No. 24-0211

IN THE

United States Court of Appeals

For the Ames Circuit

SYLVIA PIERCE,

Plaintiff-Appellant,

v.

UNITED STATES POSTAL SERVICE, DINO MEYER, AND HARLEY GARDNER,

Defendants-Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF AMES

BRIEF FOR DEFENDANTS-APPELLEES

The Aiko Herzig-Yoshinaga Memorial Team

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MARCH 11, 2025, 7 P.M.
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Oral Argument

QUESTIONS PRESENTED

1. Under the postal-matter exception to the Federal Tort Claims Act, the United States is immune from any suit "arising out of" the "loss" or "miscarriage" of mail. Can Appellant Sylvia Pierce nonetheless sue the United States when she alleges claims associated with the non-delivery of her mail?
2. Congress enacted 42 U.S.C. § 1985(3) to create a private right of action against civil rights conspiracies amid state-level resistance to federal civil rights enforcement.
    a. Under this federal enforcement statute that reaches private and state-level conspiracies, can Pierce bring a § 1985(3) claim against Meyer and Gardner, when they both are employees of the United States Postal Service, a federal government agency?
    b. Or, does the intracorporate-conspiracy doctrine, which states that two agents of the same legal entity cannot satisfy the plurality of actors required to allege a conspiracy, independently bar Pierce's § 1985(3) claims against Meyer and Gardner?

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INTRODUCTION

The United States government navigates a precarious equilibrium, balancing accountability with protecting itself, as sovereign, from damaging suit. Sovereign immunity, federal actor immunity, and intracorporate-conspiracy are among the doctrines that uphold this balance. The United States District Court for the District of Ames correctly applied these three legal doctrines to dismiss Pierce's Federal Tort Claims Act and 42 U.S.C. § 1985(3) claims against the United States Postal Service, Dino Meyer, and Harley Gardner.

The congressionally-delineated avenues for suit under the FTCA and § 1985(3) do not extend to Pierce's claim that she is the victim of a conspiracy depriving her of mail. Reviving Pierce's suit is fraught. Undoing protections for the federal government to achieve an outcome here that appears socially desirable would disrupt the delicate balance Congress has achieved. The United States only asks this Court to fulfill its role as "'a steady, upright, and impartial administrat[or] of the laws.'" *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 456 (2015) (quoting The Federalist No. 78, at 465 (Alexander Hamilton)).

The proper venue for a debate about changing the will of Congress is for the halls of that legislative body, not this Court.

OPINIONS AND ORDERS

The order of the United States District Court for the District of Ames granting Defendants-Appellees' motion to dismiss is reproduced on page 9 of the Joint Appendix ("JA"). This Court's procedural order appears at JA-11.

STATEMENT OF JURISDICTION

The district court dismissed Pierce's FTCA claim for lack of subject matter jurisdiction under 28 U.S.C. § 1346(b)(1). The district court had jurisdiction over Pierce's 42 U.S.C. § 1985(3) claims under 28 U.S.C. §§ 1331 and 1343(a). Jurisdiction over the FTCA claim is contested. Pierce timely appealed. Because the district court dismissed all the claims and entered judgment for Defendants-Appellees, JA-9, this Court has jurisdiction over Pierce's appeal under 28 U.S.C. § 1291.

RELEVANT PROVISIONS

This case involves 28 U.S.C. §§ 1346(b), 2680(b), and 42 U.S.C. § 1985(3). These provisions are reproduced in the Appendix.

STATEMENT OF THE CASE

In 2021, Defendants-Appellees Dino Meyer and Harley Gardner began working as federal employees of the United States Postal Service ("USPS"). JA-2–3. Soon after starting, Meyer and Gardner were assigned to deliver mail for the Ames City neighborhood where Plaintiff-

Appellant Sylvia Pierce owns a triple-decker residence. JA-2. As new postal officers making deliveries, Meyer and Gardner bypassed Pierce's residence and only made deliveries to her neighbors' residences. JA-3.

After two weeks of Pierce and her tenants not receiving mail, *see* JA-2–3, Pierce confronted Meyer while he was delivering mail to her neighbor and asked why he was not delivering mail to her residence. JA-3. Angered by the exchange, Meyer refused to answer but "flipped off" Pierce and told her to get out of the neighborhood. *Id.* Pierce tried this approach again, separately confronting Gardner one week later. *Id.* Gardner also refused to answer her questions. *Id.* He told Pierce that she would not get mail until she "joined 'people like' her" in a different part of town. *Id.*

Pierce is Black. JA-2. The race of her tenants is unknown. Although Pierce's tenants were not receiving their mail either, Pierce interpreted these hostile interactions and the non-delivery of her mail to be because of her race. JA-4.

Pierce filed a complaint with USPS in Ames City about not receiving mail. JA-4. After complaining, Pierce learned that her mail was been being marked "undeliverable" and returned to sender. JA-3–4. Moreover, the manager of the Ames City USPS informed her that the Postal Service would "likely not deliver any mail to her residence." JA-4. Pierce has continued to complain to USPS about the non-delivery of

her mail, but no mail has been delivered to Pierce's residence. *Id.* One tenant has told Pierce that he will not renew his lease because of the issue with the non-delivery of mail. *Id.*

Pierce sued USPS under the Federal Tort Claims Act, and Meyer and Gardner under 42 U.S.C. § 1985(3). JA-4–5. The United States, Meyer, and Gardner moved to dismiss all claims. JA-7. The district court granted the dismissal and entered judgment for the defendants. JA-8. Pierce appealed the district court's order. JA-10.

SUMMARY OF ARGUMENT

First, the district court correctly dismissed Pierce's FTCA claim against USPS under the postal-matter exception, 28 U.S.C § 2680(b). The exception bars "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." The statutory text and its context confirm that the postal-matter exception encompasses intentional "loss" and "miscarriage." Pierce suffered a "loss" of her mail because she never received her mail, and a "miscarriage" of her mail because she experienced problems with the mail delivery process. Furthermore, all of Pierce's claims "aris[e] out of" that "loss" or "miscarriage" because all of her injuries are associated with the non-delivery of her mail. Because Pierce suffered injuries that "aris[e] out of" the "loss" and "miscarriage" of her mail, the postal-matter exception bars her FTCA claim.

Second, the district court correctly dismissed the § 1985(3) claim against Meyer and Gardner. Section 1985(3) authorizes a private right of action for damages against "two or more persons" who engage in a conspiracy to deprive someone of the "equal protection of the laws." 42 U.S.C. § 1985(3). Section 1985(3)'s text and structure, along with Congress's legislative purpose of combatting private acts by the Ku Klux Klan and state-sanctioned violence after the Civil War, illustrate that the statute was not intended and should not apply to federal officials. Even if the statute does reach federal officials, Pierce's claims against Meyer and Gardner are independently barred by the intracorporate-conspiracy doctrine. Common law principles of agency and conspiracy, well-established at the time of § 1985(3)'s drafting, indicate that agents acting within the scope of their employment constitute one "person" within the meaning of § 1985(3). Per the doctrine, agents of the same legal entity, acting in the course of their official duties cannot satisfy the plurality of actors required to allege a § 1985(3) conspiracy. Because Meyer and Gardner's non-delivery of Pierce's mail occurred within the course of their official duties as postal employees, any agreement between them cannot, by law, constitute a conspiracy between "two or more persons."

