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 OF *AMICUS CURIAE* TAXPAYERS PROTECTION ALLIANCE SUPPORTING RESPONDENT

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Among the many federal employees impacting our daily lives, the ones Americans interact with most frequently are those employed by the United States Postal Service (USPS). Mail carriers are seen running up and down driveways, walkways, and stoops on a daily basis. And, even in an increasingly paperless world, stamp-buying and package drop-offs at post offices are often a necessity.

The USPS's regular visibility and frequent interactions with Americans underscore the need for a well-functioning, well-behaved agency. Unfortunately, taxpayers and customers have grown accustomed to having neither. The USPS regularly runs multi-billion-dollar annual deficits, including a $9.5 billion loss in fiscal year 2024, notwithstanding repeated price hikes.[2] And even with those yearly deficits, Americans still face rampant delays, routine theft, repeated cybersecurity issues, opaque accounting procedures, and even, as here, racially motivated delivery refusals.

Unfortunately, there is little recourse for many such postal misdeeds. Successive Postmasters General have largely ignored criticism, with one going so far as

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[1] This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief's preparation or submission.

[2] U.S. Postal Serv., U.S. Postal Service Reports Fiscal Year 2024 Results 1 (Nov. 14, 2024), https://tinyurl.com/2cd9x44p; *Rates for Domestic Letters Since 1863,* U.S. Postal Serv. (Feb. 2025), https://tinyurl.com/mpfa3pcc.

to cover his ears during a December 2024 hearing criticizing postal policies.[3] Meanwhile, customers and watchdog groups have written opinion pieces, appealed to the Postal Regulatory Commission, and testified before Board of Governors hearings to relative silence. Worse, customers have severely limited recourse—and no ability to sue—when the USPS loses, miscarries, or negligently transmits their mail. And if that were not bad enough, the USPS now seeks immunity even for deliberate wrongdoing by its agents.

The legal battle at hand is a testament to the deep dysfunction of the USPS and the costly consequences of shielding the agency from liability. It is therefore of great interest to the Taxpayers Protection Alliance (TPA), a nonprofit 501(c)(4) taxpayer advocacy and education group with a focus on defending free enterprise and championing reduced taxation and limited government principles. Since its founding, TPA has fought to hold sprawling agencies such as the USPS accountable and proposed numerous reforms to better the agency and incentivize it to improve. Unfortunately, the USPS has ignored these proposals with impunity.

This case illustrates the severe consequences that can come from allowing federal agencies and their agents to believe they are above the law. The Court should affirm both because the Fifth Circuit got the law right and because its decision has the added

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[3] Juliann Ventura, *Postmaster General Covers His Ears from House Republican Questioning During Oversight Hearing*, The Hill (Dec. 10, 2024), https://tinyurl.com/sv4t8s9p.

benefit of allowing the people some means to hold the USPS accountable for the culpable malfeasance of its employees.

SUMMARY

Amicus agrees with Respondent and the Fifth Circuit that the Federal Tort Claims Act (FTCA) allows claims based on intentional acts of mail non-delivery. It writes separately to focus on the original and narrow public and USPS understanding of key statutory terms contained in the limited postal-matter exception to FTCA liability.

Under the FTCA, enacted in 1946, Congress generally waived sovereign immunity, allowing the United States—including the USPS—to be sued "in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. §2674. In turn, 28 U.S.C. §2680(b) carves out a postal-matter exception that preserves immunity for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." The government reads "loss" and "miscarriage" expansively, insisting these words should be interpreted to bar suits alleging even intentional misconduct by postal employees (*e.g.*, deliberately withholding mail for racially discriminatory reasons). See Pet.Br.10-12. That reading is wrong because it is inconsistent with the text, history, structure, and purpose of the postal-matter exception.

1. As the Fifth Circuit correctly recognized, the common understanding of "loss" "square[s] with the plain meaning of loss—no one intentionally loses something." Pet.6a. In addition to dictionary

definitions, Post Office Department (POD) circulars from 1947 and 1948 (roughly contemporaneous with the FTCA) confirm that the word "lost" was publicly understood to refer to misplaced—rather than purposefully *seized*—mailable matter.

