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 A FINAL JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF AMES

REPLY BRIEF FOR THE PLAINTIFF–APPELLANT

The Charles Fried Memorial Team

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Oral Argument

MARCH 11, 2025
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ARGUMENT

Appellees fail to grapple with the consequences of their positions. Taken at face value, they would immunize all USPS activity from FTCA liability—no matter how outrageous or malicious—so long as the plaintiff is deprived of mail. Appellees would also read a provision of the Ku Klux Klan Act to immunize the Klan itself, and they reach this conclusion based on ahistorical claims about nineteenth-century common law. These arguments are untenable.

I. THE DISTRICT COURT ERRED IN DISMISSING PIERCE'S CLAIMS AGAINST THE USPS UNDER THE POSTAL EXCEPTION.

Appellees expand the postal exception beyond recognition. A racist "embargo" of mail is not a "loss, miscarriage, or negligent transmission" of mail. 28 U.S.C. § 2680(b).

A. Pierce's claims do not arise out of the "loss" or "miscarriage" of mail.

Pierce's mail was not "lost," because the USPS always knew where it was. Nor was it "miscarried," because Meyer and Gardner refused to carry it at all.

1. Pierce's claims do not arise out of a "loss."

First, "loss" requires an inability to locate or recover an item. Appellees try to reduce this to an "extratextual 'whereabouts' requirement." Brief for Appellees [hereinafter Br-] 9. But being "ignorant of [an item's] whereabouts" or unable to "recover it" is exactly what makes something "lost." *Lost, Black's Law Dictionary* (3d ed.

1933). Indeed, each of Appellees' proposed definitions demand this: "Loss" requires a "deprivation," "ruin," or "place[ment] beyond recovery." Br-9. The only two cases Appellees cite regarding "loss" also support this. Both held that a "loss" occurred where the USPS could neither locate nor recover the mail, rendering it "'lost' from the postal system." *Levasseur v. USPS*, 543 F.3d 23, 24 (1st Cir. 2008); *see also C.D. of NYC, Inc. v. USPS*, 157 F. App'x 428, 429 (2d Cir. 2005).

Second, the postal exception is triggered only when the *postal system* suffers a "loss" of mail—not every time the *recipient* suffers a "loss" of mail. An interpretation that reads "loss" to bar *all* claims, so long as the recipient is deprived of mail, would immunize malicious activity far removed from core USPS functions. For instance, if the USPS seized valuables to enrich itself or withheld mail to publish its private contents online, the recipient would suffer a "loss" and have no FTCA claim. This violates Supreme Court precedent, which makes clear that the postal exception applies "only" to "harms . . . primarily identified with the Postal Service's function of transporting mail." *Dolan v. USPS*, 546 U.S. 481, 489 (2006).

Although they claim otherwise, Appellees argue for this erroneous interpretation of "loss" from the recipient's perspective. They purport to offer an "objective inquiry" that does not require taking a position as to whether the postal exception is triggered by a "loss" to the

postal system or a "loss" to the recipient. Br-10. But Appellees do take a position: In the same sentence that they tell this Court that it "need not adopt any particular point of view," they adopt the recipient's point of view, arguing that "loss" is defined by its separation "from the *recipient*." *Id.* (emphasis added).

From the postal system's perspective, there was no "loss" because the USPS knew where the mail was when it was intentionally withheld.

2. Pierce's claims do not arise out of a "miscarriage."

First, an attempted carriage must be underway for a "miscarriage" to occur. Appellees define "miscarriage" as something going "awry" while postal employees are "*bringing mail* from the sender to the recipient." Br-11 (emphasis added). Thus, by Appellees' own definition, a postal employee who is not "bringing mail" to the recipient cannot possibly "miscarry" it.

