind of "negligent transmission" occurred where a telegraph operator on the receiving end mistranscribed a message. *See, e.g.*, *Redding,* 129 So. at 744-45 (mistranscribed medical diagnosis); *Swingle*, 177 So. at 300 (wrong price estimate). Mistranscription doesn't have an obvious analog in the mail context.

that relatives were unable to make it to a sick man's bedside before he died. *W. Union Tel. Co. v. Landry*, 108 S.W. 461, 462-63 (Tex. Civ. Ct. App. 1908).

In the mail context, then, "transmission" problems occur when a letter is stranded at the post office or delivered late. Rojas's and Drake's *conduct* fell squarely into that bucket—they refused to transmit Ms. Konan's mail, holding it hostage at the Euless Post Office. But their *mens rea* was not covered by the statutory term. A "negligent transmission" must be, well, negligent. And Rojas and Drake did not act negligently.

A separate tort—often referred to as "willful refusal to transmit"—covered instances where defendants wrongfully stalled a telegram. For instance, courts characterized telegraph operators who deliberately and wrongfully declined to send along a message as engaging in a "*willful* or *intentional* refusal to transmit." *State v. W. Union Tel. Co.*, 88 S.W. 834, 835 (Ark. 1905) (emphasis added); *see also Weaver v. Grand Rapids & Ind. R.R. Co.*, 65 N.W. 225, 225 (Mich. 1895) (penalty can only be recovered for "the *willful* withholding of a dispatch as a discrimination against the sender, and because of partiality and bad faith," not "for mere failure to transmit without any wrongful motive") (emphasis added); *Frauenthal v. W. Union Tel. Co.*, 6 S.W. 236, 237 (Ark. 1887); *State v. W. Union Tel. Co.*, 142 S.W. 1149, 1149 (Ark. 1912). But Congress conspicuously did *not* codify that tort into Section 2680(b).

Because Ms. Konan has alleged that both Rojas and Drake acted wrongfully, not negligently, her claims did not arise from the "negligent transmission" of mail. Rather, Ms. Konan's case involved a "willful

refusal to transmit"—a term which Congress chose not to list in Section 2680(b).

II. Ms. Konan's claims did not arise out of the "miscarriage" of mail.

A. "Miscarriage" occurs when mail inadvertently ends up in the wrong place.

As the Fifth Circuit put it, a "miscarriage" occurs when the USPS "*mistakenly* delivers mail to a third party." Pet. App. 8a (emphasis in original). This Court said the same in *Dolan v. USPS*, 546 U.S. 481 (2006), explaining that mail is "miscarried" if it "goes to the wrong address." 546 U.S. at 487.

Ms. Konan's allegations thus don't describe a "miscarriage" for two separate and independent reasons. First, her mail did not go to the wrong address; Rojas and Drake refused to deliver it to any address at all. And second, her mail was not "*mistakenly*" delivered anywhere; Rojas and Drake acted wrongfully and withheld her mail as part of a deliberate campaign.

1. When referring to a "letter," the verb "miscarry" meant "[t]o be carried to a wrong place." 3 Funk & Wagnalls New Standard Dictionary of the English Language 1585 (Issac K. Funk et al. eds., 1900). Other dictionaries are similar; the Oxford English Dictionary, for instance, defined "miscarry" as "to get into the wrong hands." 6 The Oxford English Dictionary 498 (James A. Murray et al. eds., 1933); *see also* The New Century Dictionary of the English Language 1069 (H.G. Emery & K.G. Brewster eds. 1927) ("go astray"); The Random House Dictionary of

the English Language 915 (Jess Stein & Laurence Urdang eds., 1966) ("to go astray"); Webster's Third New International Dictionary of the English Language Unabridged 1442 (Philip Babcock Gove ed., 1966) ("go to the wrong destination"); Webster's New International Dictionary Latest Unabridged 1568 (William Allan Neilson et al. eds., 2d ed. 1945) ("to go to the wrong destination"); Webster's New International Dictionary of the English Language 1379 (W.T. Harris & F. Sturges Allen eds., 1930) ("to go to the wrong destination; to go astray").[9]

Judicial opinions contemporaneous with the passage of the FTCA reflect that "[m]iscarriage of mail" occurs when mail is dropped off in the wrong place. *In re Carobine*, 8 F. Supp. 605, 606 (S.D.N.Y. 1934) (characterizing miscarriage as resulting from "discrepancy in [recipient] address"); *see also Meta Craft Co. v. Grand Rapids Metalcraft Corp.*, 239 N.W. 363, 364 (Mich. 1931) (holding that the plaintiff offered evidence "indicating miscarriage of mail" because he "received several packages intended for

---

[9] The Government would presumably eschew definitions of "miscarry" to shed light on the meaning of "miscarriage." It criticizes Ms. Konan for relying on definitions of cognate words, rather than solely on definitions of the words in the statute, arguing that "the meaning of a word can change when the word is converted from one part of speech to another." Petr. Br. 39-40. But this Court frequently looks to definitions of cognate words to define the terms in a statute. *See, e.g.*, *Nielsen v. Preap*, 586 U.S. 392, 407 (2019) (dictionary definitions of verb "describe" to define adjective "described"); *Kyllo v. United States*, 533 U.S. 27, 32 n.1 (2001) (dictionary definitions of verb "search" to define noun "search"). As the very case the Government cites explains, these sorts of cognate words "typically" shed light on the meaning of a statutory term, though of course, "not always." *FCC v. AT&T Inc.*, 562 U.S. 397, 402 (2011).

defendant"); *Colonial Dames of Am. v. Colonial Dames of N.Y.*, 60 N.Y.S. 302, 304 (N.Y. Sup. Ct. 1899) (holding that "miscarriage of mail" occurred because "letters intended for" the defendant were "in the first instance, delivered to the plaintiff"), *aff'd sub nom. Colonial Dames of Am. v. Colonial Dames of N.Y.*, 65 N.E. 1115 (N.Y. 1902); *S. Exp. Co. v. Hill*, 98 S.W. 371, 373 (Ark. 1906) ("miscarriage" where a box was accidentally addressed to "Nashville, Tenn." instead of "Nashville, Ark." and was never found); *see also* Jack E. Hauck, Treasures of Wenham History 478 (2013) (describing a colonial Massachusetts law "preventing the miscarriage of letters" as prohibiting the wrong person from reading a letter).

Non-legal sources, too, use "miscarry" to indicate mail that has ended up in the wrong place. Cardinal Wolsey's downfall in Shakespeare's *Henry VIII* was set in motion when "The Cardinal's Letters to the Pope miscarried / And came to the eye o' the King." William Shakespeare, Henry VIII act 3, s. 2, l. 30 (1613). Dating all the way back to the Founding, military letters that fell into the hands of enemy combatants were described as "miscarriages." Letter from John Jay to Phillip Schuyler (Mar. 21, 1779). Lower brow fare was to the same effect: Romance novels would describe a character as "[a]fraid of miscarriage" where he fretted that his letters might be "intercepted, or opened by a stranger." John Neal, True Womanhood: A Tale 425 (1859); *see also* Washington Allston, Monaldi: A Tale 172 (1841) (describing delivery of letter to wrong recipient as "miscarriage"); Horatio Alger, The Errand Boy 170 (1888) (promising that a "letter won't miscarry" by going to the wrong destination).