STANDARD OF REVIEW

The applicability of the postal-matter exception is reviewed de novo. *Najbar v. United States*, 649 F.3d 868, 870 (8th Cir. 2011). Likewise, appellate courts review the dismissal of claims for a § 1985(3) action de novo. *See Cantú v. Moody*, 933 F.3d 414, 419 (5th Cir. 2019) (applicability of statute to federal officials); *Amadasu v. The Christ Hosp.*, 514 F.3d 504, 506–7 (6th Cir. 2008) (failure to state a claim because intracorporate-conspiracy doctrine applied). When reviewing a motion to dismiss, courts "'accept all of the factual allegations in [the] complaint as true' and ask whether the allegations state a claim sufficient to survive a motion to dismiss." *United States v. Gaubert*, 499 U.S. 315, 327 (1991). However, this court need not credit "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

ARGUMENT

I. The district court properly dismissed Pierce's FTCA claims under the postal-matter exception.

"The United States, as sovereign, is immune from suit save as it consents to be sued[.]" *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Under the FTCA, the United States waives its immunity for certain torts committed by federal employees acting within the scope of

their employment. *See Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 484–85 (2006). However, this waiver is limited by exceptions. *Id.*[1] When a lawsuit falls within an exception, courts must dismiss the suit for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See Najbar*, 649 F.3d at 870.

One such exception is the postal-matter exception, 28 U.S.C. § 2680(b), which states that individuals cannot sue the United States for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." If an FTCA claim arises "directly or consequentially," *Dolan*, 546 U.S. at 489, from even one of these enumerated categories, the court must dismiss that claim. Here, Pierce's claims arise from both "loss" and "miscarriage." However, the postal-matter exception only requires one to mandate dismissal.

The district court correctly dismissed Pierce's FTCA claims under the postal-matter exception because (1) the complaint is based on a "loss" or "miscarriage" of Pierce's mail and (2) all claims "aris[e] out of" that "loss" or "miscarriage."

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[1] The Postal Reorganization Act allows courts to exercise jurisdiction, pursuant to the FTCA, over torts committed by USPS. *See* 39 U.S.C. § 409(c).

A. Pierce's allegations constitute a "loss" or "miscarriage" within the meaning of § 2680(b).

Courts should "construe a statutory term in accordance with its ordinary or natural meaning." *F.D.I.C. v. Meyer*, 510 U.S. 471, 476 (1994). "Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis." *Dolan*, 546 U.S. at 486. Courts use "contemporaneous dictionaries" to understand statutory terms. *See, e.g.*, *Delaware v. Pennsylvania*, 598 U.S. 115, 128 (2023). In the case of § 2680(b), the Supreme Court has used both Webster's Second and Third Editions to define terms. *See Dolan*, 546 U.S. at 486 (using Webster's 3rd Edition to define terms from § 2680(b)); *id.* at 493 (Thomas, J., dissenting) (using Webster's 2nd Edition to define terms from § 2680(b)). These traditional tools of statutory interpretation confirm that "loss" and "miscarriage" under § 2680(b) include the conduct that Pierce alleges, irrespective of intentionality.

Every circuit except one agrees that the United States maintains immunity for intentional conduct resulting in the "loss" or "miscarriage" of mail. *Compare Levasseur v. U.S. Postal Serv.*, 543 F.3d 23, 23–24 (1st Cir. 2008); *C.D. of NYC, Inc. v. U.S. Postal Serv.*, 157 F. App'x 428, 429–30 (2d Cir. 2005); *Benigni v. United States*, 141 F.3d 1167 (8th Cir. 1998),

with Konan v. United States Postal Serv., 96 F.4th 799, 804 (5th Cir. 2024).

Pierce suffered a "loss" of her mail because she never received her mail and a "miscarriage" of her mail because of problems with the mail delivery process.

1. "Loss" occurs when individuals do not receive their mail.

The meaning of "loss" when Congress enacted the postal-matter exception in 1948 was "that of which anything is deprived or from which something is separated." Webster's New International Dictionary of the English Language 1460 (2d ed. 1934, rev. 1939) ("Webster's 2d"). Other dictionaries define "loss" similarly, as "failure to keep possession" and "the state or fact of being destroyed or placed beyond recovery[.]" Webster's New International Dictionary of the English Language 1338 (3d ed. 1961, rev. 1966) ("Webster's 3rd"); *see also* Oxford English Dictionary 452 (1933) (defining "loss" as, "…the condition or fact of being 'lost', destroyed, or ruined.") ("Oxford").

The definition of "loss" includes intentional acts. The above definitions use words that implicate intentional acts, such as "deprived," Webster's 2d 1460, and "destroyed," Oxford 452. Further, the full text of Pierce's chosen definition of "loss" is "failure to keep a possession; esp., unintentional parting with something of value." Appellant's Br. 7; Webster's 2d 1460. The qualifier, "esp[ecially]," merely affirms that

"unintentional" loss is a subset of "loss," and its use assumes the existence of other types of loss, namely intentional loss. Both the Supreme Court's preferred dictionaries and the full text of Pierce's definition point to one conclusion: "loss" includes intentional conduct.

2. Pierce experienced a "loss" of her mail.

Pierce's claim that she has not received mail, *see* JA-4, is a "loss" of mail because she was "deprived" or "separated" from her mail, *Loss*, Webster's 2d 1460. The Supreme Court's definition in *Dolan* accords with this proposition. *See* 546 U.S. at 487 (explaining mail is "'lost' if it is destroyed or misplaced"). This Court need not adopt any particular point of view to analyze "loss" because this is an objective inquiry focusing on the "separation" of mail from its recipient.

Under this definition, Pierce experienced a "loss" of her mail even if that loss was a result of intentional conduct. The United States Court of Appeals for the First Circuit held that mail that was intentionally diverted by postal employees because of political biases fell "squarely within th[e] category" of "loss." *Levasseur*, 543 F.3d at 23–24. As the *Levasseur* court noted, the underlying inquiry is whether the plaintiff ultimately "complain[ed] of the 'nondelivery . . . of sensitive materials.'" *See id.* (quoting *Dolan*, 546 U.S. at 489). Just as in *Levasseur*, Pierce ultimately complained that her mail did not arrive, *see* JA-4, so irrespective of the underlying cause, her complaint constitutes a loss.

Pierce asks this Court to create an extratextual "whereabouts" requirement. *See* Appellant's Br. 9. Neither the postal-matter exception, nor the cases cited by Pierce, requires that USPS be unable to find a piece of mail to be considered "loss." *See*, *e.g.*, *Levasseur*, 545 F.3d 23; *C.D. of NYC, Inc.*, 157 Fed. Appx. at 429. Even if this Court were to accept Pierce's "whereabouts" exception, nothing in the record substantiates that USPS knows where the mail is once it has been returned to sender. *See* JA-2–5.

3. A "miscarriage" occurs when the process of bringing mail from the sender to the recipient goes awry.

The meaning of "miscarriage" when Congress enacted the postal-matter exception in 1948 was "[f]ailure (of something sent) to arrive" and "[f]ailure to carry properly." Webster's 2d 1568; *see Dolan*, 546 U.S. at 493 (Thomas, J., dissenting) (using Webster's 2nd Edition to define terms from § 2680(b)). Other dictionaries the Supreme Court uses to interpret the postal-matter exception define "miscarriage" similarly, as "mismanagement or bad administration" or "a failure (as of a letter) to arrive at its destination . . . a failure (as of goods) to carry properly." Webster's 3d 1442; *see Dolan*, 546 U.S. at 486 (using Webster's 3rd Edition to define terms from § 2680(b)). These definitions, regarding the failure of an object to "arrive" or be "carr[ied] properly," are met whether the failure is intentional or not. *See Miscarriage*, Webster's 2d 1568; *see*

Miscarriage, Webster's 3rd 1442; *see also Miscarriage*, Oxford 497 ("[t]he failure (of a letter, etc.) to reach its destination;" "[f]ailure to carry or convey properly").

Pierce cannot avoid unfavorable definitions of statutory terms by inventing a new word: "non-carriage." *See* Appellant's Br. 12. As Pierce is quick to point out, there is a plethora of other words Congress could have chosen in place of "miscarriage." Appellant's Br. 14. However, this case is about the real word that Congress chose: "Miscarriage," as the "[f]ailure to carry properly," Webster's 2d 1568, which encompasses failure at any point between sending and final delivery. By circumscribing "carriage" to the movement of a letter from Meyer and Gardner's bags to Pierce's mailbox, *see* Appellant's Br. 13, Pierce asks this court to effectively understand "attempted carriage" as synonymous with successful delivery, *see id.* at 12. Such an interpretation does not comport with the definition of "miscarriage." *See* Webster's 2d 1568.