2. Contemporary definitions of "miscarriage" likewise rebut any suggestion that the word was publicly understood to include deliberate action. Those definitions presuppose that carriage was attempted but fell short through happenstance or error, rather than through purposeful obstruction. Here again, during the FTCA era, the POD's own use of "failure" (the key definitional component of "miscarriage") matched that common public sense of the term: "failure to deliver" covered situations where delivery proved impossible despite the USPS's good-faith attempts at delivery, such as when the addressee was unknown, the address illegible, or the delivery refused by the would-be recipient. Other contemporary dictionaries likewise described "failure" as falling short despite trying—supporting a narrow, non-intentional reading of "miscarriage."

3. Further undermining the government's all-encompassing understanding of "loss" and "miscarriage" is the fact that both terms appear on a list with a third term: "negligent transmission." This Court usually interprets a word by looking to its context and "the company it keeps," *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 575 (1995), and any definition of "loss" or "miscarriage" should be tempered by the fact that negligence is, by definition, unintentional. And while negligence involves a limited degree of culpability for a bad outcome, its separate

inclusion necessarily implies that the prior terms in the list were meant to cover situations where there was no culpability, but rather simple happenstance or ordinary and unintentional error. Indeed, reading "loss" or "miscarriage" as covering both error and culpable conduct makes the added exception for negligence mere surplusage. No coherent reading of the "loss" and "miscarriage" elements could cover only non-culpable unintentional errors *and* culpable intentional acts, leaving a donut-hole of negligence that needed to be filled by the subsequent phrase. The text simply cannot bear such contortions.

4. Structurally, the FTCA's language surrounding the postal-matter exception also points to a narrow reading for the words "loss" and "miscarriage." When Congress intended to shield the government from liability for deliberate seizures, it used unmistakable language to that effect. Section 2680(c), for example, retains immunity for claims arising from "detention" of property by customs officers or "any other law enforcement officer." The absence of comparable "detention" language in §2680(b) implies that FTCA's drafters envisioned a narrower scope for the postal exception. Other FTCA exceptions likewise employ sweeping language exempting from the FTCA "any claim arising from the activities of" a given agency. Section 2680(b)—which lacks more direct language immunizing all claims related to the handling of postal matter—is uniquely narrow in the types of immunity it preserves.

Further, this Court in *Kosak* v. *United States*, recognized that the FTCA's exceptions were meant to avoid "extending the coverage of the Act to suits for

which adequate remedies were already available." 465 U.S. 848, 858 (1984). Existing postal policies make clear that customers may already insure mail or file administrative claims for agency negligence or delivery failures.

Such ordinary or even negligent errors are likely to be more frequent and could generate burdensome amounts of litigation, so it makes sense to remedy their consequences in a different and more limited manner. But intentional misconduct is (presumably) rarer than simple error. Thus, while it is a more egregious offense to the customers affected, it would generate less litigation. And since even separately funded insurance policies exclude coverage for intentional non-delivery, those affected by intentional misconduct lack any alternative remedy. Extending the limited postal-matter exception to such bad acts and actors thus would thwart the FTCA's remedial purpose of providing *some* relief where none other exists by closing off *any* relief for the *most* egregious and tortious conduct.

ARGUMENT

In construing a statute, this Court interprets the words Congress enacted consistent with their ordinary public meaning at the time of their adoption. *Southwest Airlines Co.* v. *Saxon*, 596 U.S. 450, 455 (2022) (citing *Sandifer* v. *United States Steel Corp.*, 571 U.S. 220, 227 (2014)). A term's ordinary meaning is not typically subject to idiosyncratic interpretations. See *ibid*. Indeed, this Court recently clarified that, in interpreting statutory text, it will not "pick a conceivable-but-convoluted interpretation over the

ordinary one." *Stanley* v. *City of Sanford*, 145 S. Ct. 2058, 2065-2066 (2025). And to find a term's relevant, ordinary meaning, this Court frequently looks to contemporary dictionaries as authoritative sources. *E.g.*, *Bostock* v. *Clayton County*, 590 U.S. 644, 655-658 (2020). It also looks to the government's contemporary practices, cf. *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 68 (2022), and to "related provisions" in the same statute "as well," *Harrington* v. *Purdue Pharma LP*, 603 U.S. 204, 221 (2024).