2. "Miscarriage" doesn't encompass mail that the USPS withholds or detains.

Indeed, the 1940 edition of the Postal Laws and Regulations—the "backdrop" against which "Congress enacted the postal exception," Petr. Br. 35—differentiates between "miscarriage" and "detention": The Division of Stamps must adjust stamp production in "cases of loss, miscarriage, *or detention* of stamped supplies in transit." U.S. Post Office Dep't, *Postal Laws and Regulations of 1940* § 13(6) (1941) (emphasis added).

The prefix "mis-," as opposed to "non-" confirms that a refusal to deliver is different from a miscarriage. Courts at the time distinguished between "misdelivery" and "nondelivery," for instance: "Misdelivery" meant delivery to "a person not authorized," whereas "nondelivery" was a "refusal" to deliver goods altogether. Black's Law Dictionary 1192, 1249 (3d ed. 1933); Black's Law Dictionary 1150, 1206 (4th ed. 1951).[10] They similarly distinguished between "nonperformance or nondelivery" of a telegram and "miscarriage" of it. *See Quaker City Fire & Marine Ins. Co. v. W. Union Tel. Co.*, 52 S.E.2d 342, 343-44 (Ga. Ct. App. 1949) (citation omitted). That distinction accords with how the prefixes "mis" and "non" are used in other settings. Consider "misperformance" versus

---

[10] "Misdelivery" and "miscarriage" are interchangeable terms. *See, e.g.*, *Hardware Co. v. First Nat'l Bank*, 232 S.W. 902, 905-06 (Tex. Civ. App. 1921) (equating two terms). "Misdelivery" was often used in technical or legal contexts, whereas "miscarriage" was used more in everyday English. *See, e.g.*, New Century Dictionary 1070 (1927) (no entry for "misdeliver" or "misdelivery"); Webster's New International Dictionary of the English Language 1569 (1945) (same).

"nonperformance"—to "perform wrongly or improperly" versus a "failure to perform." Webster's Third New International Dictionary 1444, 1538 (1966). Or "misuse" versus "nonuse"—using a product in an "improper" manner versus "a failure to use." *Id.* at 1447, 1539.

3. At the time of the FTCA's passage, the term "miscarriage" in reference to mail had another key feature: It excluded wrongful conduct.

As one court put the point, "[i]t would be manifestly unreasonable" to hold a company "liable for every mistake, *miscarriage*, or accidental delay that may occur." *U.S. Tel. Co. v. Gildersleve*, 29 Md. 232, 246 (Md. 1868) (emphasis added); *see also Windham Bank v. Norton, Converse & Co.*, 22 Conn. 213, 223-24 (Conn. 1852) ("miscarriage" is a "casualty, incident to" the mail that results from an "accident or mistake of the postmaster"); *Gibbons v. Sherwin*, 44 N.W. 99, 102 (Neb. 1889) ("information is miscarried" on account of "casualty or failure of the public mails"); *Taliferro v. W. Union Tel. Co.*, 54 S.W. 825, 826 (Ky. 1900) (miscarriage is "without the fault of appellee," a telegraph company); *Wagner v. Lucas*, 193 P. 421, 422-23 (Okla. 1920) ("miscarriage of the mails" is a "casualty happening against the will" of the defaulting party; "miscarriage of the mails" is listed as an "unavoidable casualty" or an "event[] which human prudence, foresight, and sagacity, could not prevent" alongside "sickness and death" and "mistake in the wording of a telegram").

4. The term "miscarriage" thus picks up where the term "negligent transmission" leaves off, the latter covering mistakes while the mail is in the USPS's possession and the former covering mistakes in where

the mail ends up after it leaves the USPS's possession. To be sure, the lines between the two could sometimes be blurry. But by pairing the two terms, Congress ensured the United States would not be held liable for *any* negligence that resulted in mail failing to end up in the right place at the right time, whether because it was fumbled while in the USPS's possession ("negligent transmission") or because the USPS delivered it to the wrong place ("miscarriage").

5. Ms. Konan's claims thus did not arise from the "miscarriage" of letters or postal matter. Her mail did not end up in the wrong hands. Instead, it was detained at the post office when Rojas and Drake refused to deliver it. And in any event, her claims didn't arise from an "accident or mistake" on the part of USPS employees; she has alleged Rojas and Drake simply refused—on purpose and wrongfully—to deliver the mail.

B. The Government's definition of "miscarriage" is wrong.

The Government urges this Court to read "miscarriage" to mean *any* "failure to arrive" or "to carry properly." Petr. Br. 14 (citation and quotation marks omitted). The Government doesn't supply any examples of "miscarriage" being used so broadly, let alone proof that "failure to arrive or carry properly" is the *usual* use of the term. It doesn't explain how to square its definition with *Dolan*'s admonition that mail is "'miscarried' if it goes to the wrong address," but it is "'lost'"—not "miscarried"—"if it is destroyed." 546 U.S. at 487. And the Government's reading is impossible to reconcile with the way the statute is written.

1. To start, on the Government's reading, Congress could have drafted Section 2680(b) simply to exempt "claims arising out of the miscarriage of letters or postal matter"—no mention of "negligent transmission" or "loss." The Government itself admits that "negligent transmission" is superfluous on its reading. Petr. Br. 16-17. The term "loss" is entirely superfluous, too: On the Government's reading, "miscarriage" covers every instance where the USPS: "carr[ies] the mail to the wrong place," "fail[s] to carry the mail at all," "deliver[s] the mail late," or "deliver[s] the mail . . . in damaged condition." *Id.* 22, 30. What's left for the word "loss" to cover? The Government doesn't have a theory.

The breadth of the Government's construction of "miscarriage" is also tough to square with this Court's pronouncements (and the Government's own admissions) about what Section 2680(b) does *not* cover. Everyone agrees that Section 2680(b) does not cover car accidents involving mail carriers or instances where the USPS places a package on a doorstep in a way that causes a plaintiff to injure herself. *Dolan*, 546 U.S. at 488; Petr. Br. 23. But on the Government's telling, both of those would be encompassed by "miscarriage"—each is an instance of the USPS's "failure to carry the mail properly."

2. The Government hangs its hat on two pieces of evidence: broadly worded dictionary definitions and the prefix "mis." Neither can bear the weight the Government assigns to them.

a. As the Government notes, there are some dictionaries that define "miscarriage" more broadly than *Dolan* did, as any "failure to arrive." *Compare* Petr. Br. 13-14, *with supra*, 15-16. But as this Court

has often admonished, "[t]hat a definition is broad enough to encompass one sense of a word does not establish that the word is ordinarily understood in that sense." *See, e.g.*, *Kouichi Taniguchi v. Kan. Pac. Saipan, Ltd.*, 566 U.S. 560, 568-69 (2012). Dictionary definitions typically sweep far more broadly than the common usage of a word or phrase. *See* Kevin Tobia, *Testing Ordinary Meaning*, 134 Harv. L. Rev. 726, 778-85 (2022); *Abuelhawa v. United States*, 556 U.S. 816, 822-23 (2009).