Second, a "miscarriage" cannot be intentional. Appellees cite only one published case that "envisioned" the possibility of an "intentional miscarriage." Br-12–13; *Colbert v. USPS*, 831 F. Supp. 2d 240 (D.D.C. 2011). This omits a crucial detail. *Colbert* only did so to clarify that where "the USPS has been *intentionally* interfering with the transmission of Plaintiff's mail . . . Defendant is not entitled to sovereign immunity." 831 F. Supp. 2d at 243.

Because Meyer and Gardner were never "bringing mail" to Pierce, and were instead intentionally withholding it, they could not have "miscarried" it.

3. Circuit precedent indicates that the postal exception does not include intentional conduct.

Appellees claim that "[e]very circuit except one agrees" that the postal exception "maintains immunity for intentional conduct." Br-8. Not so. Appellees cite only three cases in their favor, two of which are not precedential. *See C.D. of NYC*, 157 F. App'x at 428–30 (unpublished); *Benigni v. United States*, 141 F.3d 1167, 1167 (8th Cir. 1998) (unpublished). And, in an opinion omitted from Appellees' brief, the D.C. Circuit favorably cited cases limiting the postal exception to unintentional conduct. *See Lopez v. Postal Regul. Comm'n*, 709 F. App'x 13, 16 (D.C. Cir. 2017).

That leaves two circuits favoring Pierce's reading, and only one officially opposed. *Compare id. and Konan v. USPS*, 96 F.4th 799, 802–03 (5th Cir. 2024), *with Levasseur*, 543 F.3d at 24.

B. Pierce offers the better reading of the postal exception.

Pierce's reading abides by the rules of statutory construction and remains faithful to Congress's intent.

1. Appellees' interpretation of the postal exception violates the rule against surplusage.

Appellees' capacious definition of "loss" renders "miscarriage" superfluous. The Supreme Court has emphasized that "loss" and

"miscarriage" must be given independent effect. *See Dolan*, 546 U.S. at 486–87. Appellees define "loss" as *every* instance where "individuals do not receive their mail," Br-9, and "miscarriage" as a "[f]ailure (of something sent) to arrive," Br-11. Therefore, every time the mail fails to arrive (a "miscarriage"), an individual necessarily does not receive their mail (a "loss"). That turns "miscarriage" into "mere surplusage." *Smith v. United States*, 508 U.S. 223, 231 (1993).

Pierce's definitions of "loss" and "miscarriage" solve this problem. Each term covers independent ground, and "negligent transmission" does not render them superfluous because they encompass *non-negligent*, unintentional conduct. *See* Appellant Br. 20. Appellees mistakenly suggest that injuries caused by non-negligent, unintentional conduct are "not FTCA claims." Br-14. This overlooks conversion liability arising out of the USPS's role as a bailee of mail: Some states hold bailees liable for non-negligent miscarriages to the wrong person, *see* Restatement (Second) of Torts § 234 (1965), and non-negligent losses while bailed property is held "longer . . . than the parties intended," *see Williams v. Buckler*, 264 S.W.2d 279, 280 (Ky. 1954); *see also Preston v. United States*, 696 F.2d 528, 534 (7th Cir. 1982) (relying on state bailment law to assess conversion claim under the FTCA). Pierce's reading of "loss" and "miscarriage" retains sovereign immunity for these situations by filling the gap left open by "negligent transmission."

2. Congress deliberately constructed the postal exception to allow claims like Pierce's.

Appellees claim to have "legislative purpose" on their side, Br-16, yet cite no legislative history. *See* Br-16–18. They also fail to establish why Congress would have intended the postal exception to bar recovery for a years-long racist campaign to withhold mail.

Additionally, Pierce showed that the Fifth Circuit—after issuing the exact postal-exception holding she seeks on near-identical facts—has seen almost no postal-related FTCA litigation. *See* Appellant Br. 20–21. In response, Appellees warn this Court of a "flood[] of litigation," citing a single unpublished district court opinion from three years ago. *See* Br-17. This is hardly evidence that the forecasted flood has "actualized." *Contra id.*

Further, Appellees contend that a non-FTCA remedy already exists here: The senders should have insured every piece of mail sent to Pierce during the four-year "embargo." *See* Br-17. But this is no remedy at all. It does nothing for Pierce. And, because the mail was returned to the senders, JA-4, they would not have had any insurance claim. *See What is Insurance?*, USPS, https://faq.usps.com/s/article/What-is-Insurance.