4. Pierce experienced a "miscarriage" of her mail.

The definition of "miscarriage," as applied to Pierce's case, shows that her mail was miscarried. Per the complaint, USPS "fail[ed] to deliver any mail to her residence." JA-4. That constitutes a "miscarriage" because the mail was not "carr[ied] properly." Webster's 2d 1568. Courts have envisioned situations of intentional miscarriage within the process of delivering mail. *See, e.g.*, *Colbert v. U.S. Postal*

Serv., 831 F. Supp. 2d 240, 243 (D.D.C. 2011) ("It could also be that Plaintiff's mail has been consistently delivered to the wrong address, whether by accident or intentionally—i.e., miscarried."); *Moreland v. U.S. Post Off. Gen.*, No. 14-13147, 2015 WL 2372322, at *3 (E.D. Mich. May 18, 2015) ("Further, to the extent Plaintiff also alleges the loss, delay or theft of his mail was due to intentional actions, these claims are similarly barred by sovereign immunity."). Therefore, Pierce's mail was miscarried.

5. The statutory context confirms that "loss" and "miscarriage" include intentional conduct.

The canons of construction, along with the purpose and context of the statute, confirm that "loss" and "miscarriage" include intentional action.

a. The canons of construction confirm that "loss" and "miscarriage" include intentional conduct.

Use of the canons of construction to interpret the postal-matter exception follows Supreme Court precedent in *Dolan*. *See* 546 U.S. at 486 (citing *Dole v. Steelworkers*, 494 U.S. 26, 36 (1990)). Because the postal-matter exception specifies "loss, miscarriage, or negligent transmission," the expressio unius canon and the nearest-reasonable-referent canon confirm that "loss" or "miscarriage" can include intentional acts.

The expressio unius canon counsels that "loss" and "miscarriage" have no negligence limitation. Where a statute specifies a "listing or grouping" but fails to include others, expressio unius instructs courts to infer that Congress intended to omit the unnamed possibility. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (internal quotation marks and citation omitted). In the postal-matter exception, Congress identified three ways that mail could become unavailable within the same sentence: "loss, miscarriage, or negligent transmission." 28 U.S.C. § 2680(b). Congress had a chance to make all three ways unintentional and chose to reject it by giving only "transmission" a negligence limitation. This choice makes sense against the broader statutory scheme because only intentional or negligent tort claims may be raised under the FTCA. *See Berrien v. United State*s, 711 F.3d 654, 657 (6th Cir. 2013) (citing *Laird v. Nelms*, 406 U.S. 797, 802–03 (1972)). The examples of non-negligent, unintentional "loss" or "miscarriage" that are offered by Pierce, *see* Appellant's Br. 20, are simply not FTCA claims.

The nearest-reasonable-referent canon also affirms Congress's intent to have "negligent" limit only "transmission." When a statute identifies a list of potential outcomes and includes adjectives like "negligent" or "intentional," as § 2680(b) does, the nearest-reasonable-

referent canon [2] instructs that those adjectives be interpreted as modifying only the word that directly follows. *See* Porter G. Perrin & George H. Smith, *Handbook of Current English* § 25.2 (1955) ("single word adjectives…usually appear immediately before the word they modify.").

In § 2680(b), "negligent" appears only before "transmission." In the postal-matter exception, "miscarriage" and "loss" appear one and two commas away from "negligence," respectively. It would therefore offend the nearest-reasonable-referent canon to impose the "negligent" limitation on "loss" and "miscarriage," which appear before and distinctly from any mention of negligence. The First Circuit confirms this reading in *Levasseur*, explaining that "the fact that the word 'negligent' only modifies the word 'transmission' indicates that intentional acts of 'loss' and 'miscarriage' are also covered." 543 F.3d at 23–24; *see also Watkins v. United States*, F.Supp.2d 2003 WL 1906176 (N.D.Ill. 2003) at *4 ("the placement of the word "negligent" necessarily leads to the conclusion that intentional torts are not excluded from the section.").

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[2] The nearest-reasonable-referent canon evolved from the underlying principles of the last antecedent canon and is often referred to as "the last antecedent canon." *See generally*, *Lockhart v. United States*, 577 U.S. 347, 351 (1983); *see also Levasseur*, 543 F.3d at 23–24.

When "[t]he text is clear," courts "need not consider…extra-textual evidence." *N.L.R.B v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017). However, a broad reading of § 2680(b) also furthers the purpose of the FTCA.

b. Legislative purpose further substantiates that § 2680(b) includes intentional "loss" and "miscarriage."

Congress's three goals in formulating FTCA exceptions are "[1] ensuring that certain governmental activities not be disrupted by the threat of damage suits; [2] avoiding exposure of the United States to liability for excessive or fraudulent claims; and [3] not extending the coverage of the Act to suits for which adequate remedies were already available." *Kosak v. United States*, 465 U.S. 848, 858 (1984) (internal quotation marks and citations omitted). All three purposes support interpreting the postal-matter exception to include intentional conduct.

Excluding intentional torts from § 2680(b) would undermine Congress's purpose of "ensuring that certain governmental activities not be disrupted by the threat of damage suits." *Id.* "The postal service handles millions [of] pieces of mail each year; naturally, instances of stolen or misplaced mail are inevitable." *Watkins*, 2003 WL 1906176, at *5 (quotation omitted). In passing the postal-matter exception, Congress intended to ensure that postal service would not be disrupted by the threat of damages suits arising from intentional torts.

The inclusion of intentional torts also helps protect the United States from "excessive or fraudulent claims." *Kosak*, 465 U.S. at 858. Courts are concerned that without reading the postal-matter exception to include intentional torts, "potential litigants would simply recast their [negligent] lost-mail claims as ones for [intentional] mail theft in order to survive the jurisdictional bar[.]" *Watkins*, 2003 WL 1906176, at *5. Such a result would "open[] the floodgates of litigation and contraven[e] the intent of the exclusion." *Id.* This fear has actualized, with one district court noting that "[the] reconstruction of a lost mail claim into something more nefarious is precisely what has occurred [in the case before it]." *Coventry Ct., LLC v. United States*, No. 1:22-CV-233-HAB, 2022 WL 16797420, at *3 (N.D. Ind. Nov. 8, 2022).

Congress's goal of barring claims "for which adequate remedies were already available," *Kosak*, 465 U.S. at 858, is also furthered in this case. There were other remedies available for the loss of Pierce's mail because the senders could have insured the mail. *See, e.g.*, *Dolan*, 546 U.S. at 481 at 497 n.2 (Thomas, J., dissenting) (recognizing insurance covers the sender). In *Dolan*, the Supreme Court explained that the postal-matter exception bars claims that are "at least to *some degree* avoidable or compensable through postal registration and insurance." *Id.* at 481 (emphasis added). Such is the case here. In any case, some courts have noted that "[n]othing in *Dolan* hints that the inability to

gain insurance impacts the scope of immunity." *See Johnson v. United States*, 529 F. App'x 474, 477 (6th Cir. 2013) (quoting *Dolan*, 546 U.S. at 481). Despite Pierce's contention to the contrary, *see* Appellant's Br. 17–19, this Court should recognize that the insurance contemplated in *Dolan*—and available here—comports with Congress's understanding of "adequate remedies" when it enacted the postal-matter exception.