Indeed, this Court has cautioned against uncritical use of broad dictionary definitions specifically when interpreting Section 2680(b). In *Dolan*, this Court considered whether "negligent transmission" could include placing a package on a recipient's doorstep in such a way as to cause a slip and fall. 546 U.S. at 483. It acknowledged that most dictionaries defined "transmission" to include delivery, such that "negligent transmission" could encompass placing a package negligently during delivery. *Id.* at 486. But it explained that "[t]he definition of words in isolation" is "not necessarily controlling in statutory interpretation." *Id.* "A word in a statute may or may not extend to the outer limits of its definitional possibilities." *Id.* And the *Dolan* Court ultimately held that "negligent transmission" did *not* include placing the package negligently during delivery. *Id.*

Besides, it's possible to read the dictionaries the Government cites as at least limiting "miscarriage" to the result of inadvertence. Most of the dictionaries use some variant of "failure to arrive," which, the Government argues, covers both negligent and wrongful conduct. *See* Petr. Br. 715-22. But the term

"failure" doesn't usually cover deliberately wrongful conduct. A diplomat might "fail to arrive" at a treaty negotiation if her flight were cancelled, but no one would describe her as "failing to arrive" if she deliberately skipped the talks to undermine the treaty ("refused to attend" would be more accurate).

As between the sense in which "miscarriage" was almost universally used—the sense in which *Dolan* understood "miscarriage" and which avoids rendering the other statutory terms superfluous—and the broadest possible reading of the broadest possible dictionary definition of the word, this Court should choose the former.[11]

b. The Government's other argument is that "miscarriage" should extend beyond its common usage to encompass wrongful conduct because it has the prefix "mis": "[O]ther 'mis-' words, such as 'misbehavior,' 'misconduct,' and 'misdeed,' encompass intentional wrongs." Petr. Br. 16-17. But plenty of

[11] The Government wisely doesn't suggest that the broadest reading should be given to Section 2680(b) because waivers of sovereign immunity are sometimes "strictly construed." *See Dolan*, 546 U.S. at 492 (citation omitted). This Court has rejected the strict construction rule for waivers of sovereign immunity in the FTCA context. *Id.* at 491-92. And the presumption is doubly inapplicable when it comes to FTCA suits against the USPS, which has its own "sue and be sued" clause waiving sovereign immunity. *See* 39 U.S.C. § 409.

"mis" words—mishap,[12] misunderstand,[13] mistake,[14] misread,[15] and misjudge,[16] to name just a few—connote inadvertence.

In any event, the critical question isn't what the prefix "mis" might mean in the abstract, or even what "miscarriage" might mean in some settings. It's what "miscarriage" means *in the context of mail*. And as explained *supra*, 19, in that context, "miscarriage" almost always excluded wrongful conduct.

3. As a fallback, the Government urges that even if Ms. Konan's reading of "miscarriage" is correct, her claims stem from a "miscarriage" because mail held at the Euless Post Office has been "carried to the wrong address." Petr. Br. 22. The Government gives no examples of the word "miscarriage" being used to describe mail that is halted on its journey. To the contrary: "Miscarriage" was used to describe letters that *left* the mail carrier's custody for someone else's, not letters that the mail carrier refused to give up. *See supra*, 15-17.

---

[12] 6 Oxford English Dictionary 515 (1933) ("Evil hap; bad luck; misfortune . . . An unlucky accident."); *see also* Webster's New International Dictionary 1381 (1930) ("Ill luck; misfortune; mischance.").

[13] Webster's New International Dictionary 1384 (1930) ("To misconceive; mistake; miscomprehend; to take in a wrong sense; to misinterpret.").

[14] *Id.* at 1383 ("An apprehending wrongly; a misconception; a misunderstanding; a fault in opinion or judgment; an unintentional error.")

[15] *Id.* at 1382 ("To read amiss; to misinterpret in reading.").

[16] *Id.* at 1381 ("To judge erroneously or unjustly; to err in judgment; to misconstrue.").

The Government similarly gives no examples proving that letters returned to sender are "one form of miscarriage of mail." Petr. Br. 22. When the USPS accepts a letter, it serves as a bailee with instructions to deliver the mail to a designated recipient. *Id.* 14. By refusing to deliver the mail at all and returning it to the sender, the USPS hasn't engaged in a "miscarriage." Regardless, Ms. Konan's allegation is that Rojas and Drake *wrongfully* returned her mail to the sender. And *that* conduct is well outside the scope of a term that has always been understood to cover mistakes, accidents, and unavoidable casualties, not wrongful acts. *See supra*, 19.

III. Ms. Konan's claims did not arise out of the "loss" of mail.

A. "Loss" refers either to mail that is destroyed or mail that is misplaced.

Finally, Ms. Konan's claims did not arise out of the "loss" of mail. At the time of the FTCA's passage, the term "loss" primarily referred to mail that was destroyed. But Ms. Konan's mail was not destroyed: Rojas and Drake left it intact.

The Fifth Circuit and this Court in *Dolan v. USPS*, 546 U.S. 481 (2006), both thought it was possible that "loss" in Section 2680(b) meant "misplaced," rather than destroyed. 546 U.S. at 487; Pet. App. 6a. Even if that's correct, though, Ms. Konan's claims did not arise out of the "loss" of mail.

1. ***Destroyed***—

a. Start with "loss" as destruction. Though it may sound odd to the modern ear, that was the primary definition given by dictionaries in the early twentieth

century. The first entry in the Oxford English Dictionary for "loss" is: "ruin or destruction." 6 The Oxford English Dictionary 452 (James A. Murray et al. eds., 1933). Webster's First is similar: "Loss" is the "state or fact of being lost or destroyed; ruin; destruction; perdition." Webster's New International Dictionary of the English Language 1277 (W.T. Harris & F. Sturges Allen eds., 1st ed. 1930); *see also* 2 The New Century Dictionary of the English Language 980 (H.G. Emery & K.G. Brewster eds., 1927) ("[d]estruction or ruin"). These definitions are consistent with the primary dictionary definitions of cognates of "loss," such as "lose" and "lost."[17]

"Destruction" was also the sense of "loss" most closely associated with the mail at the time of the FTCA's passage. Consider court cases contemporaneous with the FTCA. *See, e.g.*, *Great N. Ry. Co. v. United States*, 236 F. 433, 435-36 (8th Cir. 1916) (when "a large quantity of mail and mail equipment was destroyed," considering whether a fine should be "imposed for the *loss* of said equipment") (emphasis added); *Union Pac. R.R. Co. v. United States*, 219 F. 427, 429 (8th Cir. 1915) (describing the "*loss*, damage, and destruction of registered mail matter" in a train collision) (emphasis added); *La Bourgogne*, 139 F. 433, 435 (2d Cir. 1905) (considering the effect of a steamship collision "resulting in total *loss* of merchandise") (emphasis added); *United States*

---

[17] *See, e.g.*, Webster's New International Dictionary 1277 (1930) (first definition of "lose" is "[t]o bring to destruction; to ruin; to destroy"); Webster's New International Dictionary of the English Language Latest Unabridged 1460 (William Allan Neilson et al. eds., 2d ed. 1945) (first definition of "lost" is "[r]uined or destroyed").

v. Atl. Coast Line R.R., 215 F. 56, 60 (4th Cir. 1914) (fines may be imposed on a railroad for causing the mail "to become wet, *lost*, injured, or destroyed" or "expos[ing] it to depredation, *loss* or injury") (emphasis added).