Here, 28 U.S.C. §2680 lists several exceptions to the FTCA's general waiver of sovereign immunity. One such exception, the "postal-matter exception," retains the government's 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). This exception—like all statutory provisions—should be interpreted according to its ordinary meaning and consistent with contemporaneous understanding and practice. The government's expansive readings of the terms "loss" and "miscarriage" to include intentional acts cannot be squared with the passive, unintentional connotation those words carried when Congress enacted the FTCA. See Pet.Br.10-12. And they cannot be squared with the separate, but limited, protection for merely negligent conduct that would be rendered surplusage if the prior terms covered both intentional and unintentional conduct regardless of culpability. The government's readings thus flout basic principles of statutory interpretation and should be rejected.

I. The Ordinary Meaning of "Loss" Supports a Narrow Reading of the FTCA Postal-Matter Exception.

Starting with "loss"—common contemporary dictionary definitions, coupled with contemporaneous USPS practice, show that a "loss" implies unintentional happenstance or error whereby the USPS can no longer account for a letter or other postal matter.

Published in 1942, *Webster's Second New International Dictionary* ("*Webster's Second*") defines a "loss" as the "[a]ct or fact of losing * * * or suffering deprivation * * * esp., *unintentional* parting with something of value; as, the loss of property" and "that which is lost; of which anything is deprived or from which something is separated, usually *unintentionally* and to disadvantage." Pet.6a. (quoting *Webster's Second*, *supra* at 1460) (emphasis added). Similarly, *The American College Encyclopedia Dictionary*, another dictionary published just after the FTCA was enacted, describes a "loss" as "the *accidental* or *inadvertent* losing of something." *The American College Encyclopedia Dictionary* 721 (1947) (emphasis added). The Fifth Circuit was thus correct to hold that such contemporary definitions "square with the plain meaning of loss—no one intentionally loses something." Pet.6a.

The FTCA-era Post Office Department used a similar definition of "loss" in its documents and communications with the public, emphasizing the word's unintentional nature. For example, in 1948, it instructed that the "Offices of mailing and address shall keep a record of all mail matter reported lost,

and, in the case of registered, registered [collect on delivery], or ordinary mail, if the article is found, immediately notify the Inspector in Charge of the Division in which the office is located."[4] This instruction makes abundantly clear that a "loss" was understood as resulting from an unintentional administrative oversight, not intentional foul play from within the POD itself.

Likewise, in the 1947 Official Postal Guide, the POD gave an overview of various fates that could befall a "postal savings certificate": it could conceivably be "lost, stolen, destroyed, or improperly withheld,"[5] all of which had to be remedied by filling out an application form. If the word "lost" covered not just the accidental misplacement of mail, but also all cases of *intentional* withholding, the POD would have saved its ink and just used "lost" as a catchall. In reading statutes, the rule against surplusage cautions against reading a statute in a way that deprives certain subparts of meaning. *City of Chicago* v. *Fulton*, 592 U.S. 154, 160 (2021). So too here: The 1947 guide, as "contemporaneous historical evidence," is probative of the original meaning of "loss." Cf. *Bruen*, 597 U.S. at 68. The guide should not be interpreted to render superfluous three of the only four items it lists. Rather, it reflects the public and POD understanding

[4] Post Off. Dep't, United States Official Postal Guide, vol. 4, pt. II, at 66 (July 1948), https://tinyurl.com/mwu6xbcf.

[5] Post Off. Dep't, United States Official Postal Guide, vol. 2, pt. I, at 100 (July 1947), https://tinyurl.com/325a6fu3 ("1947 Official Postal Guide").

that such words carried different and non-overlapping meanings.

In short, both the contemporary dictionary definition of "loss" and context-relevant use of the word from the FTCA era make the term's meaning abundantly clear: the USPS cannot intentionally lose the mail. Accordingly, that aspect of the FTCA's exception only covers unintentional circumstances by which the USPS misplaces or otherwise loses possession of postal materials.

II. The Ordinary Meaning of "Miscarriage" Supports a Narrow Reading of the FTCA Postal-Matter Exception.

Similar considerations caution against adopting the government's definition of "miscarriage." The 1942 version of *Webster's* defines "miscarriage" as a "[f]ailure (of something sent) to arrive" or a "[f]ailure to carry properly; as, miscarriage of goods." Pet.7a (quoting *Webster's Second, supra* at 1568). Published just five years later, *The American College Encyclopedia Dictionary* included definitions of "miscarriage" much like those in *Webster's*: "a transmission of goods not in accordance with the contract of shipment" and "failure of a letter, etc., to reach its destination." *The American College Encyclopedia Dictionary, supra* at 776. These definitions imply that carriage was attempted but fell short for some reason, whether because the address was illegible or misread, a letter was chewed on by a hostile dog, or postal matter got mistakenly bundled with a neighbor's mail. Such errors in the attempt, or simple inability to complete the task of delivery, are

sensibly understood as "failures" and, hence, "miscarriage." However, the USPS not even *attempting* carriage due to animus against consumers cannot and would not be considered a "miscarriage" under the ordinary public meaning of the term.