Congress calibrated the scope of the postal-matter exception intentionally. Other FTCA exceptions within the same statute provide blanket immunity to federal agencies, such as 28 U.S.C. § 2680(l) which bars "[a]ny claim arising from the activities of the Tennessee Valley Authority," whereas 28 U.S.C. § 2680(b) bars only claims arising out of the "loss, miscarriage, or negligent transmission" of postal matter. The Supreme Court recognized this distinction, saying that Congress "could have used sweeping language similar to that used in other FTCA exceptions." *Dolan*, 546 U.S. at 482. Indeed, Congress could have granted USPS blanket immunity but chose not to. However, Pierce would remake *Dolan's* commentary that Congress did not "intend[] to preserve immunity for all delivery-related torts," *id.*, into license to interpret the postal-matter exception even more narrowly than Congress intended. Pierce's attempt to carve out intentional "loss" and "miscarriage" is supported by neither legislative purpose nor precedent.

B. All of Pierce's injuries "aris[e] out of" the loss or miscarriage of her mail.

Because Pierce alleges a "loss" or "miscarriage" of her mail, the inquiry now turns to whether all claims made by Pierce "aris[e] out of" this "loss" or "miscarriage." The term "arising out of" should be understood by its ordinary meaning. *See* § I.A, *supra*. Save for the nuisance and intentional infliction of emotional distress claims, Pierce does not dispute that her claims "arise out of" the "loss" and "miscarriage" of her mail. *See* Appellant's Br. 23. Dictionary definitions, statutory context, and precedent elucidate that "arising out of" encompasses all "personal or financial harms," *Dolan*, 546 U.S. at 489, that would not have occurred without the "loss" or "miscarriage." Because Pierce's claims all fall within this definition of "arising out of," the district court properly dismissed Pierce's complaint.

1. "Arising out of" encompasses any act that is associated with the "loss" or "miscarriage" of mail.

The word "arise" means "[t]o proceed; issue; spring." *Arise*, Webster's 2d 117; *see also Arise,* Webster's 3d 117 ("[t]o come into existence or action"); *Arise*, Black's Law Dictionary 137 (3d ed. 1933) (equating "arising" with "proceeding, issuing or springing"). Thus, when used in the postal-matter exception, the words "arising out of" should be read to mean any claim that comes from the "loss, miscarriage, or negligent transmission" of mail.

The Supreme Court's analysis of "arising out of" in other FTCA exceptions is instructive with regard to the postal-matter exception. *See Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 433 (1932) ("[I]dentical words used in different parts of the same act are intended to have the same meaning."). For example, the Supreme Court has held that identical language in "Section 2680(h) does not merely bar claims for assault or battery; in sweeping language it excludes any claim arising out of assault or battery." *United States v. Shearer*, 473 U.S. 52, 55 (1985). The Court similarly defined "arising out of" in § 2680(c), explaining that the phrase "seems to sweep within the exception all injuries associated *in any way* with the [initial act described by the exception.]" (emphasis added). *See Kosak*, 465 U.S. at 854. The Supreme Court understands "arising out of" to include more than just the act itself, but rather any action with its origins in one of the listed terms. *See also Georgacarakos v. United States*, 420 F.3d 1185, 1186 (10th Cir. 2005) (equating "arising out of" in § 2680(b) with but-for causation). This Court should not depart from precedent on the matter.

2. Pierce's claims are all associated with the "loss" or "miscarriage" of her mail.

Pierce's allegations are associated with the "loss" or "miscarriage" of her mail and are thus barred by § 2680(b) because, without the non-delivery of her mail, Pierce would not have suffered any of the alleged personal or financial harms.

For example, Pierce concludes her complaint by stating that a tenant "told [Pierce] that he would not renew his lease because of the issue [with the mail]." JA-4. As explained in *Dolan*, the loss of rental income is a "purely financial harm," and one that falls squarely within the scope of the § 2680(b). *See Dolan*, 546 U.S. at 489 (explaining quintessential injuries barred by the postal-matter exception are "personal or financial harms arising from nondelivery or late delivery of sensitive materials or information").

Even claims that seem "unrelated" to the mail, Appellant's Br. 23, nonetheless stem from the "loss" or "miscarriage" of mail and are thus barred. The United States Court of Appeals for the Tenth Circuit held that a claim was barred despite the fact that the claim was caused "in part by an event not covered" by the postal-matter exception. *Georgacarakos*, 420 F.3d at 1186. The court reasoned that because the claim was "generated in part by an event" associated with the loss, miscarriage, or negligent transmission of mail, the claim as a whole was barred. *See id.* Similarly, Pierce states that, among other things, "no mail is delivered to her address or to her tenants." JA-4. Just as in *Georgacarakos*, even the nuisance and intentional infliction of emotional distress ("IIED") elements of Pierce's claim are barred by the postal-matter exception because the core of her claim comes from the non-delivery of mail.

Despite Appellant's contentions, *see* Appellant's Br. 23, IIED still falls within the postal-matter exception per the causal analysis required to determine "arising out of." The Eighth Circuit dismissed claims under the postal-matter exception for IIED because the injury would not have happened without the non-delivery of mail. *See Najbar*, 649 F.3d at 872. Just as in *Najbar*, the alleged IIED is a consequence of the "loss" or "miscarriage" of mail, which makes the claim a logical outgrowth of the "loss" or "miscarriage." Because of association with the distress and non-delivery, the allegation falls within the postal-matter exception.

II. The district court correctly dismissed the § 1985(3) claims against Meyer and Gardner.

Pierce's § 1985(3) damages claims against Meyer and Gardner should be dismissed on the basis of two alternative grounds. First, the private right of action under § 1985(3) does not reach federal officials. Second, even if § 1985(3) does reach federal officials, Pierce's claims against Meyer and Gardner are barred by the intracorporate-conspiracy doctrine. Meyer and Gardner, both employees of USPS, are part of the same legal entity and cannot form the requisite "conspiracy" required under the statute.

Pierce's complaint fails to specify whether she is suing Meyer and Gardner in their individual or official capacities, or the form of relief she is seeking. Any official-capacity claim, however, is barred by sovereign immunity because the United States has not consented to suit under

§ 1985(3). *See Unimex, Inc. v. U.S. Dep't of Hous. & Urb. Dev.*, 594 F.2d 1060 (5th Cir. 1979) (citing *United States v. Testan*, 424 U.S. 392, 400 (1976)); *see also Tanvir v. Tanzin*, 894 F.3d 449, 459 (2d Cir. 2018) (quoting *Hafer v. Melo*, 502 U.S. 21, 25 (1991)) (official-capacity suit against federal employee is suit against the federal government). The following analysis thus assumes that any claim for damages is brought against Meyer and Gardner in their individual capacities.

A. Section 1985(3) does not apply to federal officials.

Section 1985(3) creates a private right of action for individuals against:

> two or more persons in any State or Territory [who] conspire . . . for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . [in] an action for the recovery of damages.

42 U.S.C. § 1985(3). The provision was originally enacted in 1871 against the backdrop of a bloody civil war and the federal government's top-down attempt at Reconstruction. As Justice Frankfurter noted in *United States v. Williams*, the "history of the times—the lawless activities of private bands, of which the Klan was the most conspicuous—explains why Congress dealt with both State disregard of the new constitutional prohibitions and private lawlessness." 341 U.S. 70, 71 (1951).

Section 1985(3) originated in the Ku Klux Klan Act ("Klan Act"), otherwise known as the Civil Rights Act of 1871. *Griffin v. Breckenridge*, 403 U.S. 88, 98–99 (1971). The Klan Act "grew out of a message" sent by President Grant to Congress in 1871, explaining that a "condition of affairs now exists in some States of the Union rendering life and property insecure . . . the power to correct these evils is beyond the control of State authorities." *Ngiraingas v. Sanchez*, 495 U.S. 182, 187 n.7 (1990). This "condition" was the formation of the Klan, a white supremacist group, that began a "wave of murders and assaults [that] was launched against both blacks and Union sympathizers." *District of Columbia v. Carter*, 409 U.S. 418, 426 (1973). Congress heeded President Grant's call and enacted the Klan Act with the "main goal" of "overid[ing] the corrupting influence of the Ku Klux Klan and its sympathizers *on the governments and law enforcement agencies of the Southern States*." *Allen v. McCurry*, 449 U.S. 90, 98–99 (1980) (emphasis added). From the beginning, the Klan Act was intended as a federal enforcement remedy—not as a private right of action against federal officials.