Ordinary speakers of English used "loss" in the same way, generally talking about destruction when discussing a "loss" of mail. Packages "charred beyond recognition" were described as a "loss" when a train full of Christmas mail caught fire. *Christmas Mail Burned in Car*, L.A. Times, Dec. 24, 1921, at II3. When sacks of mail on the Lusitania went down with the ship, a newspaper reported on "the loss of 82 bags of United States mail." *Mail Lost on Lusitania*, Wash. Post, May 17, 1915, at 2.

b. "Loss" as destruction generally referred to inadvertent destruction. Where "loss" meant destruction as a result of wrongful conduct, the term was usually qualified to so indicate.

Take the example of "loss" in the context of insurance. "Loss" in that setting is typically defined as "injury or damage sustained by the insured in consequence of the happening of one or more of the *accidents or misfortunes*" covered by the insurer. Black's Law Dictionary 739 (2d ed. 1910) (emphasis added). Where an insurance contract meant to refer to destruction as a consequence of wrongful conduct, it instead referred to "*intentional* loss." *See, e.g.*, *Redmon v. Phoenix Fire Ins. Co.*, 8 N.W. 226, 229-30 (Wis. 1881) (highlighting that "intentional loss" and "dishonest loss" are not the usual losses contemplated by insurance contracts).

Court cases are similar. Cases from the early twentieth century that use the term "loss" without

qualification are generally referring to inadvertent acts. For example, a court might refer to the "loss" of mail when it burns in a trainwreck. *See Union Pac. R.R. Co.*, 219 F. at 435. Or it might find that the "loss" of mail results from a negligent ship collision. *See La Bourgogne*, 139 F. at 435. But where cases refer to destruction that someone intended to inflict, they specify as much, using terms like "intentional loss." *See, e.g.*, *Redmon*, 8 N.W. at 230; *Ewton v. McCracken*, 64 So. 177, 178 (Ala. Ct. App. 1913). Postal regulations, too, specify where a "loss" is not inadvertent but instead results from "willfulness or malice." *See* Petr. Br. 37 (collecting examples).

c. In Section 2680(b), Congress didn't use any such modifier to indicate that it meant to cover a "loss" stemming from wrongful conduct. Indeed, context suggests the opposite—that "loss" is limited to negligence.

First, Congress conspicuously declined to use modifiers like "unlawfully" and "willfully"—modifiers that were frequently used at the time to denote wrongful conduct vis-à-vis the mail. For instance, a statute passed just two years after the FTCA criminalized when a postal employee "*unlawfully* secretes, destroys, detains, [or] delays" mail. 18 U.S.C. § 1703 (emphasis added). Court cases similarly describe postal employees who refused to deliver as "*unlawfully and willfully* secret[ing], embezzl[ing], and destroy[ing]" mail. *Bromberger v. United States*, 128 F. 346, 350 (2d Cir. 1904) (emphasis added). Section 2680(b) doesn't use any of those words.

Second, it would be odd to hold that the United States can be subject to suit where a postal worker intentionally delays delivering a package (because

wrongful conduct is not a "negligent transmission") or deliberately gives it to the wrong person (because wrongful conduct is not a "miscarriage"), yet shield the United States from liability where a postal worker deliberately destroys a package. Because the terms "negligent transmission" and "miscarriage" omit wrongful conduct, so, too, should the term "loss."

d. Ms. Konan's claims thus didn't arise from a "loss." Her mail was intact, not destroyed. And the conduct she alleges was wrongful, not negligent.

2. ***Misplaced—***

Even if—as *Dolan* and the court below contemplated—"loss" meant "misplacement" instead of "destruction," it still doesn't cover Ms. Konan's case. "Loss" as misplacement has two key features, neither of which applies to Ms. Konan's allegations.

a. "Loss" as "misplacement" is, definitionally, unintentional. As the Fifth Circuit explained, "no one intentionally loses something" in the sense of misplacing it. Pet. App. 6a.

Dictionary definitions also make clear that "loss" as misplacement refers exclusively to the result of inadvertent conduct. *See, e.g.*, 2 New Century Dictionary 980 (1927) (loss is an "accidental or inadvertent losing of something dropped, misplaced, or of unknown whereabouts"); Webster's New International Dictionary 1460 (1945) ("unintentional parting"). The same is true of cognate words like "lose" when used to mean misplacement.[18]

---

[18] 6 Oxford English Dictionary 450 (1933) ("[T]o part with through negligence or misadventure; to be deprived of."); *see also*

The legal sense of "loss" as misplacement is similar. "An article is 'lost' when the owner has lost the possession or custody of it, involuntarily and by any means, but more particularly by accident or his own negligence or forgetfulness, and when he is ignorant of its whereabouts or cannot recover it by an ordinarily diligent search." Black's Law Dictionary 739 (2d ed. 1910); *see also Mfrs. Safe Deposit Co. v. Cohen*, 85 N.Y.S.2d 650, 653 (N.Y. App. Div. 1948). Goods are thus "*lost* in the legal sense of the word only when the possession has been casually and involuntarily parted with, through negligence, carelessness, or inadvertence." 36A C.J.S., *Finding Lost Goods* § 1 (John Boudeau ed., 2025) (emphasis added) (citing cases dating back to 1940s). By contrast, courts use another term—"abandoned"—to refer to property that the owner has "voluntar[il]y relinquish[ed]." 1 C.J.S., *Abandonment* § 5 n.6 (Cecily Fuhr ed., 2025) (citing cases back to 1915).

b. "Loss" meaning misplacement has a second key feature. Something is only "lost" in the sense of misplaced if the searcher doesn't know where it is. *See, e.g.*, 2 New Century Dictionary 980 (1927) ("loss" as something "of unknown whereabouts"); The American College Dictionary 721 (Clarence L. Barnhart et al. eds., 1st ed. 1947) ("loss" as "something dropped, misplaced, or of unknown whereabouts"); 2 Funk & Wagnalls New Standard Dictionary of the English Language 1465 (Issac K. Funk et al. eds., 1900) ("lost" as "taken away to some place unknown to the owner or former possessor"). The legal use of the term "loss"

Webster's New International Dictionary 1277 (1930) ("To suffer the loss of; to be deprived of; to part with (something of value), esp. in an accidental or unforeseen manner.").

is in accord—as the sources just discussed make clear, something is "lost" in the legal sense if the owner (or someone to whom it has been entrusted) "cannot recover it by an ordinarily diligent search." Black's Law Dictionary 739 (2d ed. 1910).

c. Ms. Konan's claims thus don't stem from a "loss" in the sense of misplacement. Rojas and Drake didn't inadvertently misplace Ms. Konan's mail; they wrongfully withheld it. And Rojas, Drake, and Ms. Konan all knew exactly where Ms. Konan's mail was.