The government uses *Webster's* definitions of "miscarriage" in its briefings and relies on an expansive interpretation of the word "failure" (found in these definitions) to encompass intentional USPS interference with delivery. *E.g.*, Pet.Br.10. FTCA-contemporary use of the word "failure," however, undermines the government's expansive reading. The 1947 Official Postal Guide, for example, states: "Insured parcels which fail of delivery are held the exact time specified in the sender's instructions thereon, not in excess of 30 days, or for 30 days in the absence of such instructions[.]"[6] Here, the POD framed delivery failure as occurring *despite* the agency's efforts to deliver mail, not because of an intentional refusal to deliver. Similarly, the POD wrote in its Guide that "[n]otices of failure to deliver insured mail" would be issued to senders "in instances where insured parcels are refused * * * as well as in those instances where delivery cannot be effected because the addressees are unknown or the parcels are incorrectly addressed[.]"[7] Again, failure is described as resulting from external or uncontrollable considerations, not from intentional internal choices not to deliver.

More general definitions of "fail" and "failure" from the 1940s confirm a narrow reading. For

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[6] 1947 Official Postal Guide, *supra* at 75.

[7] *Ibid.*

example, the 1944 edition *of A Dictionary of Modern American Usage* states: "[A] person or enterprise is said to fail when he or it comes to grief." It then cites examples of a "failed firm," a "failed author," "failed banks," "failed enterprises," and "a candidate who has failed to become a B.A." *Id.* at 125. Definitions of "fail" in *The American College Encyclopedia Dictionary* are also instructive. There, "fail" is first defined as "to come short or be wanting in action, detail, or result; disappoint or prove lacking in what is attempted, expected, desired, or approved." *The American College Encyclopedia Dictionary, supra* at 432. These examples connote a person or entity that has fallen short *despite* trying to achieve a goal, not one who has chosen to intentionally subvert that goal.

These definitions and instances of contemporary usage make clear that, even if the concept of "failure" is intrinsic to the meaning of "miscarriage," that word too most commonly connotes unintentionally falling short and thus the government's expansive interpretation of "miscarriage" still should be rejected.[8]

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[8] Nor can the government hide behind the fact that sometimes, the prefix "mis-" is used in words implying intentional actions. Pet.Br.16. This argument, though correct as far as it goes, cherry-picks words with definitions consistent with the government's case, ignoring many more that imply inadvertence. Among such words are misarrange, misadventure, misapply, misapprehend, mistake, miscalculate, misconception, and misfortune. The prefix therefore predicts little about the intentionality of "mis-" words. And, indeed, where intentional conduct is involved, "mal-" is the more common prefix used, as reflected in the distinction between "misfeasance" and "malfeasance." See *Misfeasance*, *Black's Law Dictionary* (2d ed. 1910) ("Misfeasance, strictly, is not doing a lawful act in a proper manner, omitting to do it as it should be

III. The Inclusion of "Negligent Transmission" in the FTCA Supports a Narrow Reading of the Postal-Matter Exception.

Further supporting a narrow reading of "loss" and "miscarriage" is Congress's inclusion of the term "negligent transmission" as the last component of the postal-matter exception. The government argues that the inclusion of the term implies expansive definitions of "loss" and "miscarriage," suggesting that "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.'" Pet.Br.3.