Interpreting § 1985(3) as only reaching private and state-level actors comports with the statute's text and structure, honors Congress's intent in preventing lawlessness and civil rights violations in the South after the Civil War, and complies with binding precedent.

1. The text of § 1985(3) indicates that "persons" does not include federal officials.

Whether federal officials qualify as "persons" under § 1985(3) turns on more than a "bare analysis of the word 'person,' but . . . upon the entire statutory context[.]" *Cf. Pfizer Inc. v. Gov't of India*, 434 U.S. 308, 317 (1978) (interpreting "persons" in Sherman Act). The term reaches as broadly as "any being whom the law regards as capable of rights or duties." *Person,* BLACK'S LAW DICTIONARY (12th ed. 2024) (internal quotation marks omitted) (quoting John Salmond, *Jurisprudence* 318 (Glanville L. Williams ed., 10th ed. 1947))). Courts have accordingly construed "persons" to exclude various classes of actors depending on the term's context and function within a statute. *See, e.g.*, *Return Mail, Inc. v. United States Postal Serv.*, 587 U.S. 618 (2019) (excluding federal government); *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989) (excluding state officials acting in official capacity); *Adams v. United States*, 420 F.3d 1049 (9th Cir. 2005) (excluding corporations).

The broader structure of the Klan Act indicates that "persons" does not include federal officials. Section 1985(3) was originally enacted alongside a brace of other provisions specifically targeting the complicity of *non*-federal actors in perpetuating constitutional violations. *See Griffin*, 403 U.S. at 88. Section 1 of the Klan Act targets constitutional deprivations inflicted under color of *state* law. *See* Ku Klux Klan Act of

1871, Act of Apr. 20, 1871, § 1, 17 Stat. 13. Section 2, to which § 1985(3) originally belonged, enumerates no less than ten distinct offenses of conspiracy committed by "persons" *against* the federal government and its officers. *See id.* § 2. Section 3 provides for a *federal* military response if "a private conspiracy was so massive and effective that it [supplanted state] authorities." *Griffin*, 403 U.S. at 98. The textual refrain is consistent throughout: in the Klan Act, federal officials are either the victims or the opponents of § 1985 conspiracies—not its perpetrators.

Pierce contends that the scope of § 1985(3) is somehow altered by its jurisdictional statute. *See* Appellant's Br. 26. This is a novel interpretive rule that, even if valid, is incorrectly applied in this instance. 28 U.S.C. § 1343(a)(1) bestows federal question jurisdiction not on "any *act* done in furtherance of *any* conspiracy[,]" *id.*, but on "any act done in furtherance of any conspiracy *mentioned in section 1985 of Title 42*." (emphasis added). Jurisdiction is limited by § 1985(3), not the other way around.

Pierce claims that because Congress limited "persons" to individuals acting "under color of [state law]" in another provision of the Klan Act, the lack of an analogous limit in § 1985(3) indicates that its reach is unlimited. *See* Appellant's Br. 25 (citing 42 U.S.C. § 1983). However, there are limits to "persons" in § 1983 itself. Despite the textual reference to "every person," the Supreme Court has held that

"person" under § 1983 does not reach either states or state officials acting in their official capacities, even if they "literally are persons" within the term's strict ordinary meaning. *See Will*, 491 U.S. at 71. While Pierce uses § 1983 as an example of Congress's capacity to limit a statute's reach, *see* Appellant's Br. 25, *Will* proves the point—to effectuate the correct meaning of "persons," analysis must go beyond the text.

2. Congress did not intend for § 1985(3) to be asserted against federal officials.

Legislative purpose and history confirm that § 1985(3) does not extend to federal officials. In addition to "context and structure, the Court often looks to 'history' [and] 'purpose' to divine the meaning of language." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quoting *Maracich v. Spears*, 570 U.S 48, 76 (2013)). And the Court has repeatedly emphasized that inquiry into Congress's original purpose is essential to § 1985's interpretation. *See, e.g.*, *United Bhd. of Carpenters & Joiners of Am., Loc. 610, AFL-CIO v. Scott*, 463 U.S. 825, 834 (1983); *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 371 (1979); *Griffin*, 403 U.S. at 99. A term like "persons," which admits many "shades of meaning," must be construed "to effectuate the intent of the lawmakers . . . [considering] the context, the purposes of the law, and the circumstances under which the words were employed." *See D.C. v.*

Carter, 409 U.S. 418, 420 (1973) (internal quotation marks and citations omitted) (interpreting "State or Territory").

Congressional intent illustrates that § 1985(3) was enacted to target the Klan and Southern state actors, not to be used as a sword against the federal government. In the aftermath of the Civil War and the midst of Ku Klux Klan violence, Congress was legislating with a top-down intent to enforce civil rights in the Southern states. The Supreme Court has stated that it was Congress's "central concern [to combat] the violent and other efforts of the Klan and its allies to resist and to frustrate the intended effects of the Thirteenth, Fourteenth, and Fifteenth Amendments." *United Broth. of Carpenters*, 463 U.S. at 837.

Limiting "persons" to state and private actors is also consonant with the legal background in 1871. Presumptions that existed at the time of enactment can inform the understanding of a word or phrase. *See Tanzin v. Tanvir*, 592 U.S. 43, 52 (2020). The Supreme Court has determined that the "primary purpose" of the Klan Act was to enforce the Fourteenth Amendment. *See Carter*, 409 U.S. at 423 (citing 17 Stat. 13). The Fourteenth Amendment, ratified in 1868, prohibits *states* from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment notably does not apply to the federal government. *Id.* ("no State shall make or enforce any law . . . nor shall any State deprive").

While § 1985(3) is "not limited by the constraints of the Fourteenth Amendment," *Scott*, 463 U.S. at 833, congressional understanding about the reach of the Klan Act is instructive in determining its applicability to federal actors, *see Tanzin*, 592 U.S. at 52. In 1871, courts did not recognize that "equal protection" could in fact be rooted in the Fifth Amendment as applied to the federal government. *See Bolling v. Sharpe*, 347 U.S. 497 (1954) (applying "equal protection," for the first time, to the federal government via the Fifth Amendment due process clause). Congress's background presumption of legislating with the enforcement of the Fourteenth Amendment in mind supports excluding federal officials from the reach of § 1985(3). It would contravene Congress's intent to enforce order and accountability in the Southern states for § 1985(3) to be used against federal officials.

3. *Griffin* says nothing about whether § 1985(3) applies to federal officials.

Every circuit that applies § 1985(3) to federal officials relies on *Griffin*, 403 U.S. at 88. *See, e.g.*, *Davis v. Samuels*, 962 F.3d 105, 115 (3d Cir. 2020); *Iqbal v. Hasty*, 490 F.3d 143, 176 (2d Cir. 2007) (collecting cases), *rev'd in part sub nom. Ashcroft v. Iqbal*, 556 U.S. 662 (2009). But this reliance errs in both logic and method.

In *Griffin*, the Supreme Court only held that Congress intended to reach private actors under § 1985(3) and had the constitutional authority to do so. *See* 403 U.S. at 88–89. This holding only applies to

private actors and does not address whether Congress intended to reach federal officials.[3] Federal officials are not private persons. Intent to reach the one does not imply intent to reach the other. *See Alharbi v. Miller*, 368 F. Supp. 3d 527, 567 (E.D.N.Y. 2019) (*Griffin* "should not be read . . . as a license to expand § 1985(3) further by applying it to conspiracies by federal officials"). Nor does the Court's holding that § 1985(3)'s "legislative jurisdiction does not require state action," *Alvarez v. Wilson*, 431 F. Supp. 136, 141 (N.D. Ill. 1977), entail that Congress *intended* to target federal action, *but see Hobson v. Wilson*, 737 F.2d 1, 20 (D.C. Cir. 1984). And here, Congress did not intend for § 1985(3) to encompass federal actors.