3. One final note: Whatever "loss" means, it does not include mail detained or withheld. Indeed, the 1940 edition of the Postal Laws and Regulations—which the Government repeatedly cites, *see, e.g.*, Petr. Br. 36—frequently contrasted "loss" with detention or withholding. For instance, the Division of Stamps must adjust stamp production in "cases of loss, miscarriage, *or detention* of stamped supplies in transit." U.S. Post Office Dep't, *Postal Laws and Regulations of 1940* § 13.6 (1941) (emphasis added); *see also id.* § 491(2) (allowing "[k]ey-deposit funds" to be used "to replace keys that have been lost *or illegally withheld*") (emphasis added); *id.* § 810(4)(b) (explaining that "[b]efore concluding that a loss is involved[,] inquiries shall be made to determine whether the article has been delivered, *is held at office of mailing* or address, or missent") (emphasis added).

B. The Government's definition of "loss" is wrong.

The Government claims that "loss" simply means "deprivation," covering *any* conduct, wrongful or not, that results in a "failure to keep, have, or get." Petr. Br. 30. But the Government doesn't tell us why it has

selected that definition among the many possible meanings of "loss." It's not the primary definition, and it's not the definition most closely associated with mail.

In any event, the Government's reading fails on its own terms.

1. Let's start by assuming the Government is right—that a "loss" is any "deprivation." Ms. Konan's claims *still* wouldn't have arisen out of a "loss" as used in Section 2680(b). That's because no one would ever say that Rojas and Drake "lost" the mail—even if "loss" means "deprivation." Rojas and Drake weren't deprived of the mail; they chose not to transport the mail.

Recognizing the flaw in its argument, the Government seeks to invert the statute. The question, argues the Government, "is whether postal employees caused the 'loss' of the mail, not whether postal employees 'lost' the mail." Petr. Br. 39. Or perhaps it's "whether *the alleged victims* 'lost' mail." *Id.* 41.

But both of the Government's purported questions are inconsistent with the rest of Section 2680(b). The question isn't whether "postal employees caused" the negligent transmission of the mail, for instance. And it isn't "whether the alleged victims" negligently transmitted mail. It's "whether the postal employees negligently transmitted the mail" or, to put it another way, "whether the mail was negligently transmitted by the postal employees."[19] So Section 2680(b) must

---

[19] The latter may be a preferable formulation because "miscarry" is ordinarily an intransitive verb when used with mail. *See supra*, 15-17 (collecting examples). The agent can most easily be specified in the prepositional passive construction.

similarly ask "whether postal employees lost the mail" or "whether the mail was lost by postal employees," lest the agent switch or multiply mid-sentence.

Besides, if Congress wanted to create an exception for instances where its employees *caused a loss* of mail, rather than for instances where its employees *lost* the mail, it knew how to do so. Look no further than Section 1346(b) of the FTCA: It creates jurisdiction where there is a "*loss* of property . . . *caused by* the negligent or wrongful act or omission of any employee of the Government." 28 U.S.C. § 1346(b) (emphasis added). Congress conspicuously chose a different formulation for Section 2680(b).

To ask the correct question posed by the statute is to answer it: The Government did not "lose" Ms. Konan's mail—on *any* definition of "loss." Instead, Rojas and Drake deliberately stymied Ms. Konan's efforts to obtain the mail.

2. Now let's assume the Government is somehow (contra basic syntax) right that the relevant question is: "Did Ms. Konan lose her mail?" The answer would still be "no," because the Government is wrong to suggest that "loss" in Section 2680(b) covers any "failure to keep, have, or get something." *See* Petr. Br. 30.

The Government's definition sweeps far too broadly. No ordinary English speaker would say that a college student suffered a "loss" of his diploma because he "failed to get" it after eight semesters of partying. And the loner who "fails to have" a birthday party did not experience a "loss" of his party, either.

At best, then, the Government can plausibly argue only that "loss" encompasses a "failure to keep" something. But Ms. Konan never got her mail in the

first place. She couldn't "fail[] to keep" something she never had.[20]

3. Finally, let's assume the Government were—somehow—correct that the question under the statute is, "Did Ms. Konan lose her mail?" *And* let's assume that "loss" can mean a "failure to get." Even still, the answer to the question would be "no," because Rojas and Drake acted wrongfully in depriving Ms. Konan of her mail.

As the Government acknowledged below and at the certiorari stage, a loss is "*usually* unintentional[]." Pet. 14 (citing Webster's New International Dictionary 1460 (1945) (emphasis added)); Petr. C.A. Pet. for Reh'g En Banc 5. That should settle the matter: "In looking for congressional intent, we quite naturally start with the *usual* meaning of the word[s]." *Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 151 (1980) (emphasis added).

At the very least, this Court should not assume the *unusual* meaning of "loss" without some indication in the statute to do so. As explained *supra*, 28-29, context in this case points in the opposite direction: Congress conspicuously *didn't* use modifiers like

---

[20] The Government insinuates that "loss" must cover a "failure to get" because Ms. Konan alleges that she "lost" rental income as a result of Rojas's and Drake's conduct. Petr. Br. 42-43. Per the Government, that allegation is an example of "loss" meaning "failure to get," not merely "failure to keep," because Ms. Konan "never physically possessed that money." *Id.* As the Government must know, that argument is a red herring. Though Ms. Konan did not "physically possess[]" the rental income, it was owed to her under a contract and was thus her property—property that she could not "keep" because of Rojas's and Drake's conduct. *See Prudential Ins. Co. of Am. v. Fin. Rev. Servs., Inc.*, 29 S.W.3d 74, 78, 83 (Tex. 2000).

"unlawfully" or "wrongfully" that it used in related statutes, and the noscitur a sociis canon suggests that if "miscarriage" and "negligent transmission" exclude wrongful conduct, "loss" does too. *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 31 (2012).

4. The Government's final argument draws on the word "loss" in a different part of the FTCA. The FTCA's jurisdiction provision covers claims "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." 28 U.S.C. § 1346(b) (emphasis added). The Government reasons that "loss" in the jurisdiction provision "refers to deprivations generally, including those caused intentionally" and that "loss" in Section 2680(a) "bears the same meaning." Petr. Br. 33-34.