In the end, Pierce and Appellees agree: "Congress could have granted USPS blanket immunity but chose not to." Br-18.

II. THE DISTRICT COURT ERRED IN DISMISSING PIERCE'S CLAIMS UNDER 42 U.S.C. § 1985(3).

"All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it." *United States v. Lee*, 106 U.S. 196, 220 (1882). Meyer and Gardner cannot escape this conclusion by arguing they are not "persons" and invoking an inapposite antitrust doctrine.

A. Section 1985(3) applies to federal actors.

Section 1985(3) covers federal actors, as it applies to "two or more persons" who "conspire" to deprive a person "of the equal protection of the laws." 42 U.S.C. § 1985(3). Appellees cite no federal circuit that holds otherwise. *See* Br-23–33.

1. Meyer and Gardner are "persons" under § 1985(3).

The parties agree that "person" means "any being whom the law regards as capable of rights or duties." Br-25. Because "person" plainly includes Meyer and Gardner, that is the end of the matter. *See* Br-8 ("Courts should 'construe a statutory term in accordance with its ordinary or natural meaning.'" (citation omitted)).

Appellees nevertheless argue that two natural persons, acting in their personal capacities, are not "persons." *See* Br-25–27. Yet they offer not even a single case adopting this novel interpretation, which courts have deemed "inconceivable" in the § 1985(3) context. *Hobson v. Wilson*, 737 F.2d 1, 20 (D.C. Cir. 1984).

Appellees instead smuggle their argument through the "artificial person" canon, citing cases that solely concern whether "person" includes sovereigns, corporations, or public officers acting in their *official* capacities. *See* Br-25–27. But this canon is never used to question whether "person" includes natural persons acting in their personal capacities. *See* Antonin Scalia & Bryan Garner, *Reading Law* 273 (2012). ("[P]erson was sensibly held to mean 'natural person' . . . . How could it be otherwise?").

2. Circuit and Supreme Court precedent maintain that § 1985(3) applies to federal actors.

Seven federal circuits hold that § 1985(3) covers federal actors. *See* Appellant Br. 26. Only one circuit has held otherwise. But Appellees omit reference to that roundly rejected case. *Compare* Br-23–33 *with* Appellant Br. 26–27 (discussing *Mack v. Alexander*, 575 F.2d 488 (5th Cir. 1978)).

Instead, Appellees accuse seven circuits of "cherry picking" language from *Griffin v. Breckenridge*. 403 U.S. 88 (1971); Br-31. But *Griffin*'s logic cannot be read to exclude federal actors. *See* Appellant's Br. 26–27. No circuit has read *Griffin* otherwise. *See, e.g.*, *Davis v. Samuels*, 962 F.3d 105, 114 n.9 (3d Cir. 2020). Nor did the Supreme Court in *Ziglar v. Abbasi*, 582 U.S. 120 (2017), when—contrary to Appellees' assertion—coverage of federal actors was discussed by both parties. *See, e.g.*, Transcript of Oral Argument at 39–40, 50, *Ziglar*, 582

U.S. 120 (No. 15–1358); Br-31.

"Judicial restraint" does not require this Court to be the *only* circuit to disagree. *Contra* Br-32–33.

3. Pierce's claims fit squarely within the purpose of § 1985(3).

The Supreme Court accords the Klan Act "a sweep as broad as [its] language," *Griffin*, 403 U.S. at 97, and often extends the Act well beyond its original purpose, *see, e.g.*, *Dennis v. Higgins*, 498 U.S. 439, 441–45 (1991) (allowing challenge to tractor tax on dormant Commerce Clause grounds under the Klan Act).