Because *Griffin* did not broaden the scope of § 1985(3) beyond what Congress originally intended, the statute's applicability to federal officials must be established by an independent analysis of the statute itself. But the factors essential to that analysis—"text, companion provisions, and legislative history," *Griffin*, 403 U.S. at 102—do not support that § 1985(3) applies to federal actors, as detailed in A.1, 2,

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[3] The Court, only two weeks after its holding in *Griffin*, judicially fashioned a private damages remedy for constitutional violations committed by federal officials in *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). If § 1985(3) applied to federal officials, implying an additional right of action would have been unnecessary. *See Alharbi*, 368 F. Supp. 3d at 567.

supra. Circuits short-circuit the Supreme Court's § 1985(3) jurisprudence by ignoring the legislative history and cherry-picking language from *Griffin*. *See, e.g.*, *Davis*, 962 F.3d at 114 ("all deprivations of 'equal protection of the laws' . . . *whatever their source*."); Appellant's Br. 27 (quoting the same); *see also United Bhd. of Carpenters*, 463 U.S. at 835 ("conclusion was warranted by the legislative history"); *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 370 n.7, 371 (1979); *Griffin*, 403 U.S. at 98–100 ("The final area of inquiry… lies in its legislative history.").

Unable to find support in *Griffin*, Pierce contends that the Supreme Court resolved the question *sub silentio* in *Ziglar v. Abbasi*, 582 U.S. 120, 123 (2017), by "treat[ing] § 1985(3)'s application to federal actors as a foregone conclusion." *See* Appellant's Br. 27. But the question of § 1985(3)'s applicability to federal officials was not before the Court. *See Ziglar*, 582 U.S. at 123. Dismissing the § 1985(3) claims on qualified immunity grounds, *see id.* at 152, was not a holding in disguise. As is the case with *Griffin*, *stare decisis* is served by following the analysis within, and not between, the lines of the Court's decisions.

4. Holding federal officials liable for damages under § 1985(3) would impair government function.

Damages liability for federal officials under § 1985(3) would cause three distinct harms. First, it would impair government decision-

making. As the Supreme Court noted in *Ziglar*, if discussions among federal officials become, as a category, a basis for § 1985(3) claims, "the result would be to chill the interchange and discourse that is necessary for the adoption and implementation of governmental policies." *See* 582 U.S. at 155 (citing *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 383 (2004)). The mere threat of litigation, especially directed against ultimately lawful action, could chill official decision-making. Second, the impositions on federal officials would not be limited to the federal postal workers at issue here but would extend to federal officials in every agency or department, including for those whose daily business involves balancing the "imperatives of events and contemporary imponderables." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring). Third, the threat of litigation imposes significant "time and administrative costs attendant upon intrusions resulting from the discovery and trial process." *Ziglar*, 582 U.S. at 134. And, "[b]ecause the judicial process itself is the injury, these harms are a bell that cannot be unrung later in the litigation." *See Mohamed v. Jones*, 100 F.4th 1214, 1240 (10th Cir. 2024) (Tymkovich, J., dissenting).

Judicial restraint also counsels against inferring a private right of action for damages against federal officials from § 1985(3) where no explicit congressional intent to do so exists. Rather than adopt a judgment that Congress itself failed to make, this Court should leave

with Congress the prerogative of determining "whether, and the extent to which, monetary and other liabilities should be imposed upon individual officers and employees of the Federal Government." *See Ziglar*, 582 U.S. at 134.

B. The intracorporate-conspiracy doctrine independently bars the § 1985(3) claims against Meyer and Gardner.

The intracorporate-conspiracy doctrine states that a legal entity cannot conspire with itself. As the Supreme Court explained in *Ziglar*, the doctrine is straightforward: Conspiracy requires an agreement between at least two separate persons. 582 U.S. at 153; *see, e.g.*, 42 U.S.C. § 1985(3). But the law has long regarded a principal and its agents as constituting a single legal person. *See, e.g.*, *Second Nat. Bank v. Ocean Nat. Bank*, 21 F. Cas. 961, 966 (C.C.S.D.N.Y. 1873); *New Orleans, J. & G.N.R. Co. v. Bailey*, 40 Miss. 395, 453 (Miss. Err. & App. 1866). Thus, when two agents of the same legal entity make an agreement in the course of their official duties, "there has not been an agreement between two or more separate people." *See Ziglar*, 582 U.S. at 153.

The terms and scope of this doctrine merit clarification. An intracorporate *conspiracy* is an unlawful agreement between agents of the same legal entity. Intracorporate-conspiracy *doctrine*, on the other hand, refers to the rule that agents of the same legal entity cannot

conspire, *i.e.*, that intracorporate conspiracies cannot exist.[4] In *Ziglar v. Abassi*, the Supreme Court laid out the intracorporate-conspiracy doctrine's background, legal framework, and policy considerations. 582 U.S. at 153–55. While the Court expressly withheld decision on the application of the doctrine to § 1985(3), *id.* at 153, its analysis is nonetheless instructive for this Court.

Common law principles of agency and conspiracy, well-established in 1871, elucidate that Congress did not intend for § 1985(3) conspiracies to include agents acting for the same legal entity. And because Meyer and Gardner were employees of the same legal entity acting in the course of their official duties, the intracorporate-conspiracy doctrine requires this Court to affirm the dismissal of the § 1985(3) claims against them under Federal Rule of Civil Procedure 12(b)(6).

1. Common law principles evince that § 1985(3) adopts the intracorporate-conspiracy doctrine.

Courts generally presume that Congress "legislates against the backdrop of the common law." *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 335 (2020). This presumption carries

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[4] In *Copperweld*, the Court uses the term intra-*enterprise* conspiracy doctrine to refer to the rule that a parent company and its subsidiary *can* conspire, *i.e.*, the opposite of the intracorporate-conspiracy doctrine. *See* 467 U.S. at 759.

special force in the context of the Klan Act, where the Supreme Court has repeatedly emphasized that the interpretive inquiry is not "a freewheeling policy choice [but is] guided . . . by the common-law tradition." *See Malley v. Briggs*, 475 U.S. 335, 342 (1986). Section 1985(3), being a conspiracy provision in the Klan Act, implicates the common law principles of agency and conspiracy that existed in 1871.

a. Common law considered a principal and its agents to be one legal entity.

When § 1985(3) was drafted in 1871, the common law held that agents acting for a principal could not be treated as separate civil conspirators because they were "one person in law." *See Travis v. Gary Cmty. Mental Health Ctr., Inc.*, 921 F.2d 108, 110 (7th Cir. 1990) (internal quotation marks omitted) (quoting William Blackstone, 1 *Commentaries on the Laws of England* (1st ed. 1765)). Or, as one court observed in 1873, the law regarded principal and agent as "but one legal entity, there being a complete legal absorption of the agent in the principal." *Second Nat. Bank*, 21 F. Cas. at 966. Agents acting for the same principal thus constituted one person, not two.

The intracorporate-conspiracy doctrine grew out of these fundamental principles of agency. *See McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000). The doctrine is far from a twentieth century American innovation. It was a corollary of the legal maxim, originating from the Roman code, "*qui facit per alium, facit per*

se . . . the agency of a servant is but an instrument [of the principal]." *See Bailey*, 40 Miss. at 454; *see also* Joseph Story, *Commentaries on the Law of Agency* §§ 458–61 (Edmund H. Bennet, 6th ed. 1863).