The Government ignores two important differences between the wording of Section 1346(b) and of Section 2680(b). First, Congress specified in Section 1346(b) that the "loss of property" in question could be "caused by . . . wrongful act[s]." As explained *supra*, 28-29, the default—that a "loss" is *not* caused by a wrongful act—can be altered if the drafter does so explicitly (think "intentional loss"). In Section 1346(b), Congress did just that. Not so in Section 2680(b).

Second, as just explained *supra*, 32-33, the two provisions place the government employee in a different role. For Section 1346(b), the question is: "Did the Government *cause the loss* of the property?" For Section 2680(b), the question is: "Did the Government *lose* the letter or postal matter?" And as just explained, whatever the answer to the *former*

question, the answer to the *latter* question must be "no."

* * *

Putting the pieces together, Ms. Konan's claims did not arise out of the "miscarriage" of postal matter—her mail was never delivered to the wrong address, and it was Rojas's and Drake's vendetta against Ms. Konan, not some accident or mistake, that caused the nondelivery. Nor did they arise out of the "loss" of mail—Ms. Konan did not allege her mail was destroyed or misplaced.

Instead, Ms. Konan claims that her mail was wrongfully withheld by the USPS. Had the withholding happened because Rojas forgot to grab a mail bag or because Drake didn't notice that a letter was left at the depot, Ms. Konan's claims might have arisen out of "negligent transmission." But because Rojas and Drake deliberately delayed or withheld mail—disobeying orders of the USPS Inspector General—Ms. Konan's claims did not arise from the "*negligent* transmission" of mail. Instead, they arose from *wrongful* acts during the transmission of mail, acts that are squarely outside the scope of Section 2680(b).

IV. The remaining statutory interpretation considerations do not counsel in favor of the Government's reading.

A. The Government's reading is inconsistent with statutory structure and precedent.

1. On Ms. Konan's reading, each term in Section 2680(b) has a separate ambit: "Loss" covers damage to the postal matter itself; "miscarriage" covers postal

matter dropped off in the wrong place; and "negligent transmission" covers detention or delays of the mail within the USPS's possession.

The Government's reading, by contrast, doesn't engage in any such niceties. According to the Government, "loss" is any "failure to keep, have, or get something," including any time the mail "fails to arrive at all." Petr. Br. 30 (citations omitted). "Miscarriage" is any "failure of mail to arrive or to be carried properly" due to *either* "ill motive" or negligence. *Id.* 2, 10, 16-17. And "negligent transmission" is any "failure[] to properly carry the mail" due to negligence (but not "ill motive"). *Id.* 16-17 (citation and quotation marks omitted). That reading is nigh impossible to square with the wording of the statute.

To start, as explained above, the Government's definition of "miscarriage" creates a superfluity problem, rendering *both* "negligent transmission" *and* "loss" superfluous. *Supra*, 21. The Government at least attempts to explain the superfluity of "negligent transmission" (though, tellingly, not the superfluity of "loss"). It claims Congress took a "belt-and-suspenders" approach: "Miscarriage" covers both negligent "failures" of the mail "to arrive or be carried properly" and such failures with "ill motive"; "negligent transmission" was intended to make doubly sure that even merely negligent failures of arrival or carriage would not generate liability. Petr. Br. 16-17, 17 n.3 (citation and quotation marks omitted).

But if Congress intended to cover the same set of acts ("failure of the mail to arrive or be carried properly") with two different mentes reae, it would be passing strange to use "miscarriage" and "negligent

transmission"—to vary the actus reus when it intended only to vary the mens rea. Far simpler to describe the two sets of activities as "miscarriage or negligent carriage" or, alternatively, "wrongful or negligent transmission."

2. The Government's reading also ignores Congress's choice to draft Section 2680(b) more narrowly than its neighboring provisions. This Court has recognized that the "specificity" of Section 2680(b) suggests that "Congress intended [it] to be *less* encompassing" than other exceptions to the FTCA's waiver of sovereign immunity. *Kosak v. United States*, 465 U.S. 848, 855 (1984) (emphasis in original).

Just look at the surrounding FTCA exceptions, disallowing, for instance, "[a]ny claim arising from the activities of the Panama Canal Company" or "[a]ny claim arising out of the combatant activities of the military. 28 U.S.C. §§ 2680(j), (m); *see also id.* §§ 2680(e), (i), (l). Congress could have used "similarly sweeping language" in Section 2680(b) but chose not to. *Dolan v. USPS*, 546 U.S. 481, 490 (2006). But on the Government's telling, the statute could have been modeled off the other Section 2680 exceptions and preserved immunity for "any claim arising from the activities of the United States Postal Service" or "any claim arising from the mail-handling activities of the United States Postal Service." *See* 28 U.S.C. §§ 2680(e), (l)-(n).

3. The Government argues that the phrase "negligent transmission" is "significant" because "[i]t shows that Congress knew how to exclude intentional misconduct when it wanted to." Petr. Br. 17. But there's a more obvious explanation. The term "transmission" encompasses all transmissions—

transmissions made with due care, neglectful mistakes, and bad-faith conduct alike. Congress needed the modifier "negligent" to specify which category of transmissions fall within the exception. The same isn't true for "loss" and "miscarriage." Congress didn't need to use the word "negligent" because those terms are already by definition limited to inadvertent conduct.

Think of a sign advertising lessons for "violin, bass, or acoustic guitar." "Acoustic" only modifies the last entry in the list, but no one would therefore argue that the lessons must be for "electric violin" or "electric bass." Everyone knows that a "violin" is acoustic, so the modifier "acoustic" is unnecessary. So, too, with "miscarriage": At the time the FTCA was passed, everyone knew "miscarriages" happened only negligently, so the modifier "negligent" was unnecessary. And though "bass" comes in electric and acoustic forms, its position between "violin" (acoustic) and "acoustic guitar" (also acoustic) makes clear we're talking about the acoustic bass, even without the "acoustic" modifier. So, too, with "loss": Although there may be definitions of "loss" that cover wrongful conduct, its position next to "miscarriage" and "negligent transmission" makes clear that here, "loss" is being used in a sense limited to negligent conduct, even without the "negligent" modifier.

4. Finally, the Government's reading is inconsistent with *Dolan*. In *Dolan*, this Court was clear that "mail is 'lost' if it is destroyed or misplaced and 'miscarried' if it goes to the wrong address." 546 U.S. at 487. On the Government's telling, mail is "lost" if it is "misplaced" *or* "goes to the wrong address" (but not if it is destroyed?) and "miscarried" if it is

"destroyed" *or* "misplaced" *or* "goes to the wrong address."

The Government insists it's the more faithful to *Dolan*, quoting the following line no fewer than *seven* times: Section 2680(b) covers "injuries arising, directly or consequentially, because mail either fails to arrive at all or arrives late, in damaged condition, or at the wrong address." Petr. Br. 2, 5, 13, 15, 16, 24.