Regardless, the Klan Act's original purpose supports applying § 1985(3) to federal actors. According to the Act's sponsor, "the whole design and scope" of what became § 1985 was to punish "*any combination or conspiracy* to deprive" citizens of the Constitution's guarantees. Cong. Globe, 42nd Cong., 1st Sess. 382 (1871) (emphasis added). Appellees claim legislative history supports their position, but cite none. *See* Br-27–29.

Furthermore, Congress legislated against a historical backdrop in which federal actors themselves were members of the Klan. For instance, in the year the Klan Act was passed, several federal employees, including "a United States mail route-agent[]," were found to be "active member[s] of the [Klan]." *Another Ku-Klux Proclamation*, Boston Daily Advertiser, Oct. 13, 1871. On Appellees' read, Congress

intended for the Klan Act to exempt these Klan members, simply because they were mailmen. That cannot be correct.

B. The intracorporate-conspiracy doctrine does not bar Pierce's claims.

The Supreme Court has been clear: The intracorporate-conspiracy doctrine is a "Sherman Act principle" whose applicability "turns on specific antitrust objectives." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 166 (2001). Appellees never argue that this antitrust doctrine advances § 1985(3)'s objectives. *See* Br-33–47. Instead, Appellees solely rely on erroneous historical arguments that ignore on-point nineteenth-century conspiracy law.

1. The common law in 1871 rejected the intracorporate-conspiracy doctrine.

All parties agree that "the common law tradition" of the nineteenth century "carries special force in the context of the Klan Act." Br-34–35. The intracorporate-conspiracy doctrine was rejected by nineteenth-century common law, so it does not apply to § 1985(3).

Although Appellees do not acknowledge it, *see* Br-35–36, agents of the same legal entity were regularly held liable for conspiring among themselves near the time of the Klan Act's passage. *See, e.g.*, *Page v. Cushing*, 38 Me. 523, 525–28 (1854) (agents of same prosecutor's office); *State v. Donaldson*, 32 N.J.L. 151, 154 (1867) (agents of same corporation); *Ochs v. People*, 16 N.E. 662, 670–71 (Ill. 1888) (county

commissioners).

In fact, courts uniformly rejected Appellees' exact argument: that an agent's "acts are the acts of the corporation . . .; a corporation is but one person . . .; [and therefore] an indictment for conspiracy cannot be maintained." *E.g.*, *People v. Duke*, 44 N.Y.S. 336, 337–38 (N.Y. Gen. Sess. 1897); *see also* Appellant's Br. 32–33 (collecting additional cases).

Appellees make no attempt to reconcile any of these cases with their position. *See* Br-33–40.

2. The common law in 1871 did not treat agents as "one person."

The Supreme Court has made clear that, although "a corporation acts through its employees . . . [they] are not legally identical." *Cedric Kushner*, 533 U.S. at 166. Appellees cite no authority articulating a different view in 1871. Instead, Appellees wrongly suggest that respondeat superior doctrine—which holds principals accountable for their agents' actions—treated agents and principals as "one person" for *all* purposes. *See* Br-35.

Every nineteenth-century source cited by Appellees—without exception—only refers to agents and principals as "one person" for the limited purpose of respondeat superior. *See* Br-33–36 (first citing *Second Nat. Bank v. Ocean Nat. Bank*, 21 F. Cas. 961, 966 (C.C.S.D.N.Y. 1873) (holding principal liable for agent's tort); then citing *New Orleans, J. & G.N.R. Co. v. Bailey*, 40 Miss. 395, 453 (Miss. Err. & App. 1866) (same);

and then citing Joseph Story, *Commentaries on the Law of Agency* §§ 458–61 (Edmund Bennett ed., 6th ed. 1863) (discussing principal's liability to third parties)).