Congress thus understood that agents of the same principal could not conspire when drafting § 1985(3) in 1871. As the Supreme Court has observed, it was only in the last decade of the nineteenth century—well after § 1985(3) had been drafted—that agents of the same legal entity began to be held liable for conspiracy, and only in the criminal context. *See Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 776 n.24 (1984) (noting that even in 1890, there was no common law tradition recognizing that two agents of the same legal entity could conspire). It is hardly remarkable that the terms "intracorporate conspiracy" and "intracorporate-conspiracy exception" are absent from nineteenth century sources, *see* Appellant's Br. 34, because such conspiracies were not recognized, and no doctrinal exception was needed. Rather, their absence proves the point—such acts were not recognized as conspiracies at all.

b. At common law, conspiracy did not seek to penalize actors with limited autonomy.

Adopting the intracorporate-conspiracy doctrine also accords with the rationale for conspiracy in the first place: penalizing unlawful agreement among autonomous actors. The autonomy ascribed to each actor at common law is thus the touchstone of the doctrine's applicability,

cf. United States v. Dege, 364 U.S. 51 (1960), not whether its adoption would further a particular policy outcome or a theory of market competition, *but see* Appellant's Br. 32. The proper inquiry supports applying the intracorporate-conspiracy doctrine to § 1985(3); to hold otherwise would be to "ignore[] the reality" that agents act with limited autonomy. *Cf. Copperweld*, 467 U.S. at 772 (observing that wholly owned subsidiary, even if a distinct actor, is subject to parent's control).

Conspiracy aims to penalize wrongful agreements between autonomous actors. *See United States v. Stevens*, 909 F.2d 431, 433–34 (11th Cir. 1990). The "concept of conspiracy [grew out] of the early doctrine that the crux of the crime is the intent." John T. Prisbe, *Comments: The Intracorporate Conspiracy Doctrine*, 16 U. Balt. L. Rev. 538, 539 (1987). The fundamental wrong of conspiracy is thus not the augmented scope and scale of "group danger," *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 603 (5th Cir. 1981) (citation omitted), but the "creative interaction of two *autonomous* minds[,]" *see Stevens*, 909 F.2d at 433 (emphasis added). For example, the economic power of a parent company and its wholly owned subsidiary is surely greater when combined than apart. But such a combination is not a conspiracy, because the two do not have "two separate corporate consciousnesses, but one." *See Copperweld*, 467 U.S. at 771. That is to say, the "essence

of a conspiracy is an *agreement*" between independent actors, *see Stevens*, 909 F.2d at 433, not the magnitude of risk alone.

Considerations of autonomy at common law thus command the inquiry into whether a statute considers actors as sufficiently separate to conspire. *See, e.g.*, *Copperweld*, 467 U.S. at 771; *Dege*, 364 U.S. at 54. In *United States v. Dege*, for example, the Supreme Court held that a husband and wife could conspire within the meaning of an 1867 statute because the common law had long considered them to be fully autonomous actors. *See id.* at 52. Conversely, two agents acting for the same principal were not considered fully autonomous actors at common law in 1871 when § 1985(3) was drafted. *See* B.1, *supra*. Therefore, subjecting agents to conspiracy liability under § 1985(3) would not be warranted.

This result is further confirmed by the Supreme Court's modern articulation of the doctrine as applied to the Sherman Act. *See Copperweld*, 467 U.S. at 771–72. In *Copperweld v. Indep. Tube Corp.*, the Supreme Court again considered whether the actors charged with conspiring were sufficiently autonomous to make an unlawful "meeting of the minds" an impossibility. *See id*. And even if the Fifth Circuit relied solely on antitrust principles to uphold the doctrine, *see* Appellant's Br. 35, the Supreme Court did not, *see* Shaun P. Martin, *Intracorporate Conspiracies*, 50 Stan. L. Rev. 399, 435 (1998) ("no evidence [in

Copperweld] suggests that the definition of a conspiracy was intended to vary from one area of substantive law to another"). The analysis in *Copperweld* likewise applies to two federal employees who are alleged to have conspired while discharging their official duties—employees who share a "common design" with their employing agency and with each other. *Cf. Copperweld*, 467 U.S. at 771; *see also Ziglar*, 582 U.S. at 153 ("When two agents of the same legal entity make an agreement in the course of their official duties . . . as a practical and legal matter their acts are attributed to their principal."). Crucially, this common purpose prevails even when their supervising authority does not keep "a tight rein" because they may "assert full control at any moment[,]" *cf. id.* at 771–72, just as the post office manager here could have done, *see* JA-4.

Because the proper inquiry looks to the autonomy of the relevant actors under the common law, the doctrine is not *per se* limited to any particular entity or statute. Courts have thus not hesitated to apply the doctrine to § 1985(3), *see, e.g.*, *Buschi v. Kirven*, 775 F.2d 1240, 1252–53 (4th Cir. 1985); *Tabb v. D.C.*, 477 F. Supp. 2d 185, 190 (D.D.C. 2007) (collecting cases from seven courts of appeals), or public entities, *see, e.g.*, *Wright v. Illinois Dep't of Child. & Fam. Servs.*, 40 F.3d 1492, 1508 (7th Cir. 1994); *Konan*, 96 F.4th at 804 (doctrine protects USPS postal workers). And like most interpretive inquiries, it certainly does not

depend on whether a particular provision belongs to an antitrust statute or even a "Super-Statute[,]" *see* Appellant's Br. 36.

2. Application of the intracorporate-conspiracy doctrine mandates a dismissal of Pierce's § 1985(3) claim.

Courts have articulated the terms of the intracorporate-conspiracy doctrine in various ways, following from the common law principles detailed in II.B.1, *supra*. Circuit courts accepting the intracorporate-conspiracy doctrine's applicability to § 1985(3) have favored a formulation premised on general principles of agency law, stating that agents acting for the same principal cannot conspire while acting within the scope of employment. *See, e.g.*, *Johnson v. Hills & Dales Gen. Hosp.*, 40 F.3d 837 (6th Cir. 1994). On the other hand, the Supreme Court's more recent formulation of the doctrine in *Ziglar* simply considers whether federal officials act within their official capacities. *See Ziglar*, 582 U.S. at 152–53. Although *Ziglar* does not hold that the doctrine applies to § 1985(3), it provides a roadmap for how it would function within the context that is implicated here: § 1985(3) as applied to federal officials. *See* 582 U.S. at 153.

Nonetheless, Meyer and Gardner are protected by the intracorporate-conspiracy doctrine under either formulation.

a. Pierce's claim falls squarely within the *Ziglar* formulation of the intracorporate-conspiracy doctrine.

In *Ziglar*, the Supreme Court defined the intracorporate-conspiracy doctrine as it would apply to federal officials in a § 1985(3) suit. Per the Court's description, albeit not crucial to the holding, the intracorporate-conspiracy doctrine requires two conditions when applied to federal actors. First, there must be "an agreement between or among agents of the same legal entity." *Ziglar*, 582 U.S. at 153 (citing *Copperweld*, 467 U.S. at 769–771). Second, "the agents [must] act in their official capacities." *Ziglar*, 582 U.S. at 152. Although the Supreme Court has not formally defined the scope of this second requirement, it has suggested that if the doctrine were to apply to § 1985(3) cases, "officials employed by the same governmental department [would] not conspire when they speak to one another and work together in their official capacities." *Id.* at 155. If both requirements are met, then there would be no unlawful "conspiracy" formed because, "as a practical and legal matter . . . there has not been an agreement between two or more separate people." *Id.* at 153. Pierce's § 1985(3) claims meet both requirements.

Pierce alleges that Meyer and Gardner, two employees of the same legal entity, USPS, "conspired with one another." JA-5. As agents acting "in the course of their official duties," *see Ziglar*, 582 U.S. at 153,

of handling mail, *see* JA-5, Meyer and Gardner could *not* have conspired with one another, per *Ziglar*. Indeed, because Meyer and Gardner were acting in their official capacities as USPS mail handlers, any agreement between them regarding the handling of the mail could not have been an agreement between "two or more persons." Because Pierce has failed to satisfy the plurality of actors required to allege a § 1985(3) conspiracy, Pierce has failed to state an actionable claim. This Court should hold, therefore, that the district court properly dismissed the § 1985(3) claim.

b. Nonetheless, Meyer and Gardner acted within their scope of employment.