It's hard to see why the Government's reading is more consistent with its preferred *Dolan* quotation. On Ms. Konan's reading of the statute, Section 2680(b) also excludes such injuries. The difference lies in the way that Ms. Konan allocates those injuries across the statutory terms: The Government would call *all* of the examples described—failures to arrive at all, arriving late, in damaged condition, or at the wrong address—"miscarriage." By contrast, Ms. Konan's reading lets each term in the statute cover different conduct ("negligent transmission" covers mail arriving late or not being delivered at all; "miscarriage" covers mail arriving at the wrong address; and "loss" covers mail arriving in damaged condition).

Although the *Dolan* line doesn't explicitly say Section 2680(b) is limited to such injuries inflicted as a result of negligent conduct by the Government, that limitation is clear from context. In *Dolan*, everyone agreed that the Government's conduct had been negligent, not wrongful. 546 U.S. at 483. There would have been no reason for *Dolan* to discuss wrongful conduct at all. And in any event, *Dolan* qualified the sentence, in language the Government conspicuously omits: "We *think* it *more likely* that Congress intended to retain immunity *as a general rule* only for injuries arising, directly or consequentially, because mail

either fails to arrive at all or arrives late, in damaged condition, or at the wrong address." *Id.* at 489 (emphasis added). The Government's preferred quotation itself leaves room for suit in the unusual case where mail is *wrongfully* withheld or delayed or damaged—the exception to the "general rule."

B. The Government's appeals to purpose and policy are unavailing.

Unable to muster an argument based on the statutory text, the Government instead makes an argument from consequences: The statute can't mean what it says because it would lead to too much litigation and thereby would not serve the "statutory purpose." Petr. Br. 23-30, 38. The Government is wrong.

1. The Government claims Ms. Konan's reading of the statute would "disrupt[]" the "essential work of the Postal Service" with "the threat of damages suits." Petr. Br. 11. Not so. Under Ms. Konan's reading of Section 2680(b), the federal government maintains its immunity for the vast majority of postal-matter related harms—the package that gets stuck in a warehouse ("negligent transmission"), the letter that's accidentally placed in a neighbor's mailbox ("miscarriage"), the painting that's inadvertently left out in the rain ("loss"), and so on. It's only for *wrongful* conduct that the United States is amenable to suit. Surely the Government doesn't believe that there are so many cases where a USPS employee singles out a citizen for racialized harassment by withholding (or destroying or misdelivering) her mail.

The Government protests that plaintiffs can "easily repackage" any claim "as an intentional tort."

Pet. Reply 9. But there are plenty of protections against that sort of dishonesty, and there's no reason to flout the rules of statutory interpretation to provide more. First, Rule 11's threat of sanctions precludes lawyers from asserting such claims without evidence. Fed. R. Civ. P. 11. Second, plaintiffs need to plead facts, not just legal conclusions, supporting an inference of purposeful conduct. *See Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). Merely alleging that postal employees acted intentionally in failing to deliver will not survive this bar. *Contra* Pet. Reply 9. Third, because Section 2680's exemptions go to the court's jurisdiction, Petr. Br. 27-28, courts can ask a plaintiff to come forward at an early stage of the case with evidence proving that her case falls outside the scope of an FTCA exemption. *See, e.g.*, *Carovillano v. Sirius XM Radio Inc.*, 715 F. Supp. 3d 562, 574 (S.D.N.Y. 2024).

In any event, this is precisely the argument this Court rejected in *Dolan*. In *Dolan*, the Government raised the "specter of frivolous" claims "inundating the Postal Service." 546 U.S. at 491. This Court rejected that argument, concluding that "ordinary protections against frivolous litigation must suffice." *Id.* The same is true here. Indeed, the nearly two decades since *Dolan* show just how wrong the Government's doomsday predictions were. Slip-and-fall liability hasn't bankrupted the USPS. Indeed, the Government admits that since *Dolan*, "the postal exception had been doing its job." Petr. Br. 23.

2. The Government points to the "hundreds of thousands of customer complaints" it receives each year as evidence that a flood of litigation will ensue. But per the USPS's website, misconduct complaints

can include everything from "[r]ude or unprofessional USPS employee behavior" to "[c]omplaints about USPS vehicle parking," not just complaints about mail delivery. USPS Office of Inspector General, File an Online Complaint, https://perma.cc/MFW7-3EJR (last visited Dec. 11, 2024).

More importantly, a "customer complaint" just requires typing a few sentences into an online form. Filing an FTCA claim requires first exhausting administrative remedies and then filing suit in court. The Government wildly overstates the economic incentives for such a suit. There are no punitive damages under the FTCA, so, in the mine run of cases, the $405 filing fee—not to mention the cost of hiring a lawyer—will dwarf any potential recovery from a missing Amazon package (even an Amazon package withheld in bad faith).[21]

3. The Government next devotes an entire subpart of its brief to arguing this Court should adopt its

---

[21] The Government does not reprise its argument, made at the cert stage, that claims arising from theft by USPS workers will bring the system to a crashing halt. Pet. 22. The FTCA is limited to cases where a federal worker commits a tort "while acting within the scope of his office or employment." *See* 28 U.S.C. § 1346(b). State law defines the "scope of employment." *See, e.g.*, *M.D.C.G. v. United States*, 956 F.3d 762, 769 (5th Cir. 2020); *Fountain v. Karim*, 838 F.3d 129, 135 (2d Cir. 2016); *Johnson v. United States*, 534 F.3d 958, 963 (8th Cir. 2008). In most states, an employee who steals mail would not be acting within the scope of his employment. *See, e.g.*, *Synergies3 Tec Servs., LLC v. Corvo*, 319 So. 3d 1263, 1275 (Ala. 2020); *RGH Enterps., Inc. v. Ghafarianpoor*, 329 So. 3d 447, 450 (Miss. 2021); *Salomon v. Citigroup Inc.*, 999 N.Y.S.2d 21, 21 (N. Y. App. Div. 2014); *Hass v. Wentzlaff*, 816 N.W.2d 96, 103-04 (S.D. 2012); *Foodland v. State ex rel. W. Va. Dep't of Health and Hum. Resources*, 532 S.E.2d 661, 665 (W. Va. 2000).

reading in order to "promote administrative simplicity." Petr. Br. 27-30, 38.

a. Per the Government, provisions of the FTCA cannot be read to distinguish between wrongful and negligent conduct because the provisions are jurisdictional. Petr. Br. 27-28, 38. The Government is wrong twice over.

First, other—equally "jurisdictional"—exceptions to the FTCA require distinguishing between wrongful and merely negligent conduct. Consider Section 2680(a), the neighboring provision to the one at issue in this case. It immunizes the Government only when an employee was "exercising due care," not when the employee acts wrongfully. 28 U.S.C. § 2680(a). Or, conversely, consider Section 2680(h), which immunizes the Government in cases of assault or battery but not in cases that involve negligent contact, however harmful. Indeed, consider Section 2680(b) itself. One of the three terms—"*negligent* transmission"—obviously requires courts to inquire into the mens rea of the government actor. The Government is simply wrong to suggest that FTCA provisions can't be read to draw a distinction between negligent and wrongful conduct.