But nineteenth-century respondeat superior did not erase all legal distinctions between agents and principals. Agents could be held "personally responsible" for their wrongs, even when acting on behalf of their principals. *See* Joseph Story, *supra*, § 311. Indeed, Appellees cannot identify any court that extinguished an agent's conspiracy liability before a 1950s antitrust case. *See Nelson Radio & Supply Co. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952).

Finally, Appellees suggest that persons must have sufficient "autonomy" to form a conspiracy. *See* Br-36–40. But Appellees cite no authority suggesting that agents of the same legal entity lack such autonomy. *See* Br-38. This is likely because, under nineteenth-century law, agents *did* have autonomy to form a conspiracy. *See supra* Section II.B.1.

3. Pierce's § 1985(3) claims are covered by the intracorporate-conspiracy doctrine's exceptions.

Even if this Court were to adopt the doctrine, its exceptions apply here. Contrary to Appellees' assertions, *see* Br-41–42, 44, *Ziglar* has no bearing on how the doctrine's exceptions apply. *See* 582 U.S. at 153 ("[N]othing in this opinion should be interpreted" as either "approving or disapproving the intracorporate-conspiracy doctrine's application.").

First, the criminal-conspiracy exception is applicable. Meyer and Gardner "conspire[d] . . . to commit an[] offense against the United States," *see* 18 U.S.C. § 371, by "willfully obstruct[ing]" the delivery of Pierce's mail, *see* § 1701. Pierce's allegations are sufficient at the pleading stage. *See McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1034 (2000). *Contra* Br-45.

Second, in response to the corporate-decision exception, Appellees reiterate their conflation of respondeat superior and the intracorporate-conspiracy doctrine. *See supra* Section II.B.2; Br-46. But because Meyer and Gardner's racist "embargo" was not official USPS policy, they were not "acting *only* for the [USPS]," and thus remained individually capable of forming a conspiracy. *Cf. Nelson Radio*, 200 F.2d at 914 (emphasis added).

Third, Appellees' response to the multiple-acts exception neglects that "different considerations [may] apply to a conspiracy respecting equal protection guarantees." *Ziglar*, 582 U.S. at 153–54. Simply put, it would be a "fiction without a purpose" to immunize Meyer and Gardner's years-long, racist campaign against Pierce. *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 603 (5th Cir. 1981).

4. Appellees' position would immunize the Ku Klux Klan itself from § 1985(3) liability.

Appellees' position is that this Court should apply the intracorporate-conspiracy doctrine to § 1985(3) without "any additional

carve-outs." Br-44. That leads to the astonishing outcome that the Ku Klux Klan itself could acquire immunity under § 1985(3) simply by incorporating.[1] *See Johnson v. Hills & Dales Gen. Hosp.*, 40 F.3d 837, 840 (6th Cir. 1994). In response, Appellees cast this as an "enforcement 'gap'" reflecting the "'eminently sound' judgment of Congress." Br-47 (citation omitted). This Court should not believe that Congress adopted a doctrine that would immunize the "historical catalyst" behind the Ku Klux Klan Act. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985).

[1] Georgia permitted the Ku Klux Klan to incorporate in 1916. *See* Samuel D. Brunson, *Addressing Hate: Georgia, The IRS, and the Ku Klux Klan*, 41 Va. Tax Rev. 45, 50 (2021).

CONCLUSION

This Court should reverse the district court's order and remand for further proceedings.

March 3, 2025

Respectfully submitted,

The Charles Fried Memorial Team

/s/ Nathalie Beauchamps

/s/ Joe Caplis

/s/ Joshua Grambow

/s/ Nicholas Nelson

/s/ Paneez Oliai

/s/ Coy Ozias

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APPENDIX

18 U.S.C. § 371

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both . . . .

18 U.S.C. § 1701

> Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined under this title or imprisoned not more than six months, or both.

28 U.S.C. § 2680(b)

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

42 U.S.C. § 1985(3)

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.