Courts also apply the general agency principles detailed in B.1, *supra*, to require that agents have acted within the scope of employment for the intracorporate-conspiracy doctrine to apply. *See, e.g.*, *Johnson*, 40 F.3d 837; *Eggleston v. Prince Edward Volunteer Rescue Squad, Inc.,* 569 F.Supp. 1344, 1352 (E.D.Va.1983), *aff'd without opinion,* 742 F.2d 1448 (4th Cir. 1984). Whether conduct falls within the scope of employment is an inquiry under state law. *See, e.g.*, *Flechsig v. United States*, 991 F.2d 300 (6th Cir. 1993) (citing *Williams v. United States*, 350 U.S. 857 (1955)). The scope of employment standard in the State of Ames is unknown.

However, cases in which the intracorporate-conspiracy doctrine is applied to § 1985(3) support a proposition that the determinative inquiry is whether the underlying activity itself—not the alleged

wrong—was part of their official duties. *See Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1261 (11th Cir. 2010) (stating that the scope of employment inquiry asks whether defendant was performing a function that, but for constitutional violation, was within "job-related duties"). Government agents can thus "act within the scope of their employment duties 'even though [a] complaint alleges improprieties in the execution of these duties.'" *Kelly v. City of Omaha, Neb.*, 813 F.3d 1070, 1078 (8th Cir. 2016) (citation omitted). A contrary rule would make the intracorporate-conspiracy doctrine "a meaningless concept . . . [because in] every case of conspiracy under section 1985 there are necessarily accusations of wrongful conduct." *Doe v. Bd. of Educ. of Hononegah Cmty. High Sch. Dist. No. 207*, 833 F. Supp. 1366, 1382 (N.D. Ill. 1993).

Here, Meyer and Gardner were acting within the scope of their employment. In each of the times that Meyer and Gardner interacted with Pierce, they were doing so while in the process of delivering or handling her mail. *See* JA-3 ("Pierce confronted Meyer while he was delivering mail"). Meyer and Gardner's interactions with Pierce all occurred during "the execution of [their] duties" as postal officers, which puts the actions within the scope of employment. *See Kelly*, 813 F.3d at 1078. Because Meyer and Gardner were performing an official duty, "improprieties in the execution," while unfortunate, do not sway the analysis. *See id.*

At no point has Pierce alleged that either Meyer or Gardner acted outside the scope of their employment. A post-hoc argument that Meyer and Gardner were acting outside the scope of their employment cannot be reconciled with Pierce's simultaneous effort to hold USPS liable for the same conduct under the FTCA. *See* 28 U.S.C. § 1346(b)(1) (indicating an employee must be "acting within the scope of his office or employment" under the FTCA); *see also Sheridan v. United States*, 487 U.S. 392, 401 (1988) (holding that the conduct of an official acting outside the scope of his employment does not give rise to an FTCA claim). Holding that Meyer and Gardner were acting outside the scope of their employment on this issue would necessitate dismissal of the FTCA claims against the United States.

3. No further exceptions are required in this case, either by law or policy.

The parameters of the doctrine laid out in the preceding sections extinguish any need for additional carve-outs. However, some circuits have applied fact-specific exceptions to the intracorporate-conspiracy doctrine. Because the two requirements contemplated by the *Ziglar* Court and, if applied, the scope of employment requirement, set sufficient limiting principles, this Court should reject the application of Pierce's preferred exceptions.

First, Pierce contends that the doctrine should not apply because Meyer and Gardner's *alleged* conduct resembles a federal crime. *See*

Appellant's Br. 42–43. Such an exception does not comport with the logic of *Copperweld*. There, the Supreme Court applied the intracorporate-conspiracy doctrine to § 1 of the Sherman Act, 467 U.S. at 777, despite the fact that a conspiracy claim under the act is, itself, a violation of federal criminal law. *See* 15 U.S.C. § 1. As *Copperweld* demonstrates, the co-existence of a criminal conspiracy with a civil conspiracy does not preclude the intracorporate-conspiracy doctrine from applying in the civil context.

And, even if the criminal law exception were to apply, Pierce's complaint does not meet the high bar the exception imposes. Per the *McAndrew v. Lockheed Martin Corp.* court, to bar the application of the intracorporate-conspiracy doctrine, the complaint must have alleged a civil conspiracy that also "squarely and unambiguously alleges a criminal conspiracy in violation of [a criminal conspiracy statute]." 206 F.3d at 1035–36. Pierce has done no such thing. At best, Pierce plucked a *non-conspiratorial* federal law from the shelf and posited conclusive criminal liability. *See* Appellant's Br. 42–43 (citing 18 U.S.C. § 1701). While a court must presume that all well-pleaded facts are true for the purpose of the civil action at issue, the court need not and should not presume a violation of a criminal law based solely on Pierce's assertion. Thus, facts of this case do not warrant a criminal law exception, if such an exception exists.

Second, Pierce contends that the doctrine should not apply because Meyer and Gardner's are low-level employees and not USPS executives. *See* Appellant's Br. 43. This exception flatly contradicts the agency principles underlying the entirety of the intracorporate-conspiracy doctrine: The actions of all agents—not just corporate executives—are attributed to the corporation. *See* § B.2, *supra*. Regardless, the complaint contradicts Pierce's assertion that "Meyer and Gardner's actions do not reflect a collective corporate decision." *See* Appellant's Br. 43. Indeed, the manager at the Ames City Post Office told Pierce, after she complained about Meyer and Gardner's conduct, "that the *Postal Service*," JA-4 (emphasis added), the collective legal entity, "would likely not deliver any mail to her residence." *Id.* This Court should not adopt such an arbitrary exception, and, in any case, the facts do not support its application.

Finally, Pierce's continuing violations theory, *see* Appellant's Br. 43–44, is fundamentally at odds with the nature of conspiratorial liability which depends on *multiple actors*, not multiple acts. *See Travis*, 921 F.2d at 111. Section 1985(3) is concerned with the former, not the latter. To state a § 1985(3) claim, courts must determine whether "the defendants conspired—that is, reached an agreement—with one another." *Ziglar*, 582 U.S. at 154. While numerous instances of alleged discrimination may make the existence of a conspiracy more likely, such

"multiple acts" cannot transform the focus of the § 1985(3) inquiry—or the intracorporate-conspiracy doctrine that applies to it—away from the agreement itself.

This Court should interpret the law as Congress intended. Even if recognizing the intracorporate-conspiracy doctrine could lead to enforcement "gaps," policy concerns are not reason enough to second guess the "eminently sound" judgment of Congress. *See Copperweld*, 467 U.S. at 776. No statutory scheme is comprehensive, but as *Copperweld* itself acknowledged, Congress—not the courts—should draw the lines. *See id.*

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

February 24, 2025 Respectfully submitted,

The Aiko Herzig-Yoshinaga Memorial Team
/s/ Neha Aluwalia
/s/ Josiah Laney
/s/ Julia Lynch
/s/ Christine Shao
/s/ Shayna Solomon
/s/ Hyunsung Yun

Counsel for Defendants-Appellees

APPENDIX

28 U.S.C. § 1346(b)(1)

Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 2680

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

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a

discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

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

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

> **(1)** the property was seized for the purpose of forfeiture under any provision of Federal law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense;
>
> **(2)** the interest of the claimant was not forfeited;

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

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

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

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

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

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

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to acts or omissions of investigative or law

enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

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

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

(k) Any claim arising in a foreign country.

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

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

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

42 U.S.C. § 1985(3)

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or

cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

39 U.S.C. § 409(c)

The provisions of chapter 171 and all other provisions of title 28 relating to tort claims shall apply to tort claims arising out of activities of the Postal Service.