Second, drawing the distinction between negligent and wrongful conduct isn't as difficult as the Government suggests. Take the Government's example of a postal employee who does not deliver mail to a particular address under a mistaken but good-faith belief that a residence is vacant. Petr. Br. 28. The United States is likely protected by Section 2680(a), which exempts it from liability for any conduct that "involve[s] an element of judgment or choice." *Berkovitz ex rel. Berkovitz*, 486 U.S. 531, 536

(1988). Even if the United States resorted to Section 2680(b) in such a case, courts would be well-equipped to adjudicate the claim: There's a whole body of case law governing when a party is culpable for a mistake of law or fact. *See, e.g.*, Restatement (Second) of Torts § 662 (A.L.I. 1977); Restatement (Third) of Restitution and Unjust Enrichment § 5 (A.L.I. 2011). And, of course, in this case, there's no such argument. Rojas and Drake didn't make a good-faith mistake about whether or not they ought to deliver the mail. They refused to deliver Ms. Konan's mail even after they were specifically "instructed to deliver the mail by the Inspector General" of the USPS. Pet. App. 8a.

b. The Government's other "administrative simplicity" argument—that it may be difficult to determine when mail ends up in the wrong place and thus when a "miscarriage" has occurred—is equally a red herring. *See* Petr. Br. 29-30. If all three of the terms in the statute—"loss," "miscarriage," and "negligent transmission"—entail the same mens rea, it doesn't particularly matter which of the categories a specific mail-handling incident falls into. Whether it's properly categorized as "negligent transmission," "loss," or "miscarriage," a claim that mail was damaged or delayed or never arrived will *always* fall within Section 2680(b) if the USPS employee acted negligently and *never* if the USPS employee acted wrongfully. On the Government's reading, though, there are real stakes to whether an incident amounts to a "miscarriage" or "loss" (in which case, wrongful conduct is covered) or whether it amounts to a problem with "transmission" (in which case, only negligent conduct is covered).

c. In any event, no one disputes that Congress could have drafted Section 2680(b) to promote greater "administrative simplicity" had it wanted to do so. Just look at the other exceptions in Section 2680. *See supra*, 38. Congress could easily have given USPS blanket immunity. Or it could have exempted all mail handling activities. It chose not to, and "administrative simplicity" isn't a basis to override that choice.

4. The Government's final argument in support of its reading is that there are alternative remedies available. Petr. Br. 26. There aren't.

The Government first points to postal insurance. But as Justice Thomas explained in *Dolan*, in most cases, "insurance covers only the sender, not the recipient." 546 U.S. at 496 n.2 (Thomas, J., dissenting). A purported recipient can only file a claim for insured mail if the sender registered the mail and decides to permit the recipient to do so. Postal Operations Manual § 137.443 (2020); *see* USPS, Domestic Mail Manual, Pt. 609.1.1, 609.1.3, 609.5.5 (Apr. 7, 2025). Plus, postal patrons cannot insure against the loss of items of sentimental value. *Dolan*, 546 U.S. at 496 n.2 (Thomas, J., dissenting).

The Government next points to the Postal Regulatory Commission and "internal discipline and criminal punishment" for postal employees. Petr. Br. 26-27. But neither does anything for Ms. Konan—these mechanisms might penalize Rojas and Drake but none would compensate Ms. Konan. *See* 39 C.F.R. § 3022.50.

Besides, this Court has never held that the availability of another federal remedy renders the FTCA inapplicable. This Court has made clear that it

will not "pronounce a doctrine of election of remedies, when Congress has not done so." *Brooks v. United States*, 337 U.S. 49, 53 (1949). So, for instance, the fact that a serviceman was paid under a statute for "disability payments to servicemen, and gratuity payments to their survivors" did not bar additional recovery under the FTCA. *Id.*; *see also United States v. Brown*, 348 U.S. 110, 111 (1954).

V. Much of Rojas's and Drake's conduct is outside the scope of Section 2680(b) on any reading.

Whatever the outcome of the question presented, this Court must remand the case for further proceedings, as Ms. Konan argued at the certiorari stage. *See* BIO 14. Not even the Government argues that much of the conduct alleged in Ms. Konan's complaint has anything to do with the "loss, miscarriage, or negligent transmission of letters or postal matter." *See* 28 U.S.C. § 2680(b).

To take just a few examples:

- Ms. Konan alleged that Rojas, "[w]ithout prior or subsequent notice to Ms. Konan," changed the USPS's records to list one of Ms. Konan's white tenants as the owner of her property. Pet. App. 42a. Rojas then changed the lock on Ms. Konan's mailbox without her permission. *Id.* 42a-44a. Ms. Konan's claims arising from that set of conduct did not arise from the "loss, miscarriage, or negligent transmission" of mail, even under the Government's capacious theory of Section 2680(b).
- Ms. Konan alleged that Rojas taped a notice in red lettering to the interior of Ms. Konan's mailbox to denote which of her tenants Rojas

"unilaterally decided should receive their mail." Pet. App. 48a. Again, singling out Ms. Konan publicly is not covered by Section 2680(b).

- Ms. Konan alleged that Drake and the rest of the Euless Post Office made up a rule requiring her—and none of its white customers—to present ID for her tenants if she wished to pick up their mail being held at the Euless Post Office. Pet. App. 43a, 50a. Again, the rules about picking up mail from the local post office don't seem to be within the ambit of Section 2680(b), even on the Government's telling.

The list goes on. Indeed, all but one of the underlying torts Ms. Konan has alleged can be established without reference to the undelivered mail. (The one exception is Ms. Konan's conversion tort.) Ms. Konan pled nuisance by alleging that Rojas's and Drake's conduct—changing the locks, taping the notice, and enforcing a different ID policy towards her—"substantially interfere[d] with the use and enjoyment of [her] land" by causing her tenants to leave. *See Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 593 (Tex. 2016) (citation omitted). These same actions underlie Ms. Konan's claim of intentional infliction of emotional distress because they were "intentiona[l]," "outrageous," and caused her "severe" emotional distress. *See Wornick Co. v. Cass*, 856 S.W.2d 732, 734 (Tex. 1993) (citation omitted). And they form the basis of a claim of tortious interference with prospective business relations: Rojas's and Drake's conduct was motivated by a desire to preclude Ms. Konan's business relationships with

her tenants. *See Victoria Bank & Tr. Co. v. Brady*, 811 S.W.2d 931, 939 (Tex. 1991).

Thus, even if this Court were inclined to adopt the Government's reading of Section 2680(b), it would still need to remand for the lower courts to determine how much of the alleged conduct falls within the scope of even the Government's very broad reading of the statute.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

Easha Anand
Jeffrey L. Fisher
Pamela S. Karlan
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305

Robert Clary
Counsel of Record
ROBERT CLARY, PLLC
405 Windward Drive
Murphy, TX 75094
(972) 757-5690
rclary662@gmail.com

August 13, 2025