No Recourse for Intentional Nondelivery: Supreme Court Expands the FTCA's Postal Exception

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***United States Postal Service v. Konan*, 607 U.S. ___ (Feb. 24, 2026)**

On February 24, 2026, the U.S. Supreme Court issued a closely divided 5-4 decision in *United States Postal Service v. Konan*, holding intentional failure to deliver mail by U.S. Postal Service (USPS) employees falls within the scope of the Federal Tort Claims Act's (FTCA) postal exception. That exception retains the federal government's sovereign immunity for claims "arising out of the loss, miscarriage, or negligent transmission" of the mail. The decision resolved a split among the federal courts of appeals and carries significant implications for individuals and businesses that depend on the mail for critical communications.

Background

The FTCA provides a broad waiver of the federal government's sovereign immunity, permitting individuals to sue the United States for "injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of a federal employee acting within the scope of employment. That waiver, however, is subject to several statutory exceptions. Among them is the postal exception, codified at 28 U.S.C. § 2680(b), which retains sovereign immunity for claims "arising out of the loss, miscarriage, or negligent transmission of letters or postal matter."

The Supreme Court previously addressed the scope of the postal exception in *Dolan v. Postal Service*, 546 U.S. 481 (2006), in which it held that a woman who tripped over mail left on her porch by a postal worker could sue the government because her injuries did not arise from the "loss, miscarriage, or negligent transmission" of mail. In *Dolan*, the Supreme Court interpreted the postal exception as, in general, providing immunity only for damages that arise from the mail failing to arrive on time or at all, in a damaged condition, or

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at the wrong location. The question left unanswered by *Dolan* was whether this exception applies when a postal worker *intentionally* — rather than negligently — causes the mail to go undelivered.

Facts and Procedural History

Lebene Konan owned two rental properties in Euless, Texas, and routinely collected mail from a central mailbox on behalf of herself and her tenants. Beginning in May 2020, USPS employees changed the name of the listed owner on Konan's mailbox, authorized and installed a new lock, stopped delivering mail, returned mail as "undeliverable," and launched an investigation into the proper ownership.

Konan characterized this conduct as part of a campaign of racial harassment. Per Konan, postal workers persisted in marking her mail "undeliverable" and returning it to senders even after the ownership investigation confirmed she was the rightful owner. The following year, postal workers allegedly stopped delivering mail to her second property as well, after learning that Konan owned that property, too. The disruptions caused Konan to lose tenants, deprived her of important mail, and prompted her to file multiple administrative complaints — all without success.

In January 2022, Konan sued the United States, the USPS, and two postal workers, bringing state-law tort claims under the FTCA and federal civil-rights claims. The district court dismissed all claims, concluding that the postal exception barred the FTCA claims and that the discrimination claims failed to state a claim. The U.S. Court of Appeals for the Fifth Circuit reversed in part, holding that "the terms 'loss,' 'miscarriage,' and 'negligent transmission' do not encompass the intentional act of not delivering the mail at all." *Konan v. United States Postal Serv.*, 96 F.4th 799, 804 (5th Cir. 2024). The Supreme Court granted certiorari to resolve a split with the First and Second Circuits, which had interpreted the postal exception to apply even to intentional misconduct.

Supreme Court's Majority Opinion

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Writing for the majority, Justice Thomas framed the postal exception as reflecting Congress's judgment that the sheer volume of postal interactions — over 300 million pieces of mail delivered daily to more than 165 million delivery points — would generate an unmanageable burden of tort litigation if not foreclosed by statute.

Applying a textualist analysis, the majority held that the terms "miscarriage" and "loss" of mail both encompass intentional nondelivery. The Supreme Court held that "miscarriage" includes any failure of mail to arrive properly — whether delivered to the wrong address, retained at the post office, or returned to the sender — regardless of why it happened. Historical examples supported this reading: mail that was stolen or intentionally destroyed has long been described as having "miscarried." Similarly, the Court held that "loss" ordinarily meant "a deprivation of mail," regardless of how that deprivation occurred, invoking the presumption of consistent usage with the FTCA's waiver provision, and citing caselaw treating an envelope that fell behind a radiator as a "loss" of its contents.

The majority rejected the argument that this broad reading renders "negligent transmission" superfluous, concluding that Congress likely used overlapping terms to keep complaints about mail delivery out of court. The Supreme Court vacated the Fifth Circuit's judgment and remanded for further proceedings, without deciding whether all of Konan's claims are barred or which arguments she adequately preserved.

Justice Sotomayor's Dissent

Justice Sotomayor authored a dissent joined by Justices Kagan, Gorsuch, and Jackson, arguing that the majority's interpretation effectively grants the USPS a blanket immunity that Congress deliberately withheld. The dissent contended that both "loss" and "miscarriage" imply negligent actions instead of intentional ones. And, by choosing to identify only "transmission" as "negligent," Congress created an inference of intent to exclude intentional misconduct from the established exception. Additionally, the FTCA's other safeguards — including the due-care and

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discretionary-function exceptions — already independently limit claims premised on intentional conduct.

Key Takeaways

- **Tort claims against the federal government for harm arising from failure to deliver mail are now largely foreclosed, even for intentional misconduct.** The Supreme Court's broad reading of the postal exception means that businesses experiencing deliberate interference with mail delivery — whether withheld invoices, undelivered contracts, or returned correspondence — will generally have no damages remedy against the United States under the FTCA.
- **Businesses that rely on USPS for time-sensitive or compliance-related communications should consider supplementary delivery methods.** Given the limited legal recourse now available, organizations dependent on timely mail delivery for operations, regulatory filings, or client communications may wish to use private carriers or electronic alternatives to mitigate the risk of nondelivery.
- **Alternative avenues for redress remain available in limited circumstances.** Administrative complaints to the USPS and claims under certain federal civil-rights statutes may still be viable depending on the facts.
- **The postal exception is no longer limited by the intent of the postal employee.** The terms "loss" and "miscarriage" in 28 U.S.C. § 2680(b) now encompass intentional nondelivery, resolving a circuit split in favor of the First and Second Circuits' broader interpretation and against the Fifth Circuit's narrower reading. But, by declining to decide whether all of Konan's claims were barred or which arguments were adequately preserved, the Supreme Court left room for further development of the postal exception's boundaries.
- **The narrow 5-4 margin and the dissent's reasoning may signal future legislative or judicial developments.** The dissent's argument that the FTCA's other exceptions already independently limit intentional-misconduct claims provides a roadmap for Congress to narrow the postal exception or for

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litigants to advance alternative theories outside of Section 2680(b).

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