But the government actually gets things exactly backwards and not only takes the negligence exception out of the context of its precursors, but would render it superfluous in the process. "[T]o avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving 'unintended breadth to the Acts of Congress,'" this Court typically employs the principle that "a word is known by the company it keeps (the doctrine of *noscitur a sociis*)." *Gustafson*, 513 U.S. at 575 (citation omitted). While "not an invariable rule, for the word may have a character of its own not to be submerged by its association," *Russell Motor Car Co.* v. *United States*, 261 U.S. 514, 519 (1923), here the association and its

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done; while malfeasance is the doing an act wholly wrongful; and non-feasance is an omission to perform a duty, or a total neglect of duty."). In any event, examining the contemporaneous definition and definitional components of the actual word "miscarriage" render such speculation regarding bare prefixes unnecessary.

limits amply support each other. For example, "loss" and "miscarriage" independently suggest that something bad happened to the mail unintentionally. Understanding them as a piece with unintentional negligence thus does no violence to either the initial terms or the final reference to negligence. More sensibly, the inclusion of negligence—unintentional but still culpable—is best understood as a progression, from blameless happenstance (loss), to ordinary error or inability to perform without even tortious culpability (miscarriage), to the lowest level of culpability that falls short of intentional behavior (negligence). That the exception to the FTCA would progress up the culpability ladder in increments, yet stop short of immunizing the *most* culpable intentional conduct, makes perfect sense in keeping like with like.

The government's suggestion that the protection of only limited culpable conduct in the FTCA's use of "negligent transmission" implies that the prior words immunize all forms of culpable conduct makes no sense and renders the negligence reference both superfluous and ridiculous. Both "loss" and "miscarriage," if read expansively, would easily cover negligent non-delivery as well, and hence there would be no point in the subsequent language. The cannon against creating surplusage thus weighs heavily against such an expansive reading. *City of Chicago* v. *Fulton*, 592 U.S. at 160. Furthermore, to preserve meaning for the last clause, the government would have to posit that "loss" and "miscarriage" covered only non-culpable unintentional conduct and highly culpable intentional conduct, creating a donut-hole for unintentional, but mildly culpable, conduct that

needed to be filled by the negligence language. The very idea of such a gerrymandered reading is absurd.[9]

The better view is that the three parts of the exception cover progressively more unintentional conduct up to and including, negligence, but do not reach as far as protecting more culpably tortious intentional conduct. And that reading also comports with the FTCA's concern with providing remedies where they are lacking yet not over-burdening certain government functions.

In a massive logistics operation like the USPS, mishaps in delivering the mail are inevitable. So too are imperfect and even negligent conduct. Even when America's mail carrier utilizes best practices to deliver the mail, it sometimes falls short. For example, the USPS claims it is "the world leader in optical character recognition technology, with machines reading nearly 98 percent of all hand-addressed letters and 99.5 percent of machine-printed mail."[10] But even the best recognition technology will be unable to decipher some addresses and return addresses, inevitably leading to some percentage of the mail remaining in limbo through no fault of the USPS. As legal scholar William King Laidlaw noted two decades before the enactment of FTCA, in ordinary bailment cases, a "bailee is liable

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[9] The government's approach likewise implies that *intentionally* wrong "transmission" is not covered by the exception and hence that "transmission" of letters and postal materials is somehow different than the "carriage" of such materials. Such an indirect and implied carve out of the government's claim of broad immunity from the first terms is bizarre, to say the least.

[10] *Optical Character Recognition*, U.S. Postal Serv., https://tinyurl.com/2kcrfmrn (last visited Aug. 20, 2025).

for a misdelivery regardless of the amount of care he has used[.]"[11]

Avoiding such strict liability for postal deliveries was likely a key motivating factor for exempting (presumably non-negligent) losses and miscarriages in addition to "negligent transmission" of the mail. And even negligence itself may occur (or be perceived by claimants) with largely unavoidable frequency when managing such a large operation with so many employees.

As the Court has noted, Congress enacted the postal exception to prevent mail deliveries from being "disrupted by the threat of damage suits." *Kosak*, 465 U.S. at 858. Suits based on mere errors or asserted negligence would be far more common and more uncertain than claims of intentional wrongdoing. It thus makes ample sense for Congress to immunize the least culpable, most common, and most burdensome potential claims for which there is alternative potential compensation, while still allowing claims targeting the most culpable, less common, and thus less burdensome claims against intentional conduct for which there is no alternative remedy. The government's disjointed effort to read the limited exclusion of negligence claims as an implied broad exclusion of even intentional torts, by contrast, makes no sense at all.

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[11] William King Laidlaw, *Principles of Bailment*, 16 Cornell L. Rev. 286, 289 (1931).

IV. The FTCA's Structure Favors a Narrow Reading of the Postal-Matter Exception.

Any ambiguity found within the definitions of the words used in the postal-matter exception, moreover, can easily be resolved by "look[ing] for guidance not just in its immediate terms but in related provisions as well." *Harrington*, 603 U.S. at 221.

1. Shortly after laying out the postal-matter exception, the FTCA's drafters explicitly describe within the statutory text a hypothetical circumstance in which federal officials deliberately seize items. 28 U.S.C. §2680(c) makes clear that sovereign immunity still holds for "[a]ny claim arising in respect of * * * the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer." If the postal-matter exception was meant to be construed broadly to apply to *any* intentional withholding or non-delivery of the mail by the government, the authors could have easily used similar "detention of any goods, merchandise, or other property" language to describe the actions of government employees other than customs officers and law enforcement. After all, "the language of these other" provisions "shows that when Congress intended to cover" a broader range of conduct, "'it knew how to do so.'" *Thompson* v. *United States*, 145 S. Ct. 821, 827 (2025) (quoting *Custis* v. *United States*, 511 U.S. 485, 492 (1994)).

Later sections of the FTCA likewise demonstrate this point, as Congress used even broader language in exempting other agencies from a waiver of sovereign immunity. For example, 28 U.S.C. §2680(l) exempts "[a]ny claim arising from the activities of the

Tennessee Valley Authority." The section after that applies sovereign immunity to "[a]ny claim arising from the activities of the Panama Canal Company." *Id.* §2680(m). The section after that pertains to "[a]ny claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives." *Id.* §2680(n). These sections too show that Congress knows how to exempt particular agencies from the FTCA's reach when it wants to. *Thompson*, 145 S. Ct. at 827. Yet, Congress opted for uniquely limited wording in the postal-matter exception to make clear the exception is *not* intended to immunize mail-handling torts involving culpability greater than negligence.

2. This narrow construction also makes sense considering the exception's original purpose, which this Court has recognized can "illuminate ambiguous text." *Azar* v. *Allina Health Servs.*, 587 U.S. 566, 579 (2019). In *Kosak*, this Court noted that one key purpose of the FTCA was to avoid "extending the coverage of the Act to suits for which adequate remedies were already available." 465 U.S. at 858; see also *Molzof* v. *United States*, 502 U.S. 301, 311-312 (1992) ("Through the § 2680 exceptions, Congress has taken steps to protect the Government from liability that would seriously handicap efficient government operations." (cleaned up)).

For example, extending sovereign immunity for postal negligence is understandably reasonable because negligence claims are likely to be more frequent and burdensome on the USPS, and customers already have an opportunity to purchase mail insurance covering said negligence. It has long been

the case that senders and recipients can file insurance claims and collect money from the agency for lost or damaged mail. However, even insured parties' claims will be denied if "[t]he claim is based on the results of * * * seizure by any agency of government"—an exemption so broad it necessarily includes the USPS itself.[12]

The FTCA acts as a backstop to provide a remedy where none other would exist, such as where the USPS or its employees deliberately interfered with consumer mail. Such intentional torts are both more culpable and less likely than claims of mere error or negligence, and accepting responsibility for defending such claims would not be unduly burdensome. A broad reading of the postal-matter exception to exclude such claims from the FTCA's waiver of immunity would subvert the original remedial purpose of the FTCA without significantly serving the competing purpose of avoiding serious disruption of operations. By contrast, the government's broad claims of near complete immunity, if accepted, would leave Americans with few (if any) avenues of recourse for even egregious and intentional postal malfeasance. A narrow reading of the exception respects both the contemporary meaning of the words used by Congress and the balance Congress sought between providing fair remedies where they were lacking and not unduly disrupting government functions.

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[12] U.S. Postal Serv., Pub. No. 122, Domestic Claims: Customer Reference Guide 16 (2016), https://tinyurl.com/2hfsrnh4.

CONCLUSION

In enacting the FTCA, Congress used targeted language to ensure that the USPS and its mail carriers—who interact with the American people daily—are held accountable for mail-carriage torts involving significant culpability. It also made sure that they remain immunized against suit for blameless or merely negligent handling of the mail. The decision below should be affirmed both because it reflects the best interpretation of the FTCA and to avoid the many harms that would flow from broad governmental immunity for willful and deliberate tampering with the Nation's mail.

Respectfully submitted